Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
SPRINT NEXTEL CORPORATION and	)	WT Docket No. 08-94
CLEARWIRE CORPORATION	)	DA 08-1477
	)	

EX PARTE REQUEST TO DENY

Prime Directive Quick Link ("PDQLink") files this *Ex Parte* comment pursuant to the Federal Communications Commission's June 24, 2008 Public Notice in the above-captioned applications for Commission consent to the combination of licenses, leases and related assets held by Sprint Nextel Corporation ("Sprint") and Clearwire Corporation ("Clearwire") to form a New Clearwire Corporation ("New Clearwire") in conjunction with other partners and investors.

The applicants have failed to address in a sufficient way the public interest concerns for such an unusual application. Therefore, PDQLink respectfully requests that the applications be denied for failure to demonstrate that the proposed license transfers are, as claimed, in the public interest and otherwise compatible with the Commission's requirements.

PDQLink does not take this step lightly. We acknowledge, of course, that the Commission's public interest standard is designed to enhance the overall public welfare, and not the position of competitors and aspiring competitors. Beyond that, we recognize an impressive array of support for the license transfers so far evident in the public record. Nonetheless, we step forward with our arguments for further Commission review 1) The multi-billion-dollar deal underlying the transfers resembles the current Wall Street bailout, with enormous and potentially adverse implications for the public along with upside potential; 2) The advocacy of many

proponents is superficial, self-serving and at times contradictory; and 3) The unusually short review process underway at the Commission heavily advantages an inner-circle of deal proponents, and severely disadvantages the general public. In other words, the process is deeply flawed, and only a more thorough examination can provide the necessary public confidence that the correct result is being achieved.

STANDING

PDQLink is a License Exempt Wireless Internet Services Provider (WISP) that is based in North Aurora, Illinois. Since 1995, PDQLink has provided broadband wireless services in North Aurora and its environs, primarily through license-exempt spectrum. The chief information officer (CIO) and founder of PDQLink serves also as the chairman of PART-15.ORG. PART-15.ORG, organized in 2002, is the premier worldwide organization of WISPs and equipment vendors who provide technical support and training in the provisioning of broadband service via license-exempt spectrum in the 902-928 MHz, 2.4 GHz, 3.65 GHz and 5 GHz bands, among others. PDQLink and PART-15.ORG have been active in many Commission proceedings that directly or indirectly affect the license-exempt industry, the deployment of broadband services, and consumers who want more choice and better services via enhanced competition. PDQLink and PART-15.ORG have created a database of some 9,000 WISPS serving (an estimated 2.3 million) customers in North America, and have used the database to conduct many electronic and in-person discussions on industry and public policy issues. PDQLink's CIO also is the editor/publisher of WISPers, a newsletter covering the license exempt industry.

PDQLink serves the public cost-effectively, primarily in the 2.4 and 5 GHz bands. Like all providers, PDQLink needs usable broadband wireless spectrum, both licensed and unlicensed, and an otherwise equitable regulatory treatment in order to serve our customers. More specifically, PDQLink has operated with the hope of buying, leasing or otherwise obtaining licensed broadband spectrum on an equitable basis in order to serve any specialized needs for its market, which combines both rural and suburban characteristics.

This proceeding centers on 194 MHz of spectrum in the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") that form the 2.5 to 2.7 GHz band. As context, the spectrum constitutes by far the largest amount of U.S. licensed broadband spectrum in the valuable lower bands below 4 GHz. The spectrum has been awarded by the Commission through the decades in various ways, including by "public interest," by lottery and by one of the first FCC auctions, from 1995-1996. The spectrum was originally authorized only for use with fixed antennae, but the Commission has steadily expanded licensee rights to foster competition so that the spectrum can now be used for either mobile or fixed services. Few of the original licensees retain their spectrum aside from many EBS licensees, who for the most part received their rights decades ago, and a few BRS licensees, primarily in smaller markets. Rights to most of the spectrum have been expertly acquired in secondary markets by Sprint Nextel Corp. or Clearwire Corp. via purchase or lease in recent years, with no direct payment to the U.S. government aside from the kinds of annual license fees paid by all commercial licensees. Sprint and Clearwire spectrum holdings include heavy components of lease rights from EBS holders, all of whom were awarded spectrum for educational purposes. A significant minority of EBS licenses belong to those who are in effect programmers who acquired their spectrum by Commission award without operating traditional schools, colleges or religious institutions. As a

comparison to more recent allocation methods, the FCC's broadband auction of just 52 MHz of broadband spectrum in the 700 MHz band won $19.2 billion in gross winning bids after the Commission eliminated 10 MHz from the auction for public safety spectrum bidders' failure to meet the auction reserve price.[1]

