Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Sprint Nextel Corporation and	)	WT Docket No. 08-94
Clearwire Corporation	)	DA 08-1477
	)	FCC File Nos. 0003367640 *et al.*
Request for FCC Consent to Transfer Control of	)	
Licenses and Authorizations	)	

REPLY OF THE
WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

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EXECUTIVE SUMMARY

WCA reiterates its support for the proposed combination of the 2.5 GHz assets held by Sprint Nextel Corporation and Clearwire Corporation, so that a new entity ("New Clearwire") may deploy those assets towards the construction and operation of the nation's first coast-to-coast WiMAX-based 2.5 GHz wireless broadband network.

The proposed transaction is an unusual event that is distinguishable from the typical CMRS-related transaction the Commission is called upon to review. This is not a case where one incumbent CMRS operator is acquiring another, leaving just one competitor in a market where there once were two and requiring an analysis of whether the public interest benefits of the combination outweigh the loss of one operator. Rather, the record here establishes that while neither of the current license holders are capable of individually deploying their own nationwide broadband networks, by pooling their resources they have attracted the capital necessary to introduce a viable new nationwide competitor into the wireless broadband marketplace. The Commission must give appropriate weight to this critical distinction, which, when viewed in tandem with the undisputed public interest benefits of the transaction, make a compelling case for expedited approval of the formation of New Clearwire.

Not surprisingly, the transaction has received overwhelming support from a broad cross-section of commenting parties, including BRS and EBS licensees and their trade groups, 2.5 GHz band wireless broadband system operators, technology companies, and consumer and other public interest representatives. The record confirms that consummation of the transaction will achieve the Commission's objective of introducing a new wireless broadband alternative in the 2.5 GHz band. As such, the creation of New Clearwire should be authorized expeditiously.

Given the overwhelming evidence that the transaction will serve the public interest, the debate as to whether the Commission should apply a modified version of the "spectrum screen" it uses to evaluate CMRS-related transactions that would include for the first time 2.5 GHz spectrum is of no decisional significance. The screen is used to identify those situations where a competitive analysis is required, and here the record provides ample evidence that the formation of New Clearwire will be pro-competitive. Less than two weeks ago, the Commission explicitly refused to include BRS spectrum in the screen used to Verizon Wireless's acquisition of Rural Cellular Corporation because the BRS band is not sufficiently developed to warrant inclusion, and nothing has changed in the interim to merit a different finding here. While there may come a time when BRS spectrum should be included within a spectrum screen, before adding any 2.5 GHz spectrum to the screen the Commission will have to address the substantial technical and regulatory differences between BRS/EBS and the CMRS wireless spectrum in lower frequency bands that is included in the spectrum screen.

Finally, the Commission should not impose special automatic roaming conditions on New Clearwire. The Commission is already considering whether to impose automatic roaming obligations on wireless broadband providers generally in its pending rulemaking on that subject (WT Docket No. 05-265). There is no justification for New Clearwire to be subject to special roaming requirements not imposed on others.

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WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys, hereby replies to filings made to date with respect to the above-captioned applications for Commission consent to the combination of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") licenses, leases and related assets held by Sprint Nextel Corporation ("Sprint") and Clearwire Corporation ("Clearwire"). WCA reiterates its support for the proposed combination.[1] The record establishes beyond any doubt that the creation and funding of New Clearwire, and the resulting construction and operation of a nationwide WiMAX-based wireless broadband network in the 2496-2690 MHz ("2.5 GHz") band, will advance the public interest in a myriad of ways that are discussed in more detail below. Thus, WCA urges the Commission to expeditiously grant the above-captioned applications.

[1] *See* Comments of Wireless Communications Ass'n Int'l, Inc., WT Docket No. 08-94 (filed July 24, 2008).

I. TIMELY APPROVAL OF THE TRANSACTION IS NECESSARY TO INTRODUCE NEW COMPETITION INTO THE BROADBAND MARKETPLACE IN SATISFACTION OF COMMISSION'S POLICY OBJECTIVES FOR THE NEW 2.5 GHZ BAND.

