

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications of Sprint Nextel Corporation,) IB Docket No. 12-343
Transferor)
)
SOFTBANK CORP., and Starburst II, Inc.,)
Transferees)
)
for Consent To Transfer of Control of)
Licenses and Authorizations)

**COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

Stefanie A. Brand
Director
Division of Rate Counsel
Christopher J. White
Deputy Rate Counsel
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 624-1047
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

Economic Consultant:
Susan M. Baldwin

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SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) recommends that the Federal Communications Commission (“FCC” or “Commission”) approve the transaction proposed by Sprint and SoftBank (“Applicants”) subject to certain, limited conditions.

The proposed transaction has the potential to be in the public interest because it could: (1) increase the level of wireless competition in a market that a duopoly (consisting of AT&T and Verizon Wireless) now dominates; and (2) lead to new and substantial investment in the nation’s wireless network that might not otherwise occur. The combination of the new competitive pressure and additional wireless investment could lead to more affordable rates and a greater diversity of wireless services for consumers than would otherwise exist. Furthermore, because SoftBank does not have a presence in the United States nor is there any evidence that it would enter the market absent the acquisition of a U.S. company, the transaction would not eliminate either an actual or potential wireless competitor. Also, SoftBank’s 2004 acquisition and operation of a major wireless provider in Japan suggests that it possesses the requisite financial, managerial, and technical expertise to own and operate the third largest U.S. wireless carrier’s network.

Although Rate Counsel supports the transaction, it does so with some reservations, however, which the FCC could address with targeted measures. The Applicants describe new levels of investment – approximately \$8 billion – that SoftBank would make in the network it proposes to acquire from Sprint. Rate Counsel welcomes this investment, but is concerned that the investment appears to be an “intention” rather than a “commitment.” Rate Counsel urges the FCC to seek an explicit, measurable commitment from the Applicants to the investment rather

than rely solely on the Applicants' promise. The FCC could also seek a commitment by the Applicants to offer wireless broadband service to a specified quantity of Lifeline customers at affordable rates. Although Rate Counsel does not consider wireless broadband service presently to be a substitute for wireline broadband service, the availability of an affordable wireless broadband ramp to the Internet for consumers who might otherwise lack such an access is preferable to no access at all. Furthermore, the FCC should condition its approval of the proposed transaction on the Applicants' commitment to abide by the CTIA Consumer Code for Wireless Service. Rate Counsel also recommends that the FCC seek explicit commitments by the Applicants to roll out 4G LTE.

Finally, Rate Counsel recommends that, as a separate but related matter, the FCC, in pending and new proceedings, address major unresolved issues that affect the future of the wireless industry, including, among others, taking the necessary steps to improve its collection, analysis, and reporting of comprehensive data so that federal and state regulators, consumer advocates, and competitors can monitor the structure and practices of the wireless industry as it continues to undergo substantial and unpredictable changes.

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I. INTRODUCTION

Pursuant to the pleading cycle established by the Federal Communications Commission (“FCC” or “Commission”),¹ the New Jersey Division of Rate Counsel (“Rate Counsel”), an

¹ / Public Notice DA 12-1924, SoftBank and Sprint Seek FCC Consent to the Transfer of Control of Various Licenses, Leases, and Authorizations from Sprint to SoftBank, and to the Grant of a Declaratory Ruling Under Section 310(B)(4) of the Communications Act, IB Docket No. 12-343, November 30, 2012. The FCC subsequently revised the pleading cycle to reflect Sprint’s “proposed acquisition of de facto control of Clearwire.” Public Notice DA 12-2090, SoftBank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint’s Proposed Acquisition of De Facto Control of Clearwire, Revised Pleading Cycle, IB Docket No. 12-343, December 27, 2012 (“December Public Notice”). On January 16, 2013, DISH Network L.L.C. (“DISH”) filed a petition requesting that the proceeding “be held in abeyance, and that the ‘shot clock’ in this proceeding be paused, until the resolution of significant unresolved contingencies concerning Sprint Nextel Corporation’s (“Sprint”) offer to acquire all of Clearwire Corporation.” As of the filing of these comments, the FCC has not addressed Dish’s petition. Oppositions to petitions to deny the Applicants’ proposed transaction are due February 12, 2013, and replies to oppositions to deny are due February 25, 2013. December Public Notice.

agency representing New Jersey consumers,² files these comments, which offer qualified support for the above-referenced applications (“Applications”) for transfer of control of certain licenses and authorizations.³

Sprint is the nation’s third largest wireless provider and offers wireless service throughout the country.⁴ Therefore, its future affects not only Sprint’s operations as they relate specifically to its New Jersey consumers, but also, because the transaction could affect the structure of the overall wireless industry, the future of Sprint’s operations potentially affects all wireless consumers in New Jersey, regardless of whether they subscribe to the wireless service of Sprint, AT&T, Verizon Wireless, or other wireless providers.⁵

Rate Counsel has participated in numerous proceedings that concern the transfer or acquisition of companies’ operations and licenses, and, as a result of that participation, has gained familiarity with the potential benefits and the potential harms associated with the increased market concentration that can result from acquisitions as well as with the potential risks to consumers of transfers of control from one company to another company.⁶

^{2/} Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel was formerly known as the New Jersey Ratepayer Advocate, as a Division within the Department of the Public Advocate. N.J.S.A. §§ 52:27EE-1 *et seq.*

^{3/} Throughout this Petition, reference to “Applications” is intended to refer to all applications in the above-captioned proceeding.

^{4/} Sprint served approximately 56 million customers at the end of the third quarter 2012. Public Interest Statement, at 3.

^{5/} Wireless carriers reported approximately 9 million wireless subscriptions in New Jersey as of December 31, 2011. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2011*, rel. January 2013, at Table 18.

^{6/} See, e.g., In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses, WT Docket No. 12-4; In re Applications of AT&T, Inc. and Deutsche Telekom AG for Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc., WT Docket No. 11-65, File Nos. 0004669383, *et al.*, In the Matter of

For the reasons set forth in these comments, the FCC should approve the Applications, subject to the conditions that Rate Counsel describes herein.

II. SUMMARY OF TRANSACTION

A. SoftBank's proposed acquisition of Sprint

On November 16, 2012, SoftBank Corp. ("SoftBank"), its indirect United States subsidiary Starburst II, Inc. ("Starburst II"), and Sprint Nextel Corporation ("Sprint") (collectively, the "Applicants") submitted their applications to the FCC⁷ pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended⁸ and sections 34-49 of the Submarine Cable Landing Act,⁹ seeking the Commission's approval of the transfer of control of various licenses, leases, and authority now held by Sprint and its subsidiaries and by Clearwire Corporation ("Clearwire") to SoftBank and Starburst II. The proposed transfer of control encompasses transfer of:

- Wireless licenses and leases;
- Domestic Section 214 authority;
- International Section 214 authorizations;
- Earth Station authorizations;
- Interests held in submarine cable landing licenses; and
- Cable television relay service licenses.

AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, Federal Communications Commission WC Docket No. 06-74.

^{7/} The Applicants also submitted a Public Interest Statement (including a declaration of Kazuhiko Kasai, a director of as well as a corporate advisor to SoftBank, and a declaration of Stephen J. Bye, Sprint's Chief Technology Officer and Senior Vice President of Technology Development and Corporate Strategy) and a Petition for Declaratory Ruling ("Petition"). The Petition is for an FCC ruling that it is in the public interest for SoftBank indirectly to hold foreign ownership and voting rights in Sprint and its post-transaction subsidiaries in excess of the 25 percent foreign ownership benchmark that is set forth in Section 310(b)(4).

^{8/} 47 U.S.C. §§ 214, 310(d),

^{9/} 47 U.S.C. §§ 34-39.

The transaction requires approval by the FCC and also by the Committee on Foreign Investment in the United States (“CFIUS”).¹⁰ The CFIUS is an inter-agency committee that includes the Federal Bureau of Investigation, the Department of Justice, the Department of State, and the Department of Homeland Security, and is authorized to assess the effect of the transaction on the national security of the United States.¹¹ Also, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18(a), the transaction is subject to review by the Department of Justice and/or the Federal Trade Commission. Finally the transaction is also subject to notification to state public utility commissions or to their review.¹²

The pending Clearwire transaction delayed the Applicants’ filing of their S-4 prospectus to the Securities and Exchange Commission (“SEC”).¹³ Rate Counsel recommends that the FCC afford interested parties the opportunity to supplement the comments that they submit in this proceeding based on their review of the Applicants’ prospectus because it is important to compare the information that Applicants submit for regulatory approval with the information that they submit to their investors. Therefore, if there is a significant delay in the SEC filing, the FCC should extend the dates for filing reply comments.

SoftBank has seemingly demonstrated the requisite financial, managerial, and technical expertise to own and operate Sprint’s wireless network, as is evidenced by of SoftBank’s

¹⁰/ Public Interest Statement, at 10.

¹¹/ *Id.*

¹²/ *Id.*

¹³ / In a December 17, 2012 SEC filing concerning Clearwire, Joseph J. Euteneuer, Chief Financial Officer of, Sprint, stated: “The completion of this transaction is contingent upon the closing of our merger with SoftBank. As a result of today’s transaction, we will be moving the filing of the S-4 for the SoftBank transaction to the first quarter and it will include some information related to this acquisition.” S DFAN14A 12/17/2012, SCHEDULE 14A, Clearwire Corporation, Sprint Nextel Corporation, at 7.

acquisition in 2004¹⁴ and subsequent operation of a wireless provider in Japan, which now serves 30.5 million customers.¹⁵ However, Rate Counsel has not separately investigated these attributes of SoftBank's Japanese operations, but rather, in these comments, assumes that to the extent that the FCC considers it necessary to ascertain SoftBank's relevant expertise and qualifications, the FCC will do so.

B. Clearwire

On December 17, 2012, Sprint announced an agreement to acquire the shares of Clearwire that it does not already own. Sprint owns more than 50 percent of Clearwire's shares, but the deal requires approval of more than 50 percent of Clearwater's minority shares. This approval by Sprint's minority shareholders is now in doubt in part because on January 8, 2013, Dish Network made a higher per-share counter-offer of \$3.30 (in comparison with the \$2.97 that Sprint offered).¹⁶

III. STANDARD OF REVIEW

Pursuant to sections 214(a), 310(b)(4), and 310(d) of the Communications Act, the FCC must determine whether the proposed transactions would serve the public interest, convenience and necessity.¹⁷ Among other things, in determining whether a proposed transaction will serve

¹⁴ / Public Interest Statement, at 14.

¹⁵ / *Id.*, at 5.

¹⁶ / Reuters, "Corrected – Chorus of Clearwire investors against Sprint bid growing louder," January 22, 2013.

¹⁷ / In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manger and *De Facto* Transfer Leasing Arrangements, WT Docket No. 08-95, File Nos. 0003463892, *et al.*, ITC-T/C-20080613-00270, *et al.*, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, File No. ISP-PDR-20080613-00012, *Memorandum Opinion and Order and Declaratory Ruling* (rel. November 10, 2008) ("Verizon/AllTel Order").

the public interest, the Commission considers whether the transaction will “substantially frustrat[e] or impair[] the objectives or implementation of the Communication Act or related statutes.”¹⁸ In applying this standard, the Commission balances potential public interest harms of the proposed transaction against potential public interest benefits.¹⁹

The FCC’s evaluation also includes a “deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.”²⁰

The FCC’s competitive analysis of the proposed transaction considers among other things “whether a transaction will enhance, rather than merely preserve, existing competition.”²¹ Finally, the Applicants bear the burden of proof that the proposed transaction, on balance, will serve the public interest.²² The FCC’s assessment of benefits considers whether they are “verifiable, transaction-specific public interest benefits.”²³

IV. COMPETITION

A. Background

Sprint serves almost 56 million customers throughout the country,²⁴ and SoftBank serves approximately 30.5 million wireless subscribers in Japan (approximately 22 percent of the

¹⁸ / *Id.*, at para. 26, cite omitted.

¹⁹ / *Id.*

²⁰ / *Id.*, at para. 27, cite omitted.

²¹ / *Id.*, at para. 28, cite omitted.

²² / *Id.*

²³ / *Verizon/AllTel Order*, at para. 114. *See also, id.*, at para. 117, which states that “[b]ecause much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit.”

²⁴ / Public Interest Statement, at 3.

Japanese wireless market).²⁵ The transaction could benefit not only Sprint’s customers, but also potentially could benefit all of the United States’ 300-plus million wireless²⁶ customers as well if the transaction creates new competitive pressure throughout the U.S. wireless industry. In their Public Interest Statement, the Applicants describe SoftBank’s success in “reinvigorating Japan Telecom,” which SoftBank acquired in 2004 (SoftBank also acquired another Japanese wireless provider) and its success as it “faced formidable odds by entering a Japanese wireless marketplace that was dominated by the wireless operations of the country’s two largest providers.”²⁷ The Applicants further describe SoftBank’s strategy in Japan of introducing various pricing innovations²⁸ and product innovations.²⁹

B. Impact of the proposed transaction on competition in the wireless market.

Rate Counsel recommends that the FCC assess the potential competitive consequences of the proposed transaction by analyzing how SoftBank’s acquisition of Sprint might affect the wireless market structure that exists today. As Table 1, below shows, today, the U.S. wireless industry has become excessively concentrated, with AT&T and Verizon controlling over 60 percent of the revenue and 65 percent of the customers. By contrast, Table 1 shows that, based on subscribers, Sprint presently controls approximately 18 percent and T-Mobile approximately 11 percent of the mobile wireless market. The proposed transaction represents an opportunity to enable Sprint to compete more effectively with the nation’s two largest wireless companies, as well as with other wireless providers, which in turn would benefit consumers.