The 2.5 GHz BRS and EBS band represents a unique spectrum resource of keen interest to WISPs because the band has many local licensees in U.S. communities congruent with WISP markets and because the spectrum characteristics are closely congruent with the spectrum that WISPs commonly use in the 2.4 and 5 GHz bands, but with vastly more potential for mobile uses that are increasingly favored by the public. This proceeding has brought forward a number of commentators with hopeful claims that their companies can extend broadband further to U.S. underserved areas in both rural and urban environments. But the entrepreneurial spirit of America's 9,000 WISPs has clearly provided the major competition so far to telco digital subscriber line (DSL) and cable incumbents. Smaller WISPs are leading the way in providing wireless broadband alternatives.

For these reasons, PDQLink possesses the kind of longstanding and direct interest in the proceeding that is suitable for standing before the Commission.

DISCUSSION

This proceeding's unusual features include: 1) its unusually fast schedule for public comment and Commission review, 2) the great magnitude of the joint venture that underlies the proposed license transfers, 3) the potential of the license transfers to harm the competitive

[1] *See* Statement by FCC Chairman Kevin J. Martin, (March 20, 2007), available via http://wireless.fcc.gov/auctions/default.htm?job=releases_auction&id=73&page=P. See also http://wireless.fcc.gov/auctions/default.htm?job=releases_auction&id=73&page=N.

landscape and consumers, and 4) its potential to undermine public confidence in the regulatory process unless the Commission examines relevant issues carefully in a transparent and otherwise equitable manner.

The Comment Schedule Creates Unusually Brief Review

The proponents filed their Application and related documents on June 6 of this year.[2] The Commission then put this proceeding on Public Notice June 24, which is a remarkably fast turnaround for a proceeding with so many licenses and so much documentation. The Commission compounded time pressures on the public by establishing an unusually rigorous comment cycle during the summer vacation season, with initial comments due on July 24, Oppositions on Aug. 4 and Replies on Aug. 11. Not surprisingly under those circumstances (and recalling legends of the "Sooner" land rush of Oklahoma), almost all of the 55 initial comments were filed by proponents and/or beneficiaries of the license transfers. This suggests strong efforts at coordination in advance. Although such coordination is not unusual in regulatory or other lobbying, the various special factors of this proceeding make it worthwhile to examine motivations here more than usual.

A Proposal of Great Magnitude Deserves Appropriate Scrutiny

The multibillion-dollar joint venture underlying the proposed transfer is unprecedented. Also, it has enormous -- and potentially adverse -- implications for the public, especially since it involves aggregating under one company so much of the U.S. commercially licensed spectrum currently available for mobile broadband, or likely to become available in the foreseeable future.

[2] *See* Description of the Transaction and Public Interest Statement, File No. 0003368272 (Lead Call Sign B085, amended June 24, 2008) (Public Interest Statement, hereafter).

In AT&T's July 24 Petition to Deny[3] and Aug. 11 Reply,[4] AT&T aptly summarized the novel scope of the proposed license transfers between erstwhile competitors, as well as many unanswered questions. As AT&T summarized it as follows, "Clearwire Proposes to Undertake the Largest Consolidation of CMRS Spectrum in the Agency's History without Any Evaluation of its Competitive Effects."[5]

