

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

In the Matter of )  
)  
Sprint and Softbank 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

**Petition to Deny or Impose Conditions  
Communications Workers of America**

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## EXECUTIVE SUMMARY

The significance of the proposed Softbank/Sprint/Clearwire transaction cannot be overstated. Increasingly, consumers and businesses rely on wireless devices for their communications needs. Wireless networks and applications are an important driver of economic growth, as well as improvements in health care, education, public safety, and other public purposes. Yet, with this transaction, Sprint aspires to join Verizon and T-Mobile as the third major wireless carrier in this country with significant, and in this case majority, foreign ownership. The Applicants seek a waiver of the statutory 25 percent foreign ownership limit. This sets a high bar that the Applicants must meet in order to demonstrate that this transaction serves the public interest. Absent conditions, this transaction fails this test.

First, Sprint offers only vague, unverifiable promises that the transaction will result in network expansion. Sprint's claim must be scrutinized against a regulatory backdrop in which the Commission has expressed concern about warehousing and has consistently sought stringent safeguards to ensure spectrum is rapidly put to use. Yet, Sprint, a company that owns more than a third of licensed spectrum, operates virtually free of any construction requirements.

The FCC should not approve the proposed transaction unless and until Sprint commits to concrete build-out requirements fleshing out its vague promises of network enhancement. Consistent with Commission precedent, the Commission should require Sprint within the next three years to cover 30 percent of the population in every EA where it holds BRS/EBS spectrum, incorporating in its network frequencies from each license it holds or leases. Sprint should also separately commit to cover, within that same three-year period, 30 percent of the population of each EA using its G Block license. At the seven year benchmark, Sprint should be required to serve, on a

license by license basis in each EA, 70 percent of the population using both its BRS/EBS and G Block spectrum.

Second, the Commission must ensure that the proposed transaction does not pose a security threat to our nation. The national security concerns implicated by the Softbank/Sprint/Clearwire transaction relate to Softbank's and Clearwire's close association with two Chinese equipment vendors, Huawei and ZTE. Huawei and ZTE are helping to build Softbank's next generation 4G wireless network in Japan. Huawei also helped build wireless networks for Clearwire and Clearwire recently announced that it has selected Huawei as a major vendor in the upgrade of its wireless network.

Huawei and ZTE pose considerable security risk to the United States, according to a recent report from the U.S. House of Representatives Permanent Select Committee on Intelligence. The House Intelligence Committee issued recommendations that would bar mergers involving Huawei and ZTE. In light of this recommendation, the Commission and the national security agencies that are reviewing this transaction must at a minimum, place restriction on the use of Huawei equipment in the Sprint/Clearwire networks. Such restrictions could have an ancillary benefit if they result in job growth for U.S. telecommunications equipment installers.

This transaction could strengthen the position of a Chinese equipment manufacturer in the U.S. market, further eroding the remaining jobs of U.S. equipment makers and installers. The decline of this critical sector over the past decade is nothing short of alarming. According to the U.S. Bureau of Labor Statistics, in 2000 there were 280,000 people working in communications equipment manufacturing. By 2012, this number had dropped to 109,000, a decline of 171,000 jobs or 157 percent.

The Commission should recognize that this transaction will *not* lead to job creation at Sprint.

Sprint is largely a marketing operation. It has outsourced its network management to Ericsson and much of its customer care operations to outside vendors. A significant portion of this work is based overseas. Sprint eliminated 6,000 in-house jobs when it signed its contract with Ericsson, and closed 30 U.S. call centers when it outsourced its customer care functions. Since 2006, Sprint eliminated 25,000 jobs.

Absent firm conditions to address these and potentially other public interest concerns raised by other parties, the Commission should deny the Application.

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## I. INTRODUCTION

In response to the Commission's Public Notices, the Communications Workers of America ("CWA") submits these comments regarding the application of Sprint Nextel Corporation ("Sprint"), Clearwire Corporation ("Clearwire") and SOFTBANK CORP. ("SoftBank" and, with Sprint and Clearwire, "Applicants") for the transfer of control of Sprint, its subsidiaries, and Clearwire to Softbank as part of a transaction in which SoftBank will acquire a 70 percent stake in Sprint. The Applicants also seek consent for the transfer to Sprint of the remaining shares of Clearwire that Sprint currently does not own.<sup>1</sup>

CWA represents 700,000 workers in communications, media, airlines, manufacturing, and public service. CWA represents employees in all sectors of the communications industry, including more than 42,000 workers in the wireless industry and several thousand in the wireless communications equipment sector. CWA members have an interest in this proceeding as both workers in the industry and as consumers.