The long and difficult history of the 2.5 GHz band is a matter of public record and need not be repeated in detail here.[2] For present purposes, it suffices to say that the Commission long ago identified 2.5 GHz regulatory reform as a critical component of its campaign for promoting wireless broadband deployment, and through a series of decisions in WT Docket No. 03-66 the Commission has crafted a new regulatory environment in which 2.5 GHz wireless broadband can flourish.[3] Now, Sprint and Clearwire, the largest spectrum holders in the 2.5 GHz band, have done their part by agreeing to the combination of assets that is essential before any nationwide network can be funded and deployed. It is not surprising then that those in the 2.5 GHz industry who know the spectrum's history all too well have uniformly urged the Commission to expeditiously approve the New Clearwire transaction as a means of furthering the spectrum's transformation into a *bona fide* source of new wireless broadband services.[4] The proposed

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[2] *See*, *e.g.*, "A Proposal For Revising The MDS And ITFS Regulatory Regime," Wireless Communications Ass'n Int'l, Inc., Nat'l ITFS Ass'n and Catholic Television Network, RM-10586, at 2-10 (filed Oct. 7, 2002).

[3] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14171-73 (2004) (discussing history of 2.5 GHz band) ["*BRS/EBS R&O*"]. *Id*. at 14167 ("The actions taken in this order initiate a fundamental restructuring of the band that will provide both existing [EBS and BRS] licensees and potential new entrants with greatly enhanced flexibility in order to encourage the highest and best use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services. By these actions, we make significant progress towards the goal of providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location.") (footnotes omitted).

[4] *See*, *e.g.*, Comments of The George Mason University Instructional Foundation, Inc., *et al*., WT Docket No. 08-94, at 3 (filed July 24, 2008) ["If the FCC were to reject the request of these two companies to combine their efforts and their 2.5 GHz assets, the Commission would kill any hope for nationwide fixed and mobile broadband services on the 2.5 GHz spectrum, thus dooming the spectrum once again to becoming the underachiever that much of it has been since it was first carved out for instructional use in the early 1960s."]; Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket No. 08-94, at 3-4 (filed July 24, 2008); Letter from Joel A. Brick, Sioux Valley Wireless, to

Sprint-Clearwire combination has been greeted with overwhelming applause, with EBS licensees (both individually and through the two major EBS coalitions), BRS licensees, 2.5 GHz system operators, technology companies, and public interest groups all expressing unqualified support for rapid creation of New Clearwire.[5]

It is not disputed that "New Clearwire holds the promise of a tremendous and much-needed boost to broadband competition in America."[6] The record establishes that "[t]he additional competition brought about by New Clearwire's entry should lead to lower prices and improved service quality in both the wireless segment of the broadband market and in the overall broadband market."[7] Moreover, there is widespread belief that the economies and efficiencies to

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Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94, at 2-3 (filed Aug. 1, 2008) ["Sioux Valley Comments"].

[5] *See, e.g.*, Comments of National Educational Broadband Service Association, WT Docket No. 08-94 (filed July 24, 2008) ["NEBSA Comments"]; Comments of Xanadoo, LLC, WT Docket No. 08-94 (filed July 24, 2008) ["Xanadoo Comments"]; Comments of Joint EBS Parties, WT Docket No. 08-94 (filed July 24, 2008); Comments of Gryphon Wireless, WT Docket No. 08-94 (filed July 24, 2008) ["Gryphon Comments"]; Letter from Monsignor Michael J. Dempsey, President, Catholic Television Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94 (filed July 24, 2008); Letter from P. Kelley Dunne, Chief Executive Officer, DigitalBridge Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94 (filed July 24, 2008) ["DigitalBridge Comments"]; Comments of Clarendon Foundation, WT Docket No. 08-94 (filed July 24, 2008); Comments of W. Kenneth Ferree and Barbara S. Esbin, WT Docket No. 08-94, at 3 (filed Aug. 4, 2008) ("Based on the record developed and the public benefits that would accrue as a result of proposed combination, the Commission should expeditiously complete its review in this matter and grant the applications without the imposition of extraneous conditions."); Sioux Valley Comments, n.4 *supra*; Letter from Philip C. Merrill, President, Virginia Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94 (filed Aug. 4, 2008); Joint Opposition of Source for Learning, Inc. and Indiana Higher Education Telecommunication System to Petition to Deny of AT&T, Inc., WT Docket No. 08-94 (filed Aug. 4, 2008) ["Joint Source for Learning Opposition"]; Letter from Philip C. Merrill, Manager, BeamSpeed, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94 (filed Aug. 4, 2008); Opposition of WHTV Corp and BIVA Telecommunications, WT Docket No. 08-94 (filed Aug.4, 2008).