²⁵/ *Id.*, at 5.

²⁶/ CTIA Semi-Annual Wireless Industry Survey, “Semi-Annual Mid-Year Top-Line Survey Results,” available at: <http://www.ctia.org/advocacy/research/index.cfm/AID/10316> (accessed January 23, 2013).

²⁷/ Public Interest Statement, at 14.

²⁸/ *Id.*, at 16-18.

²⁹/ *Id.*, at 18-19.

Although some transfers of control among carriers create the potential for anti-consumer and anti-competitive consequences, the likely consequences of this particular transaction appears to differ from many other proposed mergers. Because SoftBank (a foreign company) and Sprint are not now competitors, and because SoftBank's acquisition of Sprint likely will enable Sprint to compete more effectively with the well-entrenched AT&T/Verizon duopoly than Sprint now can, the transaction could have positive consequences. Specifically the transaction could increase competition in the wireless market, which, in turn, would benefit consumers.

The proposed transaction might enable Sprint to partially erode AT&T's and Verizon Wireless' dominance of wireless markets. Furthermore, because entry barriers for suppliers in the wireless market are high (meaning that the elasticity of supply is low),³⁰ it is unlikely that new entrants would be able to overcome these barriers to entry and deploy their own nationwide

³⁰ / See, e.g., In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses, WT Docket No. 12-4. SpectrumCo, a joint venture of three cable companies including the nation's two largest cable companies (Comcast and Time Warner) stated that "[n]otwithstanding the significant time, effort, and investment that SpectrumCo put into clearing the AWS spectrum and conducting technology tests, SpectrumCo has determined as a business matter, based on a variety of marketplace factors in combination, that constructing and operating a standalone facilities-based wireless network with that spectrum would not provide a return that would warrant incurring the substantial costs and risks involved." Verizon Wireless/SpectrumCo Public Interest Statement, at 20-21, citing Declaration of Robert Pick, Chief Executive Officer of SpectrumCo, LLC, attached as Exhibit 4 to Verizon Wireless/SpectrumCo Application, at para. 10. See also Pick Declaration, at paras. 11-15 describing the various barriers to entry by the cable companies such as the risks associated with the necessary "enormous financial resources" (para. 11), the need, if its entry were successful, to incur further costs to acquire more spectrum placing it on a "spectrum 'treadmill'" (para. 12), the fact that having "less scale than established wireless carriers" they would have needed to pay higher prices "to acquire the newest, most desirable devices" (para. 13), the costs and complexity of securing roaming agreements (para. 14), and the risk and challenge of entering a wireless marketplace with "several mature providers" (para. 15). Although having "spent substantial resources in an effort to enter the wireless market as a facilities-based provider" (Declaration of Suzanne Fenwick, Executive Director for Corporate Development for Cox Communications, included as Exhibit 4 to the Verizon Wireless/Cox Application ("Fenwick Declaration"), at para. 3, having entered into contracts with vendors to build a third generation ("3G") wireless network (*id.*), and having entered into a mobile virtual network operator ("MVNO") agreement with Sprint Nextel to provide 3G services pending to speed market entry while it deployed its own infrastructure (*id.*, at para. 4), Cox, by May 2011, "concluded that it was uneconomic to provide 3G wireless services utilizing its own network infrastructure" (*id.*, at para. 5), and in November 2011, announced that it was discontinuing its 3G MVNO wireless service the next day (*id.*, at para. 6). Cox determined that it could not deploy a 3G mobile service on its AWS spectrum "without sustaining acceptably large losses." *Id.*, at para. 7.

facilities to compete with existing providers. The significance of a low elasticity of supply is that if wireless carriers were to *raise* prices, other companies could not easily enter relevant markets in response to the price increase. Also, migrating among suppliers is not easy for consumers, and therefore the elasticity of demand is also low.³¹ Low elasticity of supply and low elasticity of demand are characteristics of a market that is not effectively competitive.³²

Although the proposed transaction would not translate immediately into a change in market concentration as measured either by wireless companies' subscribers or revenues (because it involves a transfer of customers to a company that does not today offer service in United States), the transaction could change the future structure of the wireless market. To assess this potential positive benefit, it is important to evaluate the transaction in the context of the level of market concentration that exists in today's wireless markets. The FCC has previously determined that "a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest."³³ By implication, a transaction that could erode existing carriers' market power is likely to serve the public interest.

Structure of wireless industry in the United States

The trend of increasing wireless market concentration has been observed previously by the Commission. In his statement accompanying the FCC's 15th Mobile Wireless Competition Report, Commissioner Copps states

I cannot ignore some of the darkening clouds over the state of mobile competition. The headline for this Report will be that the FCC neither

³¹ / Among the high transaction costs that discourage consumers from migrating among wireless providers are early termination fees, customer inertia, and complex pricing plans.

³² / See, e.g., Kevin J. O'Brien, "Americans Paying More for LTE Service," *The New York Times*, October 15, 2012; Tero Kuittinen, "Are AT&T and Verizon Finally Going Too Far?" *Forbes*, August 24, 2012.

³³ / *Verizon/AllTel Order*, at para. 40.

finds nor does not find effective competition. Dig deeper and, sure enough, we find ongoing trends of industry consolidation. The well-accepted metric for market concentration, the Herfindahl-Hirschman Index [HHI], remains above the threshold for a “highly concentrated” market. It also appears that consumers are no longer enjoying falling prices, according to the CPI for cellular services. We know there is a looming spectrum crunch and a growing need for backhaul. There is no doubt that the mobile market is an American success story, and there are many ways to measure industry health. But it would be foolish and decidedly not in the public interest to ignore the facts this Report reveals. If we want Americans to continue to enjoy innovation, affordability and improved mobile coverage, we must heed these facts and continue to examine areas where the Commission can act to encourage mobile competition.³⁴