PDQLink concurs with AT&T's argument that Sprint's Commercial Mobile Radio Service (CMRS) and other mobile spectrum should be included in a competitive analysis of this transaction.[6] As AT&T noted, Sprint would be the 51% majority owner of the New Clearwire, and is widely recognized as the largest private spectrum holder in the U.S. in the more valuable sub-12 GHz spectrum bands. More specifically, we concur with AT&T that EBS spectrum should be included in a competitive analysis despite Sprint and Clearwire arguments to the contrary. If EBS is not a critical part of this deal for the purposes of spectrum screen and similar competitive reviews, then why are EBS partners of Sprint and Clearwire so heavily represented? By contrast, what is the perspective of EBS holders not yet affiliated, whose leasing options would be drastically foreclosed by consolidation of two erstwhile competitors Sprint and Clearwire into one joint venture? The Commission's public interest inquiry should assess the impact of creating what amounts to a near-monopoly in market power by New Clearwire in ability to acquire EBS spectrum.

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[3] *See* Petition to Deny of AT&T, Inc., WT Docket No. 08-94 (filed July 24, 2008) available (like other comments in the proceeding) at http://www.fcc.gov/transaction/sprint-clearwire.html.

[4] *See* AT&T Reply to Sprint Nextel/Clearwire Joint Position and Google Inc. (filed Aug. 11, 2008).

[5] *Id.*

[6] *See* ATT Petition to Deny.

We do, however, qualify AT&T's argument in a couple of ways: First, there is of course some evaluation underway on competitive effects, and the real question is whether the standards are sufficient. For example, EBS spectrum is leased in varying proportions to commercial operators in different markets. Most EBS providers lease to commercial operators most of their educational spectrum. But a small number of EBS licensees use all of their spectrum for educational purposes. So, this spectrum is different in that respect from other CMRS spectrum. That said, proponents of the New Clearwire deal are wrong when they argue that no EBS spectrum should be counted toward a spectrum screen (and indeed that even commercial spectrum in the 2.4-2.7 GHz band be disregarded).[7] Especially in view of the claims to investors by Sprint and Clearwire regarding the large extent of their mobile broadband spectrum (conveniently summarized by AT&T),[8] the reasonable course for the Commission is to undertake a rigorous market-by-market analysis that includes all available BRS and EBS spectrum, bearing in mind the wide variances of the relevant leases.

More generally, PDQLink as a small-market WISP does not ordinarily concur before the FCC with AT&T, which as the largest U.S. incumbent telco has an enormously complex and ambitious action agenda before the Commission. In this instance, however, AT&T is one of the few commentators that does not directly benefit from the deal and that also used its financial resources to present comprehensive research and commentary within the proceeding's unusually tight timeframes this summer. Therefore, we decline to endorse the unqualified attack on AT&T in the initial comments by the 12-group Public Interest Spectrum Coalition[9] ("Spectrum

[7] *See* Public Interest Statement.

[8] *Id.*

[9] *See* Public Interest Spectrum Coalition Opposition to AT&T Petition to Deny (Aug. 11, 2008)

Coalition" hereafter), which described AT&T's arguments as a "transparent sham."[10] For perspective, some of the leading funders and volunteer leaders of Spectrum Coalition members would be major beneficiaries of the license transfers. They include Intel Corp., which is a nearly 20% shareholder of Clearwire and which has heavily invested also in the overall eco-system for WiMAX technology that uses the 2.5 GHz BRS and EBS bands.[11] Another is Google Inc., which has committed to a $500 million investment in the New Clearwire and whose CEO also chairs the Board of Directors of the New America Foundation.[12] The latter is a Spectrum Coalition leader along with the foundation's legal representative, the Media Access Project, which submitted the Spectrum Coalition's two filings so far.[13]

The Commission Must Examine Carefully Claims of Special Competitive Benefits

Proponents of the license transfers have filed numerous comments predicting that the deal would benefit consumers in general, and that the Commission must approve their proposal without change. Clearwire and Sprint said, for example, "Without unconditional approval, the Applicants will lack the financing and spectrum assets they need to be a viable nationwide competitor, and the 2.5 GHz band will continue its long history of underutilization."[14] Their filings have been augmented by other carriers, EBS licenses, suppliers and advocacy groups especially interested in such specialized areas as education, rural broadband, open networks, etc.