[6] Opposition of Google Inc., WT Docket No. 08-94, at 1 (filed Aug. 4, 2008) ["Google Opposition"].

[7] Comments of Randolph J. May, President, The Free State Foundation, WT Docket No. 08-94, at 2 (filed Aug. 4, 2008) ["Free State Comments"]. *See also* Opposition of Intel Corporation to Petitions to Deny and Reply to Comments, WT Docket No. 08-94, at 3 (filed Aug. 4, 2008) ["Intel Opposition"] ("New Clearwire will provide an alternative platform that will enhance marketplace competition – leading to lower prices and better service for consumers."); Google Opposition at 2 (Formation of New Clearwire

be realized from a successful New Clearwire will yield expanded broadband deployment in small rural communities,[8] as lower 2.5 GHz band equipment costs will allow all operators (not just New Clearwire) to provide service in less densely settled areas where service might not otherwise become available. In addition, the docket reflects the EBS community's view that the formation of New Clearwire will assure that EBS licensees "achieve the best use of their educational reservation."[9]

The public interest calculus here is not the same as that used for the type of Commercial Mobile Radio Service ("CMRS") transaction the Commission is typically called upon to review. The Sprint-Clearwire transaction is not one in which one incumbent service provider is acquiring another. Rather, the record evidence establishes that neither of the current license holders are capable of individually deploying their own nationwide broadband networks, but that by pooling their resources they have attracted the capital necessary to introduce a viable new nationwide competitor into the wireless broadband marketplace.[10] The Commission's public interest review

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"would yield significant benefits for all consumers by forcing today's incumbent broadband providers to compete more vigorously, to lower prices, to raise customer service levels, and to innovate.").

[8] *See, e.g.*, Gryphon Comments at 1; Xanadoo Comments at 1; DigitalBridge Comments at 1.

[9] Consolidated Opposition of Hispanic Information and Telecommunications Network, Inc. to Petition to Deny, WT Docket No. 08-94, at 14 (filed Aug. 4, 2008) ["HITN Opposition"]. *See also, e.g.*, NEBSA Comments at 1 (New Clearwire will "enable EBS licensees and other educational institutions, as well as their students, faculty and staff, to finally obtain the educational benefits made possible by 2.5 GHz-based advanced wireless broadband services").

[10] Parties to this proceeding share the assertion by Sprint and Clearwire that "without the efficiencies and capital created by the proposed Transaction, the 2.5 GHz band is unlikely to develop as a viable broadband platform capable of competing against established broadband competitors, at least for the foreseeable future." Joint Opposition of Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, at 20 (filed Aug. 4, 2008) ["Sprint/Clearwire Opposition"]. For example, one EBS licensee noted that because "rolling out nationwide WiMAX broadband at 2.5 GHz is truly a 'start from scratch' proposition. It will require the kind of immense investment in initial infrastructure that only a combination of companies and corporate investors can bring to the table." Reply Comments of The George Mason University Instructional Foundation, Inc., *et al*, WT Docket No. 08-94, at 2 (filed Aug. 4, 2008). *See also* Free State Comments at 3 ("[T]he participation of New Clearwire's major investors is a positive indicator for the venture's chance for success."); HITN Opposition at 13 (Absent approval of the proposed transaction, "neither Sprint nor Clearwire would have the resources necessary to build and

of the transaction must give appropriate weight to this critical distinction, which, when viewed in tandem with the undisputed public interest benefits of the transaction, make a compelling case for expedited approval of the formation of New Clearwire.[11] As one commenting party aptly noted:

> The fundamental issue before the Commission is whether the transaction will enhance competition. Indisputably, it will. New Clearwire will be a new nationwide broadband entrant that competes against wireline and wireless providers, providing consumers with an alternative to the incumbent providers that currently dominate the marketplace. The Commission's spectrum screen analysis is designed to protect against undue concentration of wireless providers, but that is not a concern here. There can be no serious argument that the introduction of a new competitor facing the formidable challenge of wresting market share from well-established players would somehow increase market concentration.[12]

Given the overwhelming evidence that the formation of New Clearwire will advance competition, the debate as to whether the Commission should apply a modified version of the "spectrum screen" it uses to evaluate CMRS-related transactions, and for the first time include

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operate a nationwide mobile wireless broadband service."); Intel Opposition at 4 ("combining the BRS/EBS spectrum in a single entity is necessary to be able to utilize the 2.5 GHz spectrum to deploy a WiMAX network with a national footprint; neither Sprint nor Clearwire could effectively do it alone").

[11] *See, e.g., Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11537 (2006) ("Our public interest evaluation necessarily encompasses the 'broad aims of the Communications Act,' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest. Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers. In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.") (footnotes omitted).

[12] Intel Opposition at 3. *See also* Google Opposition, at 5 (It is not disputed that "the addition of a potential broadband 'third pipe" as proposed by the New Clearwire would greatly enhance competition in mobile communications and would serve the American public.").

2.5 GHz spectrum, is of no decisional significance.[13] The screen is used to identify in the first instance those situations where a competitive analysis is required, and here the record provides ample evidence that the formation of New Clearwire will be pro-competitive.[14] As another commenting party correctly recognized, "even assuming the agency's spectrum screen were to be triggered, the public interest benefits of grant of the proposed transaction appear to outweigh any harms."[15]

Any Commission application of the mobile telephony spectrum screen here must be informed by the Commission's refusal, less than two weeks ago, to include BRS in the spectrum screen used to evaluate the competitive implications of Verizon Wireless's acquisition of Rural Cellular Corporation. There, the Commission rejected a proposal for modification of the screen to include BRS for the first time because the band "do[es] not yet meet one of the criteria for suitability on a nationwide basis."[16] Put simply, nothing has happened over the past two weeks that would merit reversal of that position and the inclusion of BRS here. Nor has anyone

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[13] *See* Petition of AT&T Inc. to Deny, WT Docket No. 08-94, at 7-8 (filed July 24, 2008) ["AT&T Petition"]; Sprint/Clearwire Opposition at 21-41.

[14] The Commission has made it clear that its spectrum screen is simply a threshold for determining whether additional Commission review of a wireless transaction is necessary. By itself, it does not define whether any given wireless transaction does or does not serve the public interest.

[15] Free State Comments at 4.

[16] *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 07-208, FCC 08-181, ¶ 44 (rel. Aug. 1, 2008). Where the Commission's initial spectrum screen of 95 MHz is exceeded (or where the Commission's initial HHI-based screens otherwise indicate possible competitive harm), the Commission conducts a more detailed case-by-case analysis of markets caught by the initial screen, and counts BRS (but not EBS) spectrum and AWS-1 spectrum for the purpose of determining how much mobile wireless spectrum is available in those markets. *See Applications of AT&T Inc. and Dobson Communications Corporation*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20315, 20317-18 (2007). Even if such a market-by-market analysis were deemed necessary here, the record provides no basis for concluding that the Sprint-Clearwire transaction will cause competitive harm in any given local market, particularly after consideration of the unique circumstances of the 2.5 GHz band and the critical role the transaction will play in advancing the Commission's objectives for that spectrum.

suggested adding EBS to any spectrum screen that excludes BRS – indeed, until this proceeding EBS has never been seriously considered as a candidate band for the screen.