The significance of the proposed Softbank/Sprint/Clearwire transaction on the development of the U.S. wireless market – and therefore on wireless consumers, workers in the industry, and the U.S. economy -- cannot be overstated. Wireless networks are a critical component of our communications system and an important driver of economic growth. Yet, with this transaction, Sprint aspires to join Verizon and T-Mobile as the third major wireless carrier in this country with significant, and in this case majority, foreign ownership. As such, in addition to its public interest review under Sections 214(a) and 310(d) of the Communications Act, the

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<sup>1</sup> "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, Nov. 30, 2012 ("*November 30, 2012 Public Notice*"); "Softbank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint's Proposed Acquisition of De Facto Control of Clearwire, IB Docket No. 12-343, Dec. 27, 2012 ("*December 27, 2012 Public Notice*").

Commission must determine that waiving the Section 310(b)(4) 25 percent foreign ownership restriction serves the public interest.<sup>2</sup> This sets a high bar that the Applicants must meet in order to demonstrate to the Commission that this transaction serves the public interest.

The acquisition by Softbank, a Japanese company, of 70 percent ownership in Sprint -- the nation's largest holder of wireless spectrum,<sup>3</sup> the third largest wireless company with 56 million subscribers,<sup>4</sup> and one of the largest providers of Internet backbone services in this country<sup>5</sup> -- raises significant public interest concerns related to broadband expansion, national security, and job creation.

CWA focuses here on two significant transaction-related issues that the Commission must address in order to determine that this transaction -- one that transfers critical communications networks to a foreign owner -- serves the public interest. First, the Commission must ensure that Sprint will put the vast amount of spectrum that it owns to productive use. Specifically, the Commission should follow past precedent in previous wireless auctions and transaction reviews and require Sprint to meet build-out requirements with three- and seven-year timetables, benchmarks, reporting requirements, and penalties for non-compliance.

Second, the Commission must ensure that the transaction does not pose any risks to national security. The House Committee on Intelligence, after an extensive review, concluded that networks

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<sup>2</sup> 47 U.S.C. Section 310(b)(4) restricts foreign ownership of any radio license to 25 percent unless the Commission determines that waiver of this restriction serves the public interest. *See also* U.S.C. Section 214(a), 310(d).

<sup>3</sup> The Commission currently fully attributes Clearwire's spectrum to Sprint. *See* FCC Fifteenth Wireless Report, 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), June 27, 2011 (rel), fn 19 and Table 27 at 168.

<sup>4</sup> Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Public Interest Statement, IB Docket No. 12-343 ("Public Interest Statement") at 3.

<sup>5</sup> *Id.* at 4.

that deploy equipment from the Chinese vendor Huawei Technologies (“Huawei”) should be considered security risks. Clearwire and Softbank both deploy Huawei equipment in their networks. The House Intelligence Committee report issued strong recommendations in favor of blocking mergers that include Huawei Technologies and against the use by U.S. carriers of Huawei equipment.<sup>6</sup> CWA urges the Commission and the national security agencies that are simultaneously reviewing this transaction -- the Department of Justice, the Federal Bureau of Investigation and the Department of Homeland Security – to incorporate these findings and recommendations into any agreement they negotiate with the Applicants. Restrictions on the use of Huawei equipment in the Sprint/Clearwire networks could have an ancillary benefit if it results in job growth for U.S. telecommunications equipment installers. Absent firm conditions to address these and potentially other public interest issues raised by other parties, the Commission should deny the Application.