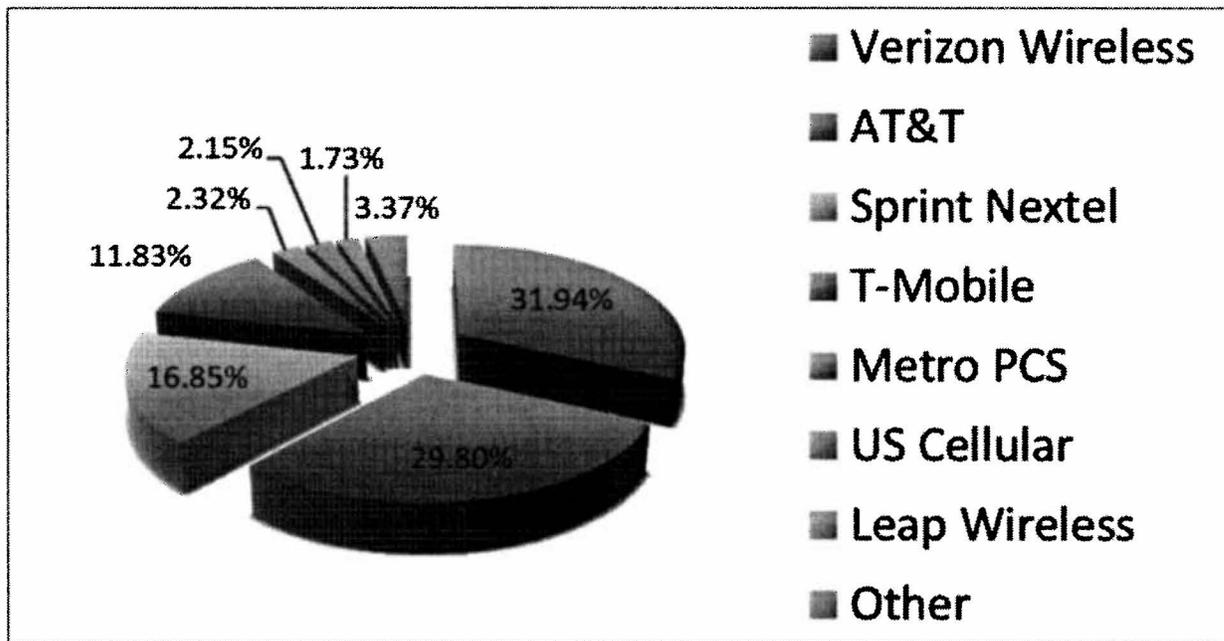
In the 14th Mobile Wireless Competition Report the FCC found that in the five years through 2009, the two largest wireless operators, AT&T and Verizon Wireless, continued to gain market share, acquiring 60 percent of both subscribers and industry revenue.³⁵ The 15th Mobile Wireless Competition Report did not find any real change in the market: at “year-end 2009, the four nationwide service providers accounted for just over 90 percent of the nation’s mobile wireless subscribers (including wholesale subscribers), with AT&T and Verizon Wireless together accounting for 62 percent.”³⁶

³⁴ / *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133 (Terminated), *Fifteenth Report*, rel. June 27, 2011, (“Fifteenth Mobile Wireless Competition Report”), Statement of Michael J. Copps, at 308.

³⁵ / *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66 (Terminated), *Fourteenth Report*, rel. May 20, 2010, (“Fourteenth Mobile Wireless Competition Report”), at para. 4.

³⁶ / *Fifteenth Mobile Wireless Competition Report*, at para. 8.

Figure 1
AT&T and Verizon Wireless Served 62% of U.S. Wireless Market
Year-End 2009³⁷



A Yankee Group report on the wireless market, which is based on first quarter 2011 financial reports from wireless carriers, showed a continued dominance, with AT&T at a 31.9% share, Verizon Wireless at a at 31.1% share, and Sprint at 16.7%.³⁸

Rate Counsel’s analysis of more recently available data,³⁹ is shown in Table 1 below. Relative to the top four wireless carriers, the niche market and regional carriers have significantly smaller shares, and therefore do not pose a significant competitive threat to the nation’s four large wireless providers. For example, as Table 1 shows, in 2012, fifth-ranked MetroPCS and sixth-ranked US Cellular served approximately 9.0 and 5.6 million subscribers,

³⁷ / Source: Fifteenth Mobile Wireless Competition Report, at Table 4.

³⁸ / Gigi Wang, *AT&T/T-Mobile Merger: More Market Concentration, Less Choice, Higher Prices*, Yankee Group, August 2011, at Exhibit 1.

³⁹ / The FCC sought year-end 2011 data in March 2012 in anticipation of publishing its Sixteenth Annual Mobile Competition Report. It has not yet released this report. See: <http://www.fcc.gov/reports/mobile-wireless-competition-report-16th-annual>.

respectively – less than 3% (each) of the 313 million wireless subscribers served by the nation’s ten largest facilities-based carriers in 2012.⁴⁰

In describing the wireless structure in its latest available Mobile Wireless Competition Report, the FCC explains that “[a]s of year-end 2009, there were four facilities-based mobile wireless service providers in the United States that industry observers typically describe as ‘nationwide,’” which include AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless.⁴¹ The FCC also explains that “[a]lthough these four providers do not have networks that cover the entire land area or population of the United States, they do cover a significant portion of both, and will be referred to as the nationwide providers throughout this Report,” and that the “four nationwide service providers all have mobile wireless networks that cover in excess of 87.5 percent of the U.S. population in large proportions of the western, mid-western, and eastern United States.”⁴²

The FCC describes the next tier of wireless providers as consisting of facilities-based companies that provide mobile wireless services on a regional, multi-metro, or local basis. The FCC states: “Leap Wireless International, Inc. (“Leap”) and MetroPCS Communications Inc. (“MetroPCS”) – provide service in multiple large and medium-sized metropolitan areas across the nation,” “United States Cellular Corporation (US Cellular) is a large regional provider that serves regions in the western, mid-western, and eastern United States” and “Clearwire, a recent

⁴⁰ / This analysis excludes Clearwire because it does not provide voice services.

⁴¹ / Fifteenth Mobile Wireless Competition Report, at para. 27, cite omitted.

⁴² / *Id.*

entrant to the mobile wireless services market, provides mobile wireless broadband services in several metropolitan areas across the country.”⁴³

Facilities-based providers also include over ninety small providers that may serve only a single area, often in rural areas. Among these companies are Cincinnati Bell Wireless (serving the Cincinnati, Ohio area), and C-Spire, formerly Cellular South, (which serves the southeastern part of the United States, primarily Mississippi). Non-nationwide service providers typically rely on roaming agreements with nationwide facilities-based providers so that they can extend their coverage.⁴⁴

Using data for the third quarter 2012,⁴⁵ for the four nationwide wireless service providers, and for the major regional mobile wireless voice providers, Table 1 shows the distribution of market shares among the wireless carriers. Presently, AT&T and Verizon Wireless control 65% of the wireless market (based on number of subscribers).

⁴³ / *Id.*, at para. 28, cites omitted.

⁴⁴ / *Id.*, at para. 29, cites omitted.

⁴⁵ / Third quarter 2012 is the latest time period for which all carriers’ results were available. For example, Verizon released its fourth quarter results on January 23, 2013, but Sprint is not expected to release its results until February 7, 2013.

