

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**

The PART-15 Organization (“PART-15.ORG”) and its member Prime Directive Quick Link LLC (“PDQLink”) file this *Ex Parte* comment in response to the Federal Communications Commission’s June 24, 2008 Public Notice on the above-captioned applications for Commission consent. These would transfer broadband assets of Sprint Nextel Corporation (“Sprint”) and Clearwire Corporation (“Clearwire”) to form a New Clearwire Corporation (“New Clearwire”) in collaboration with other partners and investors.<sup>1</sup> It and other proceedings scheduled for vote on Nov. 4 will transform the wireless landscape in the U.S. Proponents (including many of the largest communications companies) claim great benefits. Opponents claim question the fairness of the Commission’s process for fostering such consolidation.

Based on members’ positive reactions, PART-15.ORG endorses the extensive *Ex Parte* objections that PDQLink filed on Sept. 30, 2008 urging the Commission to deny the applications because of proponents’ failure to address public interest concerns adequately.<sup>2</sup> As previously noted: 1) The proponents’ deal valued at some \$14 billion has enormous and potentially adverse

---

<sup>1</sup> See Description of the Transaction and Public Interest Statement, File No. 0003368272 (Lead Call Sign B085, amended June 24, 2008), available at: <http://www.fcc.gov/transaction/sprint-clearwire.html>.

<sup>2</sup> See PDQLink Ex Parte Petition to Deny (Sept. 30, 2008) (WT Docket No. 08-94), available at [http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520173082](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520173082) (PDQLink Petition to Deny).

implications for the public; 2) The advocacy of many proponents is superficial, self-serving and at times contradictory; and 3) The FCC's unusually short review process heavily benefits the inner-circle of deal beneficiaries, and hurts the general public. In sum, PART-15.ORG and PDQLink jointly reaffirm PDQLink's prior arguments and evidence.

Today's filing cites important new developments as further evidence that the Commission should deny the New Clearwire proposal unless the FCC allows greater time for public comment and addresses fairness concerns about its procedures. If the transfers are approved by the Commission on Nov. 4 then Congress should include the fairness of this process under its current investigation of allegations of Commission "abuse of power" since 2005.<sup>3</sup>

## **BACKGROUND**

As the Commission is aware, PART-15.ORG represents License Exempt Wireless Internet Service Providers ("WISPs") and equipment vendors who provide broadband service via license-exempt spectrum. PART-15.ORG and its members have been active in a number of previous Commission proceedings that involve the license-exempt industry in the United States and internationally. The 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 at issue in this proceeding represent a unique spectrum resource of keen interest to WISPs, who typically use nearby spectrum in the 2.4 and 5 GHz bands.

PDQLink is a WISP based in North Aurora, Illinois that since 1995 has provided broadband wireless services in that community and its environs primarily through license-

---

<sup>3</sup> See, for example, Jim Puzzanghera, "Congress Investigating FCC Chair Martin for 'Abuse of Power,'" Los Angeles Times (Dec. 4, 2007) (Congress Investigating FCC Chair, hereafter.). See also 18 U.S.C. 207(a)(1) regarding conflict of interest requirements for senior federal employees and former employees.

exempt spectrum. Seeing a need for group education and action, PDQLink's CIO organized the first WISP-only trade association in 2002. He continues to serve as its founding chairman, and expanded its activities to include conventions and partnerships with more broadly based associations and government initiatives. Appointed by FCC Chairman Kevin J. Martin, he served as an active volunteer on FCC's Independent Panel on Hurricane Katrina, for example, and organized a WISPCON convention in New Orleans to help foster emergency solutions for broadband communications generally in times of such natural disasters, and specifically to support New Orleans recovery efforts.<sup>4</sup>

More generally, 9,000 U.S. WISPs have been at the forefront in delivering wireless broadband as competitors to wired companies, particularly in rural areas. WISPs are the proven "third pipe" of competition, more so than numerous spectrum speculators who have repeatedly failed to meet deployment benchmarks.

Why are WISPs willing to raise these kinds of sensitive questions? Like a number of early WISPs, PDQLink was started by a military veteran with training in wireless who created a start-up hometown business upon retirement from service. Also like most, he is still climbing towers, solving basic customer network issues and undertaking the other hands-on tasks to maintain an entrepreneurial small business. A few WISPs have grasped the vital importance to their businesses of Washington policymaking, and thus try to share as best as possible practical experience and other perspectives with the thousands of regulators, academics, advocates, journalists and financial analysts who work on policy issues. But most WISPs are ill-prepared to be effective in such advocacy, as indicated by the great momentum for the New Clearwire deal.<sup>5</sup>

---

<sup>4</sup> See FCC Hurricane Katrina Independent Panel, available at: <http://www.fcc.gov/pshs/advisory/hkip/>.