In the future, it may be appropriate for the Commission to consider whether BRS has evolved to the point that inclusion in a spectrum screen is merited. Historically, the Commission's determination of whether a particular spectrum band should be included within the screen has been based on a variety of factors: "whether spectrum should be included within the input market for mobile telephony service [is determined] by examining its suitability for mobile voice service: its physical properties; the state of equipment technology; whether the spectrum is licensed with a mobile allocation and corresponding service rules; and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony."[17] The record in this proceeding sets forth a range of serious issues that the Commission will have to confront in considering whether to add BRS spectrum to the screen, and if so, how. The record also reflects that the impediments to inclusion are substantially exacerbated with respect to EBS spectrum due to the unique regulatory regime and leasing protocols applicable to that band.

The reference to "physical properties" in the Commission's listing of criteria to be considered in evaluating the inclusion of a given band in the screen is particularly relevant where the BRS/EBS spectrum band is concerned. The new 2.5 GHz regulatory regime did not change the basic laws of physics – the record reflects that the 2.5 GHz band has propagation characteristics that are generally less favorable for wireless broadband deployment than the

[17] *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 14863, 14877 (2006) (footnotes omitted).

CMRS wireless spectrum currently included within the screen.[18] While the differences do not preclude use of the 2.5 GHz band for wireless broadband, the higher frequencies can require the use of more spectrum to achieve the same results as achievable with less spectrum at the lower bands.[19] Thus, before adding the 2.5 GHz band to the spectrum screen, the Commission will have to consider the propriety of discounting 2.5 GHz band holdings or otherwise adjusting the calculus to reflect market valuations as proposed by one party or to otherwise assure that similarly situated service providers are treated similarly, regardless of the frequency bands they employ.[20]

The record also reflects that, given the technical and service flexibility inherent in the Commission's 2.5 GHz band regulatory regime, the Commission cannot assume that all of the BRS spectrum, much less the entire band, will be usable in every market for wireless broadband deployment. For example, while it is true that the 2.5 GHz guardband spectrum (the twelve J channels and twelve K channels at 2568-2572 MHz and 2614-2618 MHz, respectively) *may* be available for broadband deployment in some markets, it cannot be assumed that all guardband channels will be available for that purpose, even where they are controlled by the same

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[18] *See* Sprint/Clearwire Opposition at 23 ("the 2.5 GHz band has much less favorable propagation characteristics for wireless broadband coverage than the 700 MHz broadband spectrum"); HITN Opposition at 9 ("BRS and EBS have radically different properties and regulatory history than 700 MHz that makes it easily distinguishable."). *See also Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14025 n.361 (2005) ("[W]hile the 2.5 GHz band offers spectrum in larger blocks than in some other bands, the propagation characteristics of the 2.5 GHz band are not as robust as those in lower frequency bands.").

[19] Not surprisingly, then, the MHz/pop value of BRS/EBS spectrum is substantially less than that for other bands at lower frequencies. *See* Intel Opposition at 4. One EBS licensee has also noted that because of the patchwork licensing of BRS and EBS and resulting partial overlaps of Geographic Service Areas that results from the former site-based licensing system, service providers will often be required to secure more spectrum in a particular area than may be required in order to have sufficient spectrum in an adjoining area. *See* HITN Opposition at 10.

[20] *See* Letter from Marjorie J. Dickman, Senior Attorney, Intel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-94 (filed Aug. 7, 2008) (proposing that the Commission "refine the spectrum aggregation using objective marketplace valuations ($ per MHz/pop)").

operator.[21] The 24 guardband channels (each just 0.333 MHz wide) were set aside because they may be required to protect the reception of EBS video services in the 2572-2614 MHz band from interference caused by mobile broadband devices.[22] Similarly, the availability of the 2572-2614 MHz segment for high-site, high-power video use imposes additional technical challenges unique to the 2.5 GHz band – not only is that spectrum not available in the particular market for wireless broadband when used for video, but wireless broadband use may also be precluded in neighboring markets due to permissible interference.[23] Obviously, these factors will vary from market to market, and pose substantial challenges to the integration of any 2.5 GHz band spectrum into a competitive screen.

Moreover, the record reflects that those challenges grow exponentially where EBS is concerned. As noted above, the Commission's analysis of whether a particular type of spectrum belongs in the spectrum screen encompasses a variety of factors including, *inter alia*, "whether the spectrum is committed to another use that effectively precludes its uses for mobile

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[21] *See* AT&T Petition at 11.