Table 1
Subscriber Base Is Highly Concentrated:
Nationwide and Regional Wireless Providers⁴⁶

Carrier	2012 Subscribers (Millions)	Share of Subscriber Base
AT&T	105.9	34%
Verizon Wireless	95.9	31%
Sprint	56.0	18%
T-Mobile	33.3	11%
MetroPCS	9.0	3%
US Cellular	5.6	2%
Leap	5.6	2%
C-Spire	1.0	0.3%
Cincinnati Bell	0.4	0.1%
Ntelos	0.4	0.1%
"Market" Total	313.1	100%

The four national carriers represent the vast majority (93%)⁴⁷ of the nation's wireless voice subscribers. As Table 1 above shows, MetroPCS, US Cellular, and Leap served approximately 20.2 million customers, or, in aggregate, 7% of the total, as of September 30, 2012. Table 2, below, shows, as measured by revenues (which reflect not only carriers' supply of services but also the prices that they can sustain in the market), Verizon Wireless and AT&T

⁴⁶ / AT&T Investor Briefing, 3rd quarter 2012, October 24, 2012, at 5; Verizon Investor Quarterly, Third Quarter 2012, October 18, 2012, at 5; T-Mobile USA Press Release "T-Mobile USA Reports Third Quarter 2012 Results," November 8, 2012, at 1; Sprint News Release "Sprint Nextel Reports Third Quarter 2012 Results," October 25, 2012, at 5; MetroPCS News Release, "MetroPCS Reports Third Quarter 2012 Results," October 30, 2012; U.S. Cellular News Release, "U.S. Cellular Reports Third Quarter 2012 Results," November 7, 2012; Leap Wireless Press Release, "Leap Reports Third Quarter Results," November 7, 2012; http://www.cspire.com/company_info/about/more_info.jsp (accessed January 24, 2013); Cincinnati Bell Third Quarter 2012 Results, October 30, 2012; NTELOS Press Release, "NTELOS Holdings Corp. Reports Third Quarter 2012 Operating Results," November 8, 2012. All figures are as of the third quarter of 2012.

⁴⁷ / This analysis treats T-Mobile and Metro PCS as separate entities. However, the companies have announced that T-Mobile is acquiring Metro PCS. In addition, Sprint is acquiring approximately 10% of U.S. Cellular's subscribers.

See: <http://www.metropcs.com/metro/support/faqTemplatePage.jsp?whichFAQ=About%20T-Mobile%20Combo>; U.S. Cellular Press Release, "U.S. Cellular To Sell Select MidWest Markets to Sprint," November 7, 2012.

greatly exceed Sprint's third-place and T-Mobile's fourth-place positions in the market. According to CTIA – The Wireless Association, wireless carriers took in \$92.3 billion in revenues over the six months ended June 2012.⁴⁸ A rough calculation demonstrates that Verizon Wireless accounts for 35% and AT&T for 32% of total industry revenues.⁴⁹

Table 2

Third Quarter 2012 Wireless Service Revenues⁵⁰

	Quarterly Wireless Service Revenues (billions)
Verizon Wireless	\$16.2
AT&T	\$14.9
Sprint	\$7.3
T-Mobile	\$4.9

SoftBank's proposed acquisition of Sprint could alter carriers' respective market shares, which, in turn, would alter the results of the HHI calculation that the FCC uses to measure market concentration.⁵¹ Of course the impact may occur over many years: it is impossible to

⁴⁸ / CTIA Semi-Annual Wireless Industry Survey, "Semi-Annual Mid-Year Top-Line Survey Results," available at: <http://www.ctia.org/advocacy/research/index.cfm/AID/10316> (accessed January 23, 2013).

⁴⁹ / Halving the 92.3 billion figure above produces a quarterly estimate of \$46.2 billion. In total, the top four wireless carriers account for approximately 94% of total revenues. That figure might be high in that the quarterly for the industry is for the period ended June 30, 2012 and the revenues in the table above are for the period ended September 30, 2012. Nevertheless, these wireless carriers account for the vast majority of industry revenues.

⁵⁰ / AT&T Investor Briefing, 3rd quarter 2012, October 24, 2012, at 4; Verizon Investor Quarterly, Third Quarter 2012, October 18, 2012, at 5; T-Mobile USA Press Release "T-Mobile USA Reports Third Quarter 2012 Results," November 8, 2012, at 4; Sprint News Release "Sprint Nextel Reports Third Quarter 2012 Results," October 25, 2012, at 1.

⁵¹ / The HHI is a well-known and well-respected measure of market share concentration, and is computed as the sum of the squares of each firm's market share. If a single firm serves a market, the HHI is 10,000 (that is, the square of 100), the highest possible HHI, and if two firms each equally serve a market the HHI of that market is 5000 (that is, the sum of 500-squared and 500-squared). The larger the HHI, the greater the concentration. Markets

predict the impact of the transaction on Sprint's ability to erode AT&T's and Verizon's market shares.⁵² In any case, the proposed transaction does not increase concentration in the mobile wireless market and may break the market power of the duopoly that now exists.

V. INVESTMENT

The Applicants intend to invest approximately \$12.1 billion to purchase approximately 1.7 billion shares from existing Sprint shareholders and to invest an additional \$8 billion directly in Sprint.⁵³ The Applicants intend to build on SoftBank's success in Japan where it "has been deploying new and innovative technology in network and customer devices" and also has been lowering prices.⁵⁴ According to the Applicants, the proposed transaction would enable SoftBank to "reinvigorate the U.S. wireless marketplace,"⁵⁵ and to "deploy wireless broadband service more aggressively and offer consumers innovative new mobile Internet services and applications."⁵⁶

Based on Rate Counsel's reading of the Applicants' filing, the additional \$8 billion in investment that the Applicants describe is just a business plan, and the intention, although

with HHI below 1500 are considered to be unconcentrated; those with an HHI between 1500 and 2500 are considered to be moderately concentrated, and those with an HHI above 2500 are considered to be highly concentrated. U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, issued August 19, 2010 ("Horizontal Merger Guidelines"), § 5.3; F.M. Scherer, *Industrial Market Structure and Economic Performance*, Rand McNally & Company, Chicago, 1970, 50-52. The most recent guidelines released in August 2010 relaxed the definition of highly concentrated. The guidelines released in 1997 defined "highly concentrated" as HHI above 1800. U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, issued April 2, 1992, revised April 8, 1997, §1.5, 1.51.

⁵² / It is also possible that Sprint would attract customers from other wireless providers.

⁵³ / Public Interest Statement, at 1, 7.

⁵⁴ / *Id.*, at 2.

⁵⁵ / *Id.*, at 21.

⁵⁶ / *Id.*, at 23; see also, 23-29.

laudable, is not enforceable. It is possible that the Applicants' S-4, which has not yet been filed, will provide further information about this planned investment. Regardless, without an agreement between the company and regulators with regard to consequences if the company should fail to invest, the benefits of the merger are entirely speculative. In other words, in a worst-case outcome, a foreign company would acquire a U.S. company, but then could fail to invest in its network, particularly if it finds itself cash-strapped as it simultaneously operates extensive networks in the United States and in Japan.⁵⁷ Absent an enforceable commitment, it would appear that post-transaction, if it lacks access to sufficient capital to invest in its two networks, SoftBank could choose to upgrade its Japanese network at the expense of its U.S. network. U.S. consumers merit the protection that firm, measureable, and enforceable investment commitments would provide.