Despite the Applicants’ assertion that the proposed transaction will lead to job creation, one thing is certain: the transaction will not lead to job growth at Sprint. Sprint is the only wireless company to contract out the management of its network. The company eliminated as many as 6,000 jobs at Sprint when it contracted that work to Ericsson, which sends some of those jobs to India.<sup>7</sup> Sprint also outsources as much as 70 percent of its customer service work, much of it to India, the

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<sup>6</sup> “Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE,” A report by Chairman Mike Rogers and Ranking Member C.A. Dutch Ruppersberger of the Permanent Select Committee on Intelligence, U.S. House of Representatives, Oct. 8, 2012. (Available at <http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/Huawei-ZTE%20Investigative%20Report%20%28FINAL%29.pdf>)

<sup>7</sup> “Sprint will outsource network operations, 6,000 employees to Ericsson,” *Kansas City Business Journal*, July 9, 2009 (available at <http://www.bizjournals.com/kansascity/stories/2009/07/06/daily41.html?page=all>); “Outsourcing to India again! Ericsson to service U.S. clients using workforce in India,” *Telcoma Technologies PVT Ltd*, Nov. 27, 2010 (available at <http://www.telcoma.in/en/2010/11/outsourcing-to-india-again-ericsson-to-serve-u-s-clients-using-workforce-in-india/>).



Philippines, and Mexico.<sup>8</sup> Sprint has provided no indication to this Commission that it intends to bring this work back to the United States.

Finally, CWA supports the petition from DISH Networks LLC (“DISH”) to postpone the review of this instant proceeding until Clearwire shareholders vote on DISH’s counter-offer to purchase all of Clearwire’s shares and until the Commission rules on the multiple objections to its *pro forma* approval of Sprint’s purchase of Clearwire shares from Eagle River LLC, a purchase that gave Sprint majority ownership in Clearwire.<sup>9</sup> Several Clearwire shareholders and DISH have petitioned the Commission to reconsider its *pro forma* approval of that transaction.<sup>10</sup> DISH has also submitted a counter offer to Clearwire’s Board to purchase all of Clearwire’s shares. It is incumbent on the Commission to resolve the issues related to the Eagle River transaction *before* it considers the Softbank/Sprint/Clearwire application, since the question of who owns Clearwire and its spectrum holdings is directly implicated in this proceeding.<sup>11</sup> The Commission should not proceed with the review of the Sprint/ /Clearwire transaction until the issue of Commission approval of the Sprint/Clearwire/Eagle River transaction is resolved.

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<sup>8</sup> “Sprint Focuses on Keeping Customers Happy So They Don’t Leave,” *Los Angeles Times*, March 5, 2009 (available at <http://latimesblogs.latimes.com/technology/2009/03/sprint-and-cust.html>).

<sup>9</sup> DISH Network LLC, Request to Hold Proceeding in Abeyance, IB Docket No. 12-343, Jan. 16, 2013.

<sup>10</sup> Crest Financial Limited, Petition for Reconsideration, In the Matter of Applications of Sprint Nextel Corporation, Transferor and SOFTBANK CORP., and Starburst II Inc., Transferees for Consent to transfer of Control of Licenses and Authorizations, IB Docket No. 12-343, Jan. 4, 2013; Petition of Dish Network L.L.C. for Reconsideration, In the Matter of Applications of Clearwire for Transfer of Control, ULS File No. 0005480932, Jan. 11, 2012; Taran Asset Management, Petition to Deny, In the Matter of Applications of Sprint Nextel Corporation, Transferor and SOFTBANK CORP., and Starburst II Inc., Transferees, Joint Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations; and Petition for Declaratory Rulings under Section 310(b)(4) of the Communications Act of 1934, as amended, Jan. 19, 2013.

<sup>11</sup> For example, the Sprint/Clearwire agreement conditions Sprint’s obligation to acquire Clearwire on the prior consummation of the Softbank/Sprint transaction. *See* In the Matter of Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Amendment, IB Docket No. 12-343, Dec. 20, 2012 at 3 (“*Amendment to the Applications*”).

## II. CONSISTENT WITH PAST PRECEDENT, THE COMMISSION SHOULD REQUIRE SPRINT TO MEET BUILD-OUT REQUIREMENTS

The expansion of next-generation high-speed wireless broadband is vital to our nation's economic growth, as well as improvements in health care, education, public safety, and other important public purposes.<sup>12</sup> Today, there are more than 298 million mobile devices in service.<sup>13</sup> Increasingly, consumers, especially low-income and minority consumers, connect to the Internet over a wireless device<sup>14</sup> and this trend is expected to grow exponentially moving forward.<sup>15</sup> As a result, Chairman Genachowski has cautioned that a looming spectrum crunch threatens the growth of this critical sector of the U.S. economy.<sup>16</sup> In light of the growing demand for wireless connectivity and given the physical limits of available spectrum, the Congress and the Commission have made it a top priority to ensure that spectrum owners put their spectrum to productive use through robust network expansion.<sup>17</sup>

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<sup>12</sup> Federal Communications Commission *Connecting America: The National Broadband Plan* at 75 (“[W]ireless communications – and mobile broadband in particular – promises to continue to be a significant contributor to U.S. economic growth in the coming decades.”)