[22] The J and K guardband channels were specifically included in the new 2.5 GHz band to create an interference buffer between lower power, cellularized commercial wireless broadband services in the band's Lower Band and Upper Band Segments (the "LBS" and "UBS") and high power, "high site" operations in the Middle Band Segment ("MBS"). *See BRS/EBS R&O*, 19 FCC Rcd at 14184-86. The MBS was created to accommodate the preexisting operations of EBS licensees, many of whom provide legacy video and other services over high power facilities (one-way video, for example). The availability of the J and K guardbands for commercial service is tied directly to whether and to what extent they must be retained to protect MBS operations from interference that may be caused by same-market LBS and UBS operations. Since system designs and EBS usage of the MBS will not be the same in all markets (indeed, such flexibility is encouraged under the Commission' EBS leasing rules), one simply cannot make universal assumptions about how the guardbands will be utilized everywhere in the country.

[23] For example, it has been suggested that a commercial operator may utilize the MBS for commercial service, on the theory that the operator is in a position to control interference to or from its operations in the adjacent LBS or UBS. *See* AT&T Petition at 9-10. In this situation, however, the more critical problem is co-channel interference between the operator's low power commercial operations and high power EBS operations sharing the same MBS channel(s) in an adjacent market. For that reason, the MBS is not analogous to the C and D block spectrum in the Lower 700 MHz band. *See id*. The 700 MHz C and D blocks are commercial frequencies. Hence, a 700 MHz operator who deploys low power facilities in the C or D blocks need not be concerned about interference from incompatible high power EBS operations.

telephony." The Catholic Television Network, the National EBS Association and other EBS interests have stressed that EBS spectrum is the only spectrum specifically set aside for educators, and is not available for commercial licensing.[24] While it is true that EBS licensees may and often do lease their spectrum to commercial 2.5 GHz operators, not all EBS licensees engage in leasing (and just last week the Commission authorized a new EBS license specifically conditioned on the licensee *not* engaging in leasing),[25] every EBS lessor must preserve capacity for educational uses, (and thus a leased MHz is not necessarily available full time for commercial use),[26] in many cases EBS licensees preserve entire channels for their own use,[27] and lease agreements often provide the EBS licensee the right to recapture capacity or even entire channels during the course of the lease.[28] Moreover, the record reflects that because the primary purpose of EBS spectrum is to meet educational objectives, EBS spectrum leases are subject to a

[24] *See* Comments of Catholic Television Network, WT Docket No. 08-64, at 2 (filed Aug. 4, 2008) ["CTN Comments"]; Opposition of National EBS Association, WT Docket No. 08-94, at 3 (filed Aug. 4, 2008) ["NEBSA Opposition"]; Joint Source for Learning Opposition at 2-3. Since its inception in 1963, EBS [formerly known as ITFS] has had as its primary purpose the transmission of instructional material to accredited public and private schools, colleges and universities for the formal education of students. *See Amendment of Part 2 and 4 of the Commission Rules and Regulations to Establish a New Class of Educational Television Service for the Transmission of Instructional and Cultural Material to Multiple Receiving Locations on Channels in the 1990-2110 Mc/s or 2500-2690 Mc/s Frequency Band*, Report and Order, 39 FCC 846, 852-53 (1963); *BRS/EBS R&O*, 19 FCC Rcd at 14222-23 ("The record demonstrates that the EBS service provides critical educational services . . . . These services are often provided by community colleges at a variety of locations across the state where such instruction would generally be unavailable. The record also demonstrates that [EBS] is used to provide training for citizens whose employment opportunities are limited by the closing of manufacturing plants and continued reduction in agricultural employment. Some EBS services . . . will even contribute to homeland security.").

[25] *See The Board of Trustees of Northern Michigan University*, Memorandum Opinion and Order, File No. 0003250992, DA 08-1674 (WTB, rel. Aug. 6, 2008).

[26] *See* NEBSA Opposition at 6; CTN Comments at 2; HITN Opposition at 9; Joint Source for Learning Opposition at 3. *See also* 47 C.F.R. § 27.1214(b)(1).