If SoftBank proceeds according to the Applicants' plans, SoftBank's proposed investment in Sprint's network could lead to innovation and more widespread broadband wireless deployment, which also could benefit consumers.

VI. RELATED FCC INVESTIGATIONS

A. Introduction

The continuing volatility in the wireless industry,⁵⁸ underscores the value of the FCC's periodic examinations of the wireless industry. In addition to the issues analyzed in its annual wireless competition reports, other overarching issues merit attention. The FCC should

⁵⁷ / One press account stated: "While infusing Sprint with cash, the deal would slow SoftBank's efforts to repay its own hefty debt load, which stood at nearly \$13 billion as of June 30." *The New York Times*, DealBook, "Deal to Buy Sprint is SoftBank's Biggest Gamble," Michael J. De La Merced, October 15, 2012.

⁵⁸ / See, also, e.g., Federal Communications Commission Public Notice, "Commission Opens Docket for Proposed Transfer of Control of MetroPCS Communications Inc. to Deutsche Telekom AG," WT Docket No. 12-301, October 17, 2012; Anton Troianovski and Ben Fox Rubin, "AT&T to Buy Alltel Operations for \$780 Million," *The Wall Street Journal*, January 22, 2013.

adopt various measures to ensure that the wireless industry evolves in a way that ensures that consumers benefit from effective competition and, where such competition does not yet exist, appropriate regulatory safeguards are established. The FCC could and should address pending matters and open investigations as necessary to address, at a minimum, the three issues addressed below in order to shape a national wireless policy that benefits today's consumers as well as future consumers.

B. Special access

As Rate Counsel has previously stated, the development of efficient wireless markets depends on reasonable rates, terms, and conditions for interstate special access services. On August 22, 2012, the FCC released a Report and Order suspending its special access rules.⁵⁹ The rules allowed for automatic pricing flexibility grants based on certain "triggers" that were heretofore considered indicators of a competitive market. The FCC concluded that there is "significant evidence that these rules, adopted in 1999, are not working as predicted, and widespread agreement across industry sectors that these rules fail to accurately reflect competition in today's special access markets."⁶⁰ Therefore, Rate Counsel welcomes the FCC's recent Order and NPRM that requests comprehensive data and seeks "comment on a proposal to use the data to evaluate competition in the market for special access services."⁶¹ Presently,

⁵⁹ / In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25; RM-10593, *Report and Order*, rel. August 22, 2012.

⁶⁰ / *Id.*, at para. 1.

⁶¹ / In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25; RM-10593, *Report and Order and Further Notice of Proposed Rulemaking*, rel. December 18, 2012, at para. 1.

supracompetitive interstate special access rates are thwarting the Commission's pursuit of diverse, affordable broadband wireless deployment.

Broadband deployment continues to be harmed as a result of high special access rates. NoChokePoints Coalition explained in 2010: "Special access services are critical inputs for broadband services provided by rural telecommunications carriers and wireless carriers, and therefore are essential for broadband deployment and competition. Special access is also the foundation of dedicated high-speed broadband for businesses, universities, hospitals, public safety organizations, and government agencies throughout the country."⁶² By virtue of their extensive wireline distribution facilities, the two largest wireless providers, Verizon Wireless and AT&T – unlike their competitors – don't need to purchase overpriced special access in a large portion of their respective wireless footprints. This in and of itself provide a huge competitive advantage. Therefore, Rate Counsel welcomes the FCC's prompt measures to recalibrate the supracompetitive interstate special access rates that stymie wireless broadband deployment.

C. Net neutrality

⁶² / In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, Comments of the NoChokePoints Coalition, January 19, 2010, at 4-5. NoChokePoints Coalition, at the time comments were filed in January 2010, included: T-Mobile U.S.A., Inc., The New America Foundation, Public Knowledge, Media Access Project, Association for Information Communications Technology Professionals in Higher Education ("ACUTA"), Ad Hoc Telecommunications Users Group, Computer & Communications Industry Association ("CCIA"), U.S. PIRG, Deltacom, Inc., Cbeyond Inc., BT Americas Inc., One Communications, Sprint Nextel Corporation, U.S. Cellular, Cellular South, Inc., Clearwire, Integra Telecom, XO Communications, and tw telecom inc. See, more recently, Ex parte letter from Maura Corbett Spokesperson for the NoChokePoints Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission, March 14, 2011, Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, Attachment: Stephen E. Siwak, Economics Incorporated, *Economic Benefits of Special Access Price Reductions*, March 2011.

Just over two years ago, the FCC issued its “network neutrality” decision.⁶³ The order was a crucial first step for ensuring that consumers and innovators can make their own choices about applications, services, launching new technologies, and communicating. The FCC’s order acknowledges that most consumers have limited choices for broadband services and that, furthermore, broadband providers’ financial interests in their own telephony and pay television services create incentives for them to block or degrade other providers’ services. The FCC’s rules (1) require transparency by providers,⁶⁴ (2) prohibit the blocking of lawful content and applications,⁶⁵ and (3) prohibit unreasonable discrimination in the treatment of lawful Internet traffic.⁶⁶ Regarding the third category of rules, the FCC explains that:

In evaluating unreasonable discrimination, the types of practices we would be concerned about include, but are not limited to, discrimination that harms an actual or potential competitor to the broadband provider (such as by degrading VoIP applications or services when the broadband provider offers telephone service), that harms end users (such as by inhibiting end users from accessing the content, applications, services, or devices of their choice), or that impairs free expression (such as by slowing traffic from a particular blog because the broadband provider disagrees with the blogger’s message).⁶⁷

The third rule, however, unfortunately does not apply to wireless providers. This is particularly troubling in that many underserved and unserved areas appear to be targeted for mobile broadband deployment and many low-income and minority consumers rely solely upon mobile

⁶³ / *Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, *Report and Order*, 25 FCC Rcd 17905 (2010) (“Net Neutrality Order”), at para. 1. Appeal pending in the United States Court of Appeals for the District of Columbia Circuit, *Verizon, v. FCC*, 11-1356 et al.

⁶⁴/ Transparency will be provided through broadband providers’ disclosures regarding network practices, performance characteristics, and commercial terms. See *Net Neutrality Order*, paras. 53-61.

⁶⁵/ See *id.*, at paras. 62-67.

⁶⁶/ See *id.*, at paras. 68-79.

⁶⁷/ *Id.*, at para. 75 (cites omitted).

broadband for broadband Internet access.⁶⁸ Therefore, the fact that the third “net neutrality” rule does not apply to wireless providers disproportionately harms rural, low-income, and minority consumers.