<sup>5</sup> See "Clearwire to Mail Definitive Proxy Materials; Special Meeting of Stockholders Scheduled for November 20, 2008," Business Wire, available at:

## NEW DEVELOPMENTS

The FCC announced Oct. 15 that it would consider two deals of unprecedented scope affecting the U.S. wireless industry on Nov. 4 as part of its agenda of seven items.<sup>6</sup> One item is the proposed approval of license transfers necessary to create a New Clearwire as a nationwide provider from the assets of the two current competitors. The other merger item is approval of Verizon's acquisition of Alltel Corp. to create the largest U.S. commercial mobile wireless carrier. The proposed carrier would leap-frog in size AT&T, which has recently grown rapidly in size under auctions, acquisitions and favorable Commission and Department of Justice interpretations of the allowable "spectrum screen" for wireless carriers. The five other items include rules to allocate "TV White Spaces" for unlicensed broadband, along with changes in administration of Universal Service funds.

PART-15.ORG's view does not preclude applicants from asking government for regulatory changes, especially when financial circumstances evolve. However, most "deals" are give and take where both parties walk away with additional benefit. To date, there seems to be scant benefit for the FCC as the public's representative to bend so far and obtain so little in return. If the Commission does elect to continue this application on such a "fast-track" schedule for approval, we would encourage the FCC to require a "fast-track" in the new Clearwire's deployment schedule. As previously stated in PDQLink's filing, one of the public concerns is

---

[http://www.businesswire.com/portal/site/google/?ndmViewId=news\\_view&newsId=20081016006335&newsLang=en](http://www.businesswire.com/portal/site/google/?ndmViewId=news_view&newsId=20081016006335&newsLang=en). The materials note that New Clearwire's five independent strategic investors – Intel Corporation, via Intel Capital, Google Inc., Comcast Corporation, Time Warner Cable Inc., and Bright House Networks – have collectively agreed to invest a total of \$3.2 billion.

<sup>6</sup> See "FCC Announces Tentative Agenda for November 4<sup>th</sup> Open Meeting," Public Notice (Oct. 15, 2008), available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-286069A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-286069A1.pdf).

that once this deal is approved, even though funding would be available, it will sit idle in the same fashion it does now.

Review of such major transactions when the nation and its watchdog institutions are preoccupied with a Presidential election is unprecedented and unjustified. The FCC vote on a Presidential election day (also, of course, a day for many other federal, state and local elections, depending on the locality) typifies the haste in the FCC's review process. Who can recall timing like this for important matters anytime in the Commission's recent history?

A clue about how insiders feel about this timing is revealed in an *ex parte* comment filed by Clearwire after FCC Chairman Martin met on Oct. 10 with Clearwire's top lobbyist.<sup>7</sup> Along with Clearwire's typical boilerplate language that it uses to summarize all of its lobbying meetings with Commissioners, this time it added a vague sentence about discussing "timing." A threshold question that was raised by PDQLink in its Sept. 30 *ex parte* comments remains: Why are applicants to the Commission disclosing to the public so little in their *ex parte* comments (which are required to be meaningful under Commission rules)?<sup>8</sup> More generally, why is the Commission willing to go far beyond the special favors they grant everyone else in matters such as these? Obviously, there are underlying factors the public is not aware of. As even broader context, the public has been told by deal proponents that it requires "unconditional approval"

---

<sup>7</sup> See Clearwire Ex Parte Statement (Oct. 13, 2008) on meeting between Chairman Martin, Chief of Staff Dan Gonzalez and Advisor Erika Olsen with Clearwire Executive Vice President Gerry Salemme, available at: [http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520175357](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520175357).

<sup>8</sup> 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>. See also an extended discussion in PDQLink Petition to Deny, cited above, and available like other documents in the proceeding at <http://www.fcc.gov/transaction/sprint-clearwire.html>.

from the Commission because the joint venture partners have financial problems.<sup>9</sup> Yet huge gifts of stock options were recently showered upon the company insiders precisely at the time they were obtaining (if not requesting) special fast-track consideration from regulators.<sup>10</sup>

More important from the perspective of public confidence in the Commission's process, the actions appear to be part of a broader, pro-active agenda documented in PDQLink's Sept. 30 filing to help or hurt financially private institutions under Commission authority. The filing described several initiatives by the FCC to use their authority in ways seemingly beyond the norm. PART-15.ORG strongly urges the Commission to utilize whatever time it needs to thoroughly understand the ramifications of their pending decision.