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[10] *Id.* The Spectrum Coalition states that it consists of, in alphabetical order: The CUWIN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), the International Association of Community Wireless Networks (IACWN), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), the Open Source Wireless Coalition (OSAWC), Public Knowledge (PK) and U.S. PIRG.

[11] *See* Clearwire Institutional Owners (http://moneycentral.msn.com/ownership?Symbol=CLWR).

[12] *See* New America Foundation website, About Us, http://www.newamerica.net/about/board.

[13] *See*, for example, Public Interest Statement, Spectrum Coalition Opposition to AT&T Petition to Deny,

[14] *See* Sprint Clearwire Joint Opposition Document (Aug. 4, 2008)

A number of small and mid-size BRS operators, for example, have filed comments in favor of the proposal.[15] Many of these BRS operators focus on small markets and with an entrepreneurial focus much like that of purely license-exempt WISPs with whom they compete. As such, PDQLink respects their opinions as fellow competitors even as we seek to ensure that the Commissioner's overall review process of their specific claims is thorough and otherwise fair. But a roll-up of vast quantities of available spectrum into New Clearwire under terms largely unknown at this time has the potential severely to hurt the general public, including customers of WISPs.

In this context, PDQLink would like to respond to arguments by the Progress and Freedom Foundation[16] and the Free State Foundation.[17] Each of their comments suggested that a competitive analysis at the Commission would unnecessarily duplicate work to be performed by either the U.S. Department of Justice or the Federal Trade Commission. With all due respect for the filers' long experience in government and in free-market advocacy, PDQLink suggests to the contrary that the FCC has at least two unique strengths for this kind of review. First is a specific expertise in the engineering qualities of spectrum management, especially since an important claim in this proceeding is that certain kinds of spectrum should not be counted in a competitive analysis. Second is a tradition of open decision-making that is at least formally on the books for the FCC via such procedures as its ex parte rules.[18] See, for example, the extensive description of what kind of disclosure is required under the Commission's rules:[19]

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[15] *See*, for example, Comments of BeamSpeed, Gryphon Wireless, Sioux Valley Wireless, Virginia Communications and DigitalBridge Communications (July 24, 2008 and following).

[16] *See* Progress and Freedom Foundation Comments (July 24, 2008).

[17] *See* Free State Foundation Comments (July 24, 2008).

[18] *See* 47 Code of Federal Regulations Sections 1.1200 to 1.1216, available with relevant history at the FCC Ex Parte Rules website section http://www.fcc.gov/ogc/xprte.html along with this definition: "An ex parte presentation is a communication directed to the merits or outcome of a proceeding that, if

> In response to questions about compliance with reporting requirements in permit-but-disclose proceedings, the Commission has issued a public notice reminding participants in permit-but-disclose proceedings, such as rulemakings, of their responsibilities. Among other things, the public notice provides:
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> > Persons orally presenting data or arguments not already reflected in their written submissions in the proceeding must file summaries of the new data or arguments. The summaries must describe the substance of the new data or arguments and not merely list the subjects discussed. Generally, more than a one or two sentence description is required. Where there is ambiguity about whether data or arguments are already in the public record, the spirit of our rules would counsel parties to briefly summarize the matters discussed at the meeting. See 47 C.F.R. § 1.1206(b)(2).

This kind of transparency is much harder to sustain elsewhere in government. The Justice Department, for example, is an Executive Branch agency with an ultimate focus on courts that understandably has fosters more of a culture of confidentiality, at least unless and until massive litigation might occur years down the road. In this instance, the huge scope and complexity of the New Clearwire transactions and their potential impact on the U.S. economy call for more real-time public transparency and accountability. It would be a great oversight upon the Commission to realize "after-the-fact" that no other governing body took the spectrum issue into consideration, since it is the FCC's function to address "spectrum" issues.

WISPs Are the True Leaders in Rural Broadband

WISPs tend to be close to our customers and local communities, and highly adaptable to evolving market trends. We recognize the public interest in a viable "third pipe" -- and indeed a "fourth pipe," etc. -- to compete with cable and telco incumbents. But we do not believe that a government industrial policy is appropriate to favor one group of competitors. This is

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written, is not served on all the parties to a proceeding, and if oral, is made without advance notice to the parties and an opportunity for them to be present."