The FCC also discusses its decision to decline to apply the no unreasonable discrimination rule to mobile broadband, and its “measured steps” for protecting openness for mobile broadband at this time in the following manner:

We are taking measured steps to protect openness for mobile broadband at this time in part because we want to better understand how the mobile broadband market is developing before determining whether adjustments to this framework are necessary. To that end, we will closely monitor developments in the mobile broadband market, with a particular focus on the following issues: (1) the effects of these rules, the C Block conditions, and market developments related to the openness of the Internet as accessed through mobile broadband; (2) any conduct by mobile broadband providers that harms innovation, investment, competition, end users, free expression or the achievement of national broadband goals; (3) the extent to which differences between fixed and mobile rules affect fixed and mobile broadband markets, including competition among fixed and mobile broadband providers; and (4) the extent to which differences between fixed and mobile rules affect end users for whom mobile broadband is their only or primary Internet access platform. *We will investigate and evaluate concerns as they arise. We also will adjust our rules as appropriate.* To aid the Commission in these tasks, we will create an Open Internet Advisory Committee, as discussed below in paragraph 162, with a mandate that includes monitoring and regularly reporting on the state of Internet openness for mobile broadband.⁶⁹

The FCC should take prompt steps to “investigate and evaluate” and to “adjust [its] rules” so that rural residents, poor households, and minority consumers are not disproportionately harmed by the skewed regulatory safeguard. The FCC’s exclusion of wireless service from a key component of its decision to ensure broadband openness was ill-advised. Moreover, in the

⁶⁸ / See *National Broadband Plan*, at 180.

⁶⁹ / *Net Neutrality Order*, at para. 105 (emphasis added).

Verizon/AllTel Order, the FCC declined to impose the Commission’s *Internet Policy Statement*.⁷⁰ Yet clearly an open Internet is essential. The FCC has also stated:

There is one Internet, which should remain open for consumers and innovators alike, although it may be accessed through different technologies and services. The record demonstrates the importance of freedom and openness for mobile broadband networks, and the rationales for adopting high-level open Internet rules, discussed above, are for the most part as applicable to mobile broadband as they are to fixed broadband. Consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission are as important when end users are accessing the Internet via mobile broadband as via fixed. And there have been instances of mobile providers blocking certain third-party applications, particularly applications that compete with the provider’s own offerings; relatedly, concerns have been raised about inadequate transparency regarding network management practices. We also note that some mobile broadband providers affirmatively state they do not oppose the application of openness rules to mobile broadband.⁷¹

Commissioner Copps, in his concurring statement, clearly articulated various regrets about the Order, including, among others that the Order lacked “real parity between fixed and mobile.”⁷² Rate Counsel acknowledges that the proposed transaction does not bear directly on this issue, but nonetheless reiterates its previously expressed recommendation that the FCC revisit its policy regarding the applicability of the third rule in the FCC’s Net Neutrality Order to wireless providers.

D. Data collection, analysis, and reporting

Consumers’ increasing demand for wireless services provides ample evidence of the growing significance of this sector of the nation’s economy to households, businesses, and social

⁷⁰ / *Verizon/AllTel Order*, at para. 191.

⁷¹ / *Net Neutrality Order*, at para. 93.

⁷² / *Id.*, at 141. Among Commissioner Copps’ other concerns were that that the FCC did not put broadband telecommunications back under Title II of the FCC’s enabling statute, did not establish a general ban on “pay for priority,” and did not do more to “strip loopholes from the definition of ‘broadband Internet access service’ to prevent companies falsely claiming they are not broadband companies.” *Id.*

institutions throughout the country. At the same time that demand has increased substantially, the quantity of nationwide suppliers has shrunk substantially, leaving two companies with noticeable market dominance. Rate Counsel is hopeful that the proposed transaction will enable Sprint to erode some of AT&T's and Verizon's market shares, and that other changes in the market such as the recent T-Mobile/MetroPCS merger will yield more robust competition. Nonetheless, in light of the lack of effective competition that now exists in the wireless industry, Rate Counsel urges the FCC to open a separate proceeding to establish regular, uniform, and comprehensive data reporting collections by the wireless industry regarding rates, terms, and conditions. Furthermore, the FCC should require the nation's top wireless carriers to provide detailed cost studies for its voice, data, and broadband services to enable the FCC to monitor whether carriers are charging supracompetitive rates. At a minimum, the FCC should endeavour to release its Mobile Wireless Competition Report in a more timely manner. The most current public data available from the FCC is over three years old.

VII. CONDITIONS

A. Introduction

Rate Counsel welcomes the prospect for more effective competition and investment in the wireless market – a market that has become excessively concentrated, that could ensue as a result of the proposed transaction. Accordingly, Rate Counsel supports the transaction subject to conditions described in these comments. Limited conditions are entirely appropriate because, post-transaction, SoftBank will be operating two extensive wireless networks, one that serves approximately 33 million consumers in Japan,⁷³ and a second one that serves approximately 56

⁷³ / Public Interest Statement, at 5.

million consumers in the United States.⁷⁴ It is important that Sprint's sale of its operations lead to the investment and competitive pressure that SoftBank promises and that, post-transaction, SoftBank's priorities continue to stay focused on those ends. Therefore, the FCC should approve the proposed transaction conditioned upon specific commitments by Applicants to deliver the benefits that they describe. Rate Counsel provides a preliminary discussion of such conditions below.

B. The Applicants should commit to specific milestones and/or time table for the proposed \$8 billion in new investment in Sprint's network.

Rate Counsel recommends that the Applicants submit a timetable for their proposed \$8 billion investment in SoftBank's U.S. network and propose a mechanism for reporting its progress in meeting these investment milestones to the FCC. The timetable and reporting mechanism should then become an integral commitment related to the FCC's approval of the transaction.

C. The Applicants should commit to roll out 4G LTE throughout its service territory.

Sprint lags AT&T and Verizon Wireless in its deployment of 4G LTE.⁷⁵ Related to their commitment to invest \$8 billion by certain dates, the Applicants should also commit to roll out 4G LTE, with specific time frames associated with this commitment.

⁷⁴ / *Id.*, at 3.

⁷⁵ / Angela Moscaritolo, "AT&T, Sprint Expand 4G LTE Networks," PCMag.com, December 18, 2012; Roger Cheng, "Sprint 4G LTE may not show up in NY, SF until March: Sprint customers could face a long wait for the faster 4G LTE network," CNET, October 24, 2012; Sprint News Release, January 16, 2013, "Sprint Adding 4G LTE to 28 Additional Cities in Coming Months."