Separately, the U.S. Department of Justice Antitrust Division reportedly is preparing to announce soon its approval of the New Clearwire deal without significant conditions, thereby paving the way for the end of "spectrum screens" as a meaningful regulatory tool to prevent the largest U.S. carriers such as Sprint, AT&T and Verizon from amassing too much of that scarce resource.<sup>11</sup> Thus the FCC remains the last important forum for review, and the only truly public one. The FCC has time to handle this process in a thorough manner, in part because pending

---

<sup>9</sup> See "Sprint Clearwire Joint Opposition Document (Aug. 4, 2008), stating, "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."

<sup>10</sup> See, for example, Insider Actions for Clearwire, MarketWatch (Oct. 20, 2008), available at <http://www.marketwatch.com/tools/quotes/insiders.asp?nextid=5640281&symb=CLWR>.

<sup>11</sup> See "Analyst: Government to clear wireless deals soon," The Deal.com (Oct. 17, 2008) available at [http://www.thedeal.com/dealscape/2008/10/analyst\\_government\\_to\\_clear\\_wi.php](http://www.thedeal.com/dealscape/2008/10/analyst_government_to_clear_wi.php). Quoting research from quoting research by Stifel Nicolaus & Co., it said, "The Department of Justice and Federal Communications Commission are reviewing Verizon Wireless' \$28.1 billion acquisition of Alltel Corp. and a complex, \$14.5 billion wireless broadband pact involving Sprint Nextel Corp., Clearwire Corp., Google Inc., Intel Corp. and three cable providers. Department of Justice approval for the Alltel buyout "could come any day," a Thursday note from Stifel Nicolaus explains, while the agency "has already passed" on the deal involving Sprint, Clearwire and the other companies.

litigation in state courts by Sprint Nextel affiliate iPCS Wireless Inc. may hold up the deal's consummation.<sup>12</sup>

The news media, advocacy groups and elected officials will find it difficult to review such matters in the next few days in any depth when most of them are preoccupied with the federal elections, and many in the news media especially have undergone major cutbacks on staff assigned to core functions.<sup>13</sup> Relevant also is that the public's watchdog institutions in the media, academia and public interest groups can themselves face conflicts from their parent organizations or other funding sources. This is especially so if a regulatory body is willing to use its power behind-the-scenes to help shape public debate, as outlined in PDQLink's previous filing.<sup>14</sup>

Given this background, the entire Commission has every reason to restore public confidence in its process before the historic decisions scheduled for Nov. 4, both in the wireless communications agenda at the Commission and at ballot boxes throughout the United States.<sup>15</sup>

## **CONCLUSION**

Both major party Presidential candidates claim to voters that if elected they will reform Washington decision-making. One way is to ask whether historic changes in U.S. wireless competition must be decided by the Commission on Election Day without thorough review. Like the initial proposals for a Wall Street bailout in September 2008, the FCC's process suggests special consideration for major spectrum speculators and their allies. True, the

---

<sup>12</sup> See "Illinois Supreme Court won't hear Sprint appeal in iPCS suit," Kansas City Business Journal (Sept. 24, 2008), (describing trial on issues scheduled to begin in December, 2008), available at [http://www.bizjournals.com/kansascity/stories/2008/09/22/daily18.html?ana=from\\_rss](http://www.bizjournals.com/kansascity/stories/2008/09/22/daily18.html?ana=from_rss).

<sup>13</sup> See PDQLink Petition to Deny, previously cited.

<sup>14</sup> *Id.*

<sup>15</sup> See "Congress Investigating FCC Chair," previously cited.

Commission agenda on Nov. 4 currently includes another proceeding to create rules for broadband in TV “White Spaces.”<sup>16</sup> PART-15.ORG and PDQLink hope that this spectrum could become usable for WISPs.

Regarding the unusual procedural history in the Sprint-Clearwire deal documented in this filing and previously: We encourage each FCC Commissioner to address the process of the Commission’s decision-making, and not simply the result.

Respectfully submitted,

PART-15 ORGANIZATION

By: \_

A handwritten signature in dark ink, appearing to read "Michael R. Anderson", is written over a light yellow rectangular background. The signature is fluid and cursive.

---

Michael R. Anderson

Chairman, PART-15.ORG & CIO, PDQLink

P.O. Box 157  
North Aurora, Illinois 60542  
630-466-9090

---

<sup>16</sup> See ET Docket No. 04-186, including Steven K. Jones, et al, “Evaluation of the Performance of Prototype TV- Band White Space Devices Phase IIA,” FCC Office of Engineering & Technology Report OET 08-TR-1005 (Oct. 15, 2008), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-08-2243A3.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-2243A3.pdf).