

October 27, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: DA 08-1477 and WT Docket No. 08-94 – Applications by Sprint Nextel Corporation and Clearwire Corporation for FCC Consent to Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

The National EBS Association (“NEBSA”) reiterates its opposition to including Educational Broadband Service (“EBS”) spectrum in a revised spectrum screen. NEBSA understands that a draft order approving the New Clearwire transaction would count EBS spectrum toward the pool of total spectrum available for “mobile telephony” and attribute the 2.5 GHz leases of Sprint Nextel and Clearwire toward both companies’ total spectrum holdings. These changes to the screen would thwart the Commission’s goals in reserving EBS spectrum for educational needs, threaten the educational mission of schools, colleges, and universities across the nation, and serve no public interest objective.

As NEBSA has twice previously explained in this proceeding, the New Clearwire transaction would benefit the EBS community by enhancing the company’s ability “to develop individual EBS licensees’ channels more rapidly into a nationwide advanced wireless broadband network” and enabling “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.”¹

However, arbitrarily including EBS in a revised spectrum screen is inconsistent with the rules and practices EBS licensees must follow to fulfill their educational missions. EBS spectrum is “not a faceless and generic wireless spectrum commodity,” but “a unique and important educational resource” that relies on “on carefully structured, on-going relationships

¹ Letter of the National EBS Association to Federal Communications Commission in support of applications by Sprint Nextel Corporation and Clearwire Corporation for FCC Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 08-94 at 1 (filed July 24, 2008); Opposition of the National EBS Association to AT&T Petition to Deny, WT Docket No. 08-94 at 2 (filed Aug. 4, 2008) (“NEBSA Opposition”).

between educational and commercial partners.” EBS spectrum is the only “spectrum specifically allocated to and reserved for the use of educators” and EBS licensees control and make use of their spectrum in ways that commercial licensees and lessors do not.²

EBS licensees take their educational mission seriously and have fought for rules and lease contract terms designed to ensure that their relationships with commercial lessees facilitate that mission. These terms not only satisfy Commission-mandated minimum educational use requirements, periodic educational use review requirements, and lease term limits, but only include privately negotiated educational channel reservations, educational spectrum recapture mechanisms, and other provisions that are tailored to particular educators’ unique needs. EBS leases are not purely commercial transactions, but rather custom-designed partnerships expressly negotiated to “improve the ability of educators to serve America’s students through wireless technology.”³

Revising the spectrum screen as reportedly proposed in the draft order would not only call into question these existing partnerships, but also raise new and serious obstacles to deploying broadband services for educational purposes. From an educator’s perspective, the logical effect of the spectrum screen proposal is to limit the ability of New Clearwire to lease spectrum from EBS licensees, or create a strong incentive for New Clearwire not to do so. These limitations – through unwarranted regulatory scrutiny, a misguided demand for spectrum divestiture or even limits on future EBS leasing – could very well prevent EBS licensees from partnering with the operator best positioned to honor their spectrum leases and fulfill their educational mission. As NEBSA previously explained, no other operator may be prepared to “pick up and honor the negotiated EBS lease arrangements of these EBS licensees,” and, even if a commercial operator overcame the technical and operational constraints inherent in the band, no guarantee exists that the EBS licensee would actually want to partner with an entity that could not offer the same level of commitment to nationwide educational opportunity that both Sprint Nextel and Clearwire have demonstrated.⁴

The New Clearwire transaction is clearly pro-competitive, and thus serves the public interest. The Commission’s spectrum screen is supposed to serve as a proxy for potential anti-competitive effects on the market for spectrum resources and the reality is that New Clearwire, as a new entrant to the wireless marketplace, raises no competitive concerns in that marketplace.

Therefore, the Commission need not and should not make ad hoc adjustments to the spectrum screen as it affects EBS spectrum, particularly where it has never before, in any wireless transaction, suggested including EBS spectrum in the screen, even as recently as the Verizon RCC Merger Order in September, 2008. Each day that passes without Commission approval of the New Clearwire transaction delays the rollout of wireless broadband services to the American public and impedes the ability of EBS licensees to provide cutting-edge wireless services and applications to their students, faculty and staff. The Commission should drop its

² NEBSA Opposition at 4.

³ NEBSA Opposition at 5.

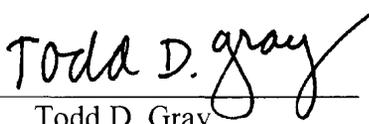
⁴ NEBSA Opposition at 7.

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effort to arbitrarily adjust the spectrum screen and approve the New Clearwire transaction without conditions, and without further delay.

Very truly yours,

NATIONAL EBS ASSOCIATION

By: 
Todd D. Gray
Its Counsel

cc (via email):

Hon. Kevin J. Martin, Chairman
Hon. Michael J. Copps
Hon. Jonathan S. Adelstein
Hon. Deborah Taylor Tate
Hon. Robert M. McDowell
Erika Olsen, Office of Chairman Martin
Bruce Liang Gottlieb, Office of Commissioner Copps
Renee Roland Crittendon, Office of Commissioner Adelstein
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Angela E. Giancarlo, Office of Commissioner McDowell
Jim Schlichting, Acting Chief, Wireless Telecommunications Bureau