<sup>13</sup> FCC Industry and Analysis Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of Dec. 31, 2011*, Jan. 2013 at 1.

<sup>14</sup> While more than half (55 percent) of cell phone users access the Internet or send e-mail with their cell phones and one-third (31 percent) use their cell phone exclusively for these purposes, the rates are higher for Blacks (51 percent) and Hispanics (42 percent) than whites (24 percent). Low-income consumers (43 percent) are twice as likely to use their cell phone exclusively to access the Internet as higher-income consumers (21 percent). Pew Internet and American Life Project “17 percent of cell phone users do most of their online browsing on their phone, rather than a computer or other device,” June 26, 2012 (available at <http://pewinternet.org/Reports/2012/Cell-Internet-Use-2012.aspx>).

<sup>15</sup> Cisco predicts mobile data traffic will grow 18-fold by 2016. *See* “Cisco Visual Networking Index: Global Mobile Data Forecast Update, 2011-2016,” Feb. 14, 2012 (available at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html)).

<sup>16</sup> “Demand for spectrum – the airwaves that sustain wireless communication – is on pace to exceed supply. If we don’t address this spectrum crunch, we’re going to run into a wall that will stifle mobile innovation, hurting consumers and slowing economic growth.” Prepared remarks of FCC Chairman Julius Genachowski, “The Internet at a Global Crossroads: Preserving Internet Freedom and Openness,” Rio De Janeiro, Brazil, Oct. 10, 2012 (available at <http://www.fcc.gov/document/genachowski-remarks-internet-freedom-futurecom-brazil>).

<sup>17</sup> *See* Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4 (rel. Aug. 23, 2012) at 119 (“*Verizon Wireless-SpectrumCo Order*”);

The Applicants repeatedly cite to SoftBank’s infusion of capital into Sprint to justify the proposed transaction—relying in particular on the resultant network benefits of that investment, including job creation. The *Public Interest Statement* states, for example, that “[t]he transaction is designed to enable Sprint to take advantage of an \$8 billion capital infusion,” which will allow Sprint “to compete more aggressively with Verizon and AT&T” and will “stimulate economic growth and promote job creation.”<sup>18</sup> In particular, Sprint argues that “SoftBank’s investment . . . will strengthen Sprint’s balance sheet and make possible increased investment in its network and wireless broadband services,”<sup>19</sup> specifically by granting the company the “financial resources needed to expand and accelerate [Sprint’s] broadband investment program.”<sup>20</sup> The *Public Interest Statement* pointedly notes that Sprint is already deploying LTE in the 1.9 GHz bands, but argues that “[t]he proposed transaction can enable Sprint to accelerate this deployment by introducing LTE more rapidly in these various bands and in more markets,” as well as allowing Sprint “to expand the capacity of its broadband network by deploying more LTE cell sites in high-traffic areas and small cells to increase capacity, speed, and network reliability.”<sup>21</sup>

While CWA broadly supports network expansion—with the concomitant benefits of job creation for U.S. workers—Sprint’s vague promises do not rise to the “verifiable, transaction-

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Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70 (2012) at 195; 47 C.F.R. § 27.14; Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, WT Docket 12-357 (2012) at 81.

<sup>18</sup> *Public Interest Statement* at 13-14.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 23.

<sup>21</sup> *Id.* at 25; see also Bye Declaration 3-4.

specific public interest benefits” the FCC should credit as a public interest benefit.<sup>22</sup> This is especially true in this case, as Sprint has previously reneged on vague commitments in prior proceedings, including falling short of the build-out it promised in acquiring Clearwire in 2008<sup>23</sup> and its promises rapidly to conclude the 800 MHz Rebanding (which is now approaching its 10<sup>th</sup> year). And, Sprint’s statements are even more alarming in view of the fact that Sprint actually seems to be contracting coverage,<sup>24</sup> and where independent test firms find Sprint’s coverage claims overstated in any event.<sup>25</sup> As discussed below, and consistent with prior transactions, Sprint should be required to commit to substantial build-out requirements for both its G Block and Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) licenses and leases.