[27] *See, e.g.*, NEBSA Opposition at 6.

[28] *See* NEBSA Opposition at 7; CTN Comments at 2.

substantially different regulatory regime than non-EBS spectrum leases authorized under the Commission's *Secondary Markets* initiative, resulting in less utility for the commercial lessee.[29]

Given these considerations, it is not surprising that until this proceeding, the Commission has not been called upon to include EBS spectrum in its competitive screen. It will be difficult enough for the Commission to integrate BRS spectrum into its calculus; the challenges associated with adding EBS spectrum to the mix will only exacerbate the problem. Indeed, because the information regarding the availability of a given MHz of EBS spectrum at a given location for commercial use depends on proprietary contractual provisions, complex technical analyses, and will inevitably change over time depending on in-market and adjacent market deployments, WCA is unable to envision any viable mechanism for including EBS spectrum in a manner that fairly reflects the availability of EBS spectrum in a given market.

II. THE COMMISSION SHOULD NOT IMPOSE THE AUTOMATIC ROAMING CONDITIONS PROPOSED BY THE RURAL CELLULAR ASSOCIATION.

Finally, the record provides no support for the proposal by the Rural Cellular Association ("RCA") for the imposition of automatic roaming obligations on New Clearwire.[30]

The Commission is already considering whether to impose automatic roaming obligations on wireless broadband providers in its pending rulemaking on that subject (WT Docket No. 05-

[29] *See* NEBSA Opposition at 7; CTN Comments at 2-3; Joint Source for Learning Opposition at 3. For example, EBS leases are limited to a maximum term of thirty years, but in practice are often as short as ten or fifteen years. *See* 47 C.F.R. § 27.1214(e). Where a lease is fifteen years or longer, however, the lessee must afford the EBS licensee a right to periodically review its educational use requirements, "in light of changes in educational needs, technology, and other relevant factors," and to obtain access "to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission." *Id.*

[30] *See* Petition of Rural Cellular Ass'n to Deny, WT Docket No. 08-94, at 9 (filed July 24, 2008) ["RCA Petition"].

265).[31] For the reasons discussed in WCA's comments in that proceeding, it is neither necessary, prudent nor legal for the Commission to impose automatic roaming obligations on any operator of nascent wireless broadband networks.[32] Whether the Commission ultimately agrees with WCA or not, here it must recognize that RCA offers no rationale for imposing special roaming conditions on New Clearwire that are not imposed on other wireless broadband providers.[33] In fact, RCA makes no serious attempt to discuss the Sprint-Clearwire transaction with any specificity, much less explain why imposition of a special automatic roaming requirement on New Clearwire would be appropriate. Instead, RCA merely offers a generic discussion of roaming as applied to "wireless carriers" (apparently without regard to the spectrum they are using) and leaves the matter there.[34] This hardly suffices.

III. CONCLUSION.

WCA's position remains as before: the creation of New Clearwire presents the Commission with an unprecedented opportunity to maximize the benefits of its new 2.5 GHz bandplan and to spur widespread broadband deployment by New Clearwire and others. Nothing in the record for this proceeding suggests otherwise. WCA agrees with the observation that "[i]f New Clearwire ultimately is successful, it will be a significant step in ensuring the United States will emerge as the unquestioned world leader in broadband penetration, pricing, innovation, and

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[31] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15845-46 (2007).

[32] *See* Comments of Wireless Communications Ass'n Int'l, Inc., WT Docket No. 05-265 (filed Oct. 29, 2007).

[33] Intel Corporation notes that imposing special roaming conditions on New Clearwire "would unnecessarily handicap a new entrant and be contrary to longstanding FCC policy." Intel Opposition at 5.

[34] *See* RCA Petition at 9-10.

choice."[35] Thus, WCA continues to support the proposed transaction and requests that the Commission grant the above-captioned applications without delay.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

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[35] Google Opposition at 5-6.

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that on this 11th day of August, 2008, caused the foregoing Reply to be served by depositing a true copy thereof with the United States Postal Service, first class postage prepaid addressed to:

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