D. The Applicants should agree to abide by the CTIA's Consumer Code for Wireless Service to deter bill shock.

Bill shock – “a sudden increase in [a consumer's] monthly bill that is not caused by a change in service plan”⁷⁶ – has emerged as a serious problem in the wireless market, causing substantial consumer harm.⁷⁷ Presently Sprint, as a member of CTIA (the wireless industry group), abides by a Consumer Code for Wireless Service. On October 17, 2011, the FCC and CTIA announced a voluntary agreement by CTIA and its members⁷⁸ to establish new industry guidelines addressing bill shock.⁷⁹ CTIA's Consumer Code for Wireless Service was modified with the following language:

Each wireless provider will provide, at no charge: (a) a notification to consumers of currently-offered and future domestic wireless plans that include limited data allowances when consumers approach and exceed their allowance for data usage and will incur overage charges; (b) a notification to consumers of currently-offered and future domestic voice and messaging plans that include limited voice and messaging allowances when consumers approach and exceed their allowance for those services and will incur overage charges; and (c) a notification to consumers without an international roaming plan/package whose devices have registered abroad and who may incur charges for international usage. Wireless providers will generate the notifications described above to postpaid consumers based on information available at the time the notification is sent. Wireless consumers will not have to affirmatively sign up in order for these notifications to be sent. Each wireless provider shall provide its customers at least two of these alerts by October 17, 2012 and all of these alerts by April 17, 2013. Wireless providers will clearly and conspicuously disclose tools or services that enable

⁷⁶ / FCC News Release, “FCC Survey Confirms Consumers Experience Mobile Bill Shock and Confusion about Early Termination Fees,” rel. May 26, 2010.

⁷⁷ / Federal Communications, Consumer and Governmental Affairs Bureau, *White Paper on Bill Shock*, October 13, 2010, at 2; In the Matter of Empowering Consumers to Avoid Bill Shock, CG Docket No. 10-207; Consumer Information and Disclosure, CG Docket No. 09-158, *Notice of Proposed Rulemaking* (“NPRM”), October 14, 2010.

⁷⁸ / According to CTIA, its members serve more than 97% of the wireless consumers in the United States. CTIA News Release, “CTIA-The Wireless Association®, Federal Communications Commission and Consumers Union Announce Free Alerts to Help Consumers Avoid Unexpected Overage Charges,” October 17, 2011.

⁷⁹ / Statement of FCC Chairman Julius Genachowski, Bill Shock Event, The Brookings Institution, Washington, DC, October 17, 2011.

consumers to track, monitor and/or set limits on voice, messaging and data usage.⁸⁰

As noted above, consumers are not required to “opt in” to these alerts but, rather, they will automatically receive the alerts. All participating carriers now provide at least two of the four types of alerts and have pledged to provide all alerts by April, 2013.⁸¹ Indeed, SoftBank should commit to continuing to abide by CTIA’s Consumer Code for Wireless Service, which entails commitments beyond “Bill Shock” items.

E. The Applicants should commit to implement a program that parallels the Comcast “Essentials” program.

The Applicants could commit to implement a program that parallels Comcast’s program whereby income-eligible families may obtain discounted broadband services and computers. On January 18, 2011, more than a year after Comcast, General Electric Company (“GE”) – which owns an 80 percent interest in NBC Universal Inc. (“NBCU”) – and Navy LLC (the Applicants’ joint venture vehicle) entered into an agreement to create a joint venture, the FCC, with Commissioner Copps dissenting, approved the proposed merger subject to numerous conditions.⁸² Comcast committed to provide discounted broadband service to low-income consumers, which was codified in the merger order:

Broadband Adoption and Deployment. Comcast will make available to approximately 2.5 million low income households: (i) high-speed Internet access service for less than \$10 per month, (ii) personal computers, netbooks, or other computer equipment at a purchase price below \$150, and (iii) an array of digital-literacy education opportunities. Comcast will also expand its existing broadband

⁸⁰ See http://www.ctia.org/consumer_info/index.cfm/AID/10352 (accessed January 24, 2013). A pdf version of the Consumer Code is available at: http://files.ctia.org/pdf/The_Code.pdf.

⁸¹ / See: <http://www.fcc.gov/bill-shock-alerts>.

⁸² / In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238 (2011)(“Comcast-NBCU Order”).

networks to reach approximately 400,000 additional homes, provide broadband Internet access service in six additional rural communities, and provide free video and high-speed Internet service to 600 new anchor institutions, such as schools and libraries, in underserved, low income areas.⁸³

The Internet service is available for \$9.95 per month plus tax with no activation or equipment rental fees. Consumers can also buy computers (netbook-style laptops) at service initiation for \$149.99 plus tax and receive free Internet training. To qualify, consumers must meet all of the following criteria: live in a Comcast service area; have a child in the home that participates in the National School Lunch Program; have not subscribed to Comcast Internet service in the past 90 days; and do not have an overdue Comcast bill or unreturned equipment.⁸⁴ The program will be offered for three “school years” but once families subscribe they can continue service as long as their account is in good standing and their child remains in the free lunch program. Comcast states on its website that the Internet service will be provided at download speeds “up to” 1.5 mbps and upload speeds of “up to” 384 kbps.⁸⁵

Although Rate Counsel does not consider wireless broadband access to the Internet, to be an effective substitute for wireline broadband access to the Internet, it is clearly preferable to households having no broadband access at all. The FCC has established a Lifeline Broadband Pilot Program, but the funds are extremely limited, and therefore industry assistance in helping to close the income-based broadband gap⁸⁶ is essential so that all citizens can benefit from

⁸³/ *Id.*, at para. 6. See paragraph 6 for a description of Comcast/NBCU’s voluntary commitments.

⁸⁴/ <http://www.internetessentials.com/how/index.html>. More information can be found at Comcast’s website: www.internetessentials.com. Consumers can also be directed to Comcast at 1-855-8-INTERNET. There is also a “Partner Portal” on the website which provides information about resources and flyers that community groups can use to publicize the availability of Internet Essentials. <http://www.internetessentialspartner.com/Login.aspx>

⁸⁵/ See <http://www.internetessentials.com/faq/index.html>.

⁸⁶/ Forty-six percent of Americans with incomes of less than \$30,000 have broadband access to the Internet at home compared to eighty-seven percent of Americans with incomes above \$75,000. Pew Research Center’s Internet & American Life Project, Spring tracking, March 15-April 3, 2012.

broadband access to the Internet, a capability which has evolved into an essential service. The Applicants could enhance the public interest attributes of their proposed transaction by proposing and committing to a program to offer subsidized broadband Internet access to low-income households.

VIII. CONCLUSION

Rate Counsel supports the Commission's approval of the proposed transaction subject to the conditions and recommendations set forth in these comments.

Respectfully submitted,

Stefanie A. Brand
Director
Division of Rate Counsel
Christopher J. White
Deputy Rate Counsel
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690

Economic Consultant:
Susan M. Baldwin

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See: <http://pewinternet.org/Commentary/2012/May/Pew-Internet-Broadband.aspx> (accessed January 24, 2013).