[19] *Id.*

particularly so when the WISP sector already constitutes this "third pipe" -- and the recent U.S. competitive landscape is littered with spectrum speculators from billion-dollar companies whose visionary plans to meet Commission deadlines have not been fulfilled despite highly favorable regulatory treatment conferred upon them. Simply affording special regulatory treatment in this proceeding will not guarantee "public interests" are being served.

Entrepreneurial WISPs largely deploy their networks in rural America, whereas large operators such as AT&T, Verizon, Sprint and Clearwire concentrate their deployments on more populated areas. The proponents claim that they will deploy an advanced mobile WiMAX broadband network that will cover up to 140 million people in the United States in 30 months, yet they make scant mention of specifics pertaining to rural America where more broadband opportunities are needed. This is not the first time Sprint and Clearwire have made such claims without fulfilling them. More specifically, Sprint accepted rigorous build-out requirements for its BRS footprint as part of the conditions for its merger with Nextel and as part of a Commission commitment to rural broadband. Yet Sprint is behind on its announced deployment schedules, with Commission deadlines looming, and yet claims that it cannot build its network without prompt joint venture approval, even after all the favorable regulatory treatment that the FCC has extended them through the years.[20] To enhance true competition, the Commission should examine closely the aggregation of spectrum envisioned in this proceeding, as well as the impact on non-affiliated small carriers (as raised by the Rural Cellular Association ("RCA") and its member SouthernLINC Wireless).[21] Compliance with standard procedures will enable either a prompt buildout by licensees under previous deadlines, or refarming of this valuable spectrum via the market to competing providers who can serve the public interest.

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[20] *See* Public Interest Statement.

[21] *See* RCA Petition to Deny (July 24, 2008) and SouthernLINC Wireless Comments (July 24, 2008).

Open Access Claims Should Be Disregarded Without Meaningful Guarantees

Similarly, Vonage Holdings ("Vonage") provided a vital critique to the promise of "open access" that New Clearwire proponents raised as a public interest benefit.[22] Proponents state, "New Clearwire also will permit consumers to download and use any software applications, content, or services they desire, subject only to reasonable network management practices and law enforcement and public safety considerations."[23] As Vonage noted: What precisely are the obligations and guarantees that New Clearwire is undertaking?[24] The questions raised by Vonage are important not simply for its business, but for WISPs and others who might want to provide new applications. As Vonage points out, New Clearwire proponents state: "New Clearwire will permit consumers to use any lawful device that they want so long as it is compatible with and not harmful to the WiMAX network."[25] But this commitment is almost meaningless without a clear definition of "compatible" and "harmful." Google -- the most prominent U.S. advocate of the general concept of open access -- described its commitment in the New Clearwire deal only briefly in its filing.[26] Sprint and Clearwire provided little more, and have a history of opposing open access.[27]

The Spectrum Coalition took one step this month in urging the Commission to require before approval "further details from the Applicants on how they intend to implement their

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[22] *See* Vonage Holdings Comments (July 24, 2008).

[23] *Id.*

[24] *Id.*

[25] *See* Vonage Comments.

[26] *See* Google Inc. Opposition to Petition to Deny (Aug. 4, 2008).

[27] *See* Heather Forsgren Weaver, "Vonage solves Clearwire blocking problem, asks feds for help," RCR Wireless (April 22, 2005), available at http://www.rcrnews.com/article/20050422/SUB/504220709, for example, as cited in Vonage Comments.

commitments to open networks and a neutral wholesale business model."[28] Yet it remains to be seen whether the Spectrum Coalition's members who have advocated vigorously for WISPs in the past will use their resources to press the Commission further on open access guarantees in this proceeding when additional public debate might be inconvenient for important funding sources such as Google.[29]

The FCC Process Must Instill Public Confidence

With the looming Wall Street financial bailout exceeding $700 Billion dollars, this is probably not a good time for the Commission to respond to "special favors" of this magnitude from commercial competitors. Special favors of this magnitude and at this time can only add to public distrust of the governing body.

The following information is submitted for simplicity in that this document brings forth "public interest" issues circulating the many industry and general public news reporting agencies regarding this proceeding into one easy to read recap of the current public sentiment regarding the Commission. Regardless if any of the public comments have merit, it is irrelevant to my point and my point being that public confidence in the FCC must be regained immediately and the Applicant's special favor sought in these proceeding should be denied or at a minimum reviewed in great detail.

Any applicant to the Commission wants speedy action on a request. Rumors and innuendos of multibillion-dollar companies who hire a regulator's preferred Washington door-

[28] *See* Ex Parte Comments of the Public Interest Spectrum Coalition (Sept. 16, 2008).

[29] *See* Scott Cleland, "More Guilty-Until-Proven-Innocent Regulation from Google's Poodles" (Dec. 11, 2007), available at http://precursorblog.com/node/606.

openers and deal-closers receiving speedier decision-making from the Commission only lead to a deeper public mistrust?

The fast-track timetable for this proceeding raises concerns beyond the norm about potential favoritism. Industry news are reporting that the U.S. House Energy and Commerce Committee Chairman John Dingell has subpoenaed records relating to Commission management practices dating back to 2005, with Published reports indicate that the focus is reportedly on the management practices of the Commission affecting the public. The House Chairman wrote the FCC, "Given several events and proceedings over the past year, I am rapidly losing confidence that the commission has been conducting its affairs in an appropriate manner." Allegations reportedly under investigation include claims the Commission: Misled Congress over the reasons for firing a former FCC Chief Technologist reviewing public safety policy; pressured private organizations such as a carrier and a well-known Washington free-market advocacy group on their hiring, financial and policy decisions; and retaliated improperly against Commission career staff based on their personal views.[30]

Serious questions about the fairness of the Commission's use of its powers have arisen in other venues. For instance, authorities reportedly are investigating allegations of a massive investor fraud involving senior level Commission staff, known as the "gatekeeper"[31] As another example, the cable industry's leading magazine Multichannel News published a column this month describing the Commission's "relentless regulatory assault on cable operators and

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[30] *See,* for example, Jim Puzzanghera, "Congress Investigating FCC Chair Martin For 'Abuse Of Power,'" Los Angeles Times (Dec. 4, 2007); and Jeffrey Silva, "Martin Grilled Over Hatfield Dismissal," RCR Wireless News (March 17, 2007), available at http://www.rcrwireless.com/apps/pbcs.dll/article?AID=/20070317/SUB/70316020/1005.

[31] *See* Stephen Labaton, "Investment Places F.C.C. Aide Amid Fraud Inquiry," New York Times (June 5, 2008), available at http://www.nytimes.com/2008/06/05/business/05fcc.html?pagewanted=all.

programmers since March 2005." The column questioned why a major cable company would hire the Commission Chairman's longtime aide who implemented the policies.[32]

Overall increasing complaints from diverse sources allege that the FCC has used its regulatory power to reward or punish industry participants in ways far beyond the norm. This has prompted, among other things, a recent Wall Street Journal editorial saying in part:

> Bad personnel decisions have haunted the Bush Administration, and one of the bigger disappointments is Federal Communications Commission Chairman Kevin Martin. In his last months as Master of the Media Universe, he seems poised to expand government regulation of the Internet...Mr. Martin's bad instincts notwithstanding, the FCC's job is not to determine business models in the private sector.[33]

Especially relevant to this proceeding are questions raised in the trade press about the role of the Wireless Communications Association International (WCA), the longtime trade association for the broadband wireless industry. As background, PDQLink and PART-15.ORG are familiar with WCA after working for years in cooperative fashion on industry maters, including extensive promotion of WCA's conventions to WISPs by PART-15.ORG and its WISPers newsletter. PDQLink has been a regular speaker for years at WCA events, and has participated in WCA government relations internal discussions on issues most relevant to the license exempt community, both as a supporter of WCA's official positions and as a dissenter when appropriate to WISP interests.

In the New Clearwire proceeding, WCA filed in July and August extensive comments in support of the license transfers sought by Sprint and Clearwire, two of its Board Executive

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[32] *See* Edward T. Hearn, "Catherine the Not So Great," Multichannel News (Sep. 2, 2008), available at http://www.multichannel.com/blog/1830000183/post/1650032565.html.

[33] *See* "FCC.politics.gov," The Wall Street Journal (July 30, 2008) (available at http://online.wsj.com/article/SB121737525991595145.html?mod=opinion_main_review_and_outlooks).

Committee members.[34] This was the first time that the association has made such a filing to the Commission involving any license transfer stemming from a joint venture or merger of any of its members during the seven years that PDQLink has participated in WCA activities. The filing had the effect of making WCA an advocate for the WiMAX segment of its membership, while at the same time undermining representation for those pursuing non-WiMAX technologies such as Long Term Evolution (LTE), or the various Wi-Fi and proprietary fixed wireless technologies that are used by many WISPSs making the WCA no longer a technology neutral association Also in mid-summer, this is further evidenced by WCA leaders replaced the association's longtime president with the Commission's former Wireless Bureau Chief Fred Campbell, who had previously served also as the FCC Chairman's legal advisor for wireless issues.[35] Communications Daily reported that the leadership change in the middle of the incumbent president's contract was, in essence, to improve chances for speedy approval of the New Clearwire deal.[36] In contrast, the rival newsletter TR Daily reported based on its sources that the change was so that a new president could improve attendance and finances at WCA's next annual "Symposium," scheduled from Nov. 4-6 in its usual location of San Jose, California.[37] Soon after the change, Chairman Martin was announced as a speaker for the Symposium, thereby accepting an invitation for a WCA event for the first time ever since he became a Commissioner in 2001. WCA's website stated that would be joined as a featured speaker by two high-level

[34] *See* Wireless Communications Association International (WCA) Comments (July 24, 2008) and WCA Reply (Aug. 11, 2008).

[35] *See*, for example, Paul S. Kirby, "Leadership Change Eyed at WCA," Telecommunications Reports (Aug. 8, 2008), Howard Buskirk, "Campbell Expected To Be Named New President of WCA," Communications Daily (Aug. 12, 2008).

[36] *See* Communications Daily (Aug. 12, 2008).

[37] *See* Telecommunications Reports (Aug. 8, 2008). *See also* Paul S. Kirby, "Campbell Reviewing Ways To Boost Attendance at WCA's San Jose Show," TR Daily (Aug. 20, 2008), and Howard Buskirk, "WCA Board Members Say Association Needed Fresh Leadership," Communications Daily (Aug. 21, 2008).

executives from Sprint and Clearwire. The convention is during the period when New Clearwire advocates have predicted approval of their license transfers, which would be especially helpful before this year's holiday season and the expected departures of the Chairman and his staff from the Commission following November's Presidential elections.[38]

As a speaker at WCA's 2007 Symposium, PDQLink recalls attendance last year as well over 1,000 attendees, about 120 speakers and nearly 60 exhibitors,[39] with this year's totals seemingly shaping up well short of that from a review of WCA's website, www.wcai.com. From all appearances, it would seem that WCA's president was in fact replaced to help leading companies curry favor for the deal and not for stated reasons of improving finances.

Moreover (and far more important from PDQLink's perspective), much of whatever discussion occurred at the Commission about relevant matters does not seem to be documented anywhere, except in terms of results. Required ex parte summaries of discussions during Commission visits and other communications by such companies as Clearwire[40] and Sprint[41] reveal little information, even though FCC rules are designed to provide the specifics to interested members of the public. Regarding a Sept. 15 visit by Clearwire executives to the FCC Chairman's office, for instance, the Clearwire ex parte summary of the substance of the discussion was simply, "Clearwire reiterated certain of the points made in its application filed on

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[38] *See* "Clearwire CFO: On Track For 4Q Closing Of Deal With Sprint, CNNMoney.com (Sept. 9, 2008); Comcast Says Wireless Deal Could Close This Year, NewsFactor Network (Sept. 11, 2008).

[39] *See* WCA's website (www.wcai.com) section on past events.

[40] *See* Clearwire Ex Parte Statements (Sept. 16, 2008) and Sept. 15, 2008) regarding: (Meetings with staff of Chairman Martin and Commissioner Robert M. McDowell) and (Meetings with staff of Commissioner Deborah Taylor Tate and Commissioner Michael J. Copps), respectively, and (July 2, 2008) (Meetings with staff of Chairman Martin and Commissioner Copps).

[41] *See* Sprint Ex Parte Statement (Aug. 29, 2008).

June 6, 2008."[42] Similar ex parte summaries from Clearwire's visit to the Chairman's office on July 2 (when it was reportedly WCA's lead negotiator along with fellow BRS company Xanadoo in hiring the Chairman's longtime top wireless advisor) were virtually word-for-word with the same language. So were ex partes to three other Commissioners.[43] Yet nowhere apparent in this record is a description of a variety of interactions relating to this deal that must have been occurring. Among them was the Commission's announcement on Sept. 26, 2008 that its Chairman would convene a Federal-State Joint Board meeting on broadband policy at WCA's Symposium on its final day of Nov. 6, thereby helping guarantee increased attendance and media attention.[44] In sum, a review of this indicates that the private sector participants obviously wanted to disclose as little as possible, even while claiming to be serving the public interest. This was despite the clear requirement in previously cited FCC's rules mandating that ex parte discussions be documented[45] and that, "Generally, more than a one or two sentence description is required."[46]

In conclusion, it is worth stressing that any concerns raised here by PDQLink primarily are to ensure a fair Commission review process, and not specific results. To support WCA's convention this November, PART-15.ORG is once again a WCA media partner reaching out to WISPs. PDQLink would be happy to see the convention be another success for the common benefit of the industry. Moreover, PDQLink is not advocating any special conditions on the license transfers by this filing-- only that the full Commission thoroughly examine the

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[42] *See* Clearwire Ex Parte Statements.

[43] *See* Clearwire Ex Parte Statements.

[44] *See* Federal Communications Commission Announces November Meeting on Broadband Policy To be Held By the Federal-State Joint Conference On Advanced Services (Sept. 26, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285684A1.pdf.

[45] *See* 47 CFR §§1.1200 to 1.1216, previously cited.

[46] *Id* at §1.1206(b)(2).

proponents' public interest claims (which proponents raised themselves) to reach a decision that will enhance public confidence in the Commission process for allocation of the unique resource of 194 MHz of BRS and EBS broadband spectrum.

To accomplish this, we respectfully encourage all five of the Commissioners to focus their impressive experience on the full implications of this proceeding, and not just such bromides as enabling a "third pipe" for broadband by a particular group of aspirants. This proceeding will create a lasting legacy on how the Commission transacts its business.

CONCLUSION

As an entrepreneurial company, PDQLink endorses in general the concepts of expanding broadband and enabling new competitors to enter the market freely to increase their revenue and the benefits of competition for the public under Commission rules. But like major Wall Street companies now seeking a government bailout, Sprint, Clearwire and their allies have argued in effect (as demonstrated earlier in this filing) that their aspirations are so big and yet their finances are so limited that they must receive special consideration from government without normal oversight by the Commission in a thorough, transparent and otherwise equitable manner.

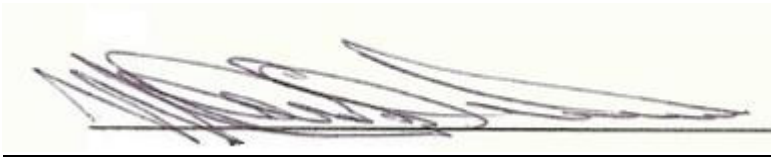
Whatever the incentives to advance broadband, the Commission should not "pull up the ladder" on WISPs and other competitors by an industrial policy deciding which competitors should enjoy special treatment. Instead, the Commission must foster public confidence in the regulatory process by denying this application unless it meets appropriate criteria. Such criteria must include thorough Commission review of the proponents' claims, market analysis that includes EBS spectrum in proportion to its geographic area, inclusion of Sprint's other spectrum

holdings, and further examination of such issues as open access that are being cited as public interest rationales, and full disclosure as required under FCC rules of all relevant advocacy.

Respectfully submitted,

PDQLink

By:



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