In such regards, it is inexplicable, as a matter of public policy, that a company which “will own more than a third of the available spectrum allocated by the U.S. government, but with less than one sixth of U.S. customers,”<sup>26</sup> operates virtually free of any construction requirements. Sprint’s PCS spectrum is uniformly beyond its initial term, and therefore is not subject to any

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<sup>22</sup> “*Verizon Wireless-SpectrumCo Order*” at 95.

<sup>23</sup> Compare Sprint Nextel Corporation And Clearwire Corporation Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94 at ¶¶ 118-119 (promising a 6 mbps network covering 140 million POPs by year end 2010), Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket 10-133, Fifteenth Report (rel. June 27, 2011) at 8 (noting Clearwire year end 2010 coverage of only 120 million POPs).

<sup>24</sup> See Sprint Nextel Corporation, “Learn more about network changes coming to portions of Kansas and Oklahoma,” available at: [http://support.sprint.com/support/article/Learn\\_more\\_about\\_network\\_changes\\_coming\\_to\\_portions\\_of\\_Kansas\\_and\\_Oklahoma/case-gz982789-20111212-190208/?ECID=vanity:coveragechange](http://support.sprint.com/support/article/Learn_more_about_network_changes_coming_to_portions_of_Kansas_and_Oklahoma/case-gz982789-20111212-190208/?ECID=vanity:coveragechange) (discussing Sprint network changes resulting in increased need for roaming by customers).

<sup>25</sup> ComputerWorld, “Sprint’s LTE coverage found lacking in four cities,” available at: [http://www.computerworld.com/s/article/9232108/Sprint\\_s\\_LTE\\_coverage\\_found\\_lacking\\_in\\_four\\_cities](http://www.computerworld.com/s/article/9232108/Sprint_s_LTE_coverage_found_lacking_in_four_cities) (noting “[i]n comprehensive testing in Dallas, Fort Worth, Kansas City and Atlanta in mid-August and early September, research firm Advanced Frequency Engineering (AFE) found that Sprint’s LTE service was ‘not present or not accessible in 75% to 90% of Sprint’s advertised LTE coverage area in the cities tested at time of testing.’”).

<sup>26</sup> Roger Entner, “Sprint to be largest U.S. spectrum holder if Clearwire deal approved,” FierceWireless (Dec. 18, 2012); available at: <http://www.fiercewireless.com/story/entner-sprint-be-largest-us-spectrum-holder-if-clearwire-deal-approved/2012-12-18#ixzz2GqFd05Um>.

current build requirements. Sprint’s national “G Block” license—awarded almost 10 years ago—has never been subject to any build-out requirements. And, Sprint’s vast BRS/EBS holdings are subject to minimal regulatory obligations—as a result of the *Sprint-Nextel Merger Order*, the company was required to “offer service in the 2.5 GHz band to at least 30 million American in at least 20 BTAs, at least two of which are rural communities outside of the nation’s top 200 most populous BTAs” within six years, with “the deployment in each of the twenty BTAs will cover[ing] at least one-third of each BTA’s population.”<sup>27</sup> Had the company been required to meet a threshold of 70 percent of the population in each EA, a threshold that has been used by the FCC in at least four recent proceedings that are detailed below, Sprint would have had to cover almost 220 million POPs within seven years, seven times what it was required to cover and nearly double what it has covered.

Sprint’s public interest claims must be scrutinized against a regulatory backdrop in which the Commission has expressed concern about warehousing and has consistently sought stringent safeguards to ensure spectrum is rapidly put to use. Not only has the FCC initiated a rulemaking proceeding to harmonize build-out requirements and renewal requirements—including potential second- and subsequent term commitments for renewal<sup>28</sup>—the agency has also adopted more stringent construction requirements for newly authorized services and required strong build commitments in the context of transactions.

*Verizon Wireless-SpectrumCo Order*. The FCC required Verizon Wireless to cover: (i) 30 percent of the total population of the areas being acquired within 3 years; and (ii) 70 percent of the total

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<sup>27</sup> Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14028-14029 at 164-166 (2005).

<sup>28</sup> Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112 (2010).

population in each Economic Area (“EA”) being acquired within 7 years.<sup>29</sup> Notably, these requirements were imposed on Verizon Wireless after the FCC observed that “Verizon Wireless would hold more than 40 megahertz of AWS-1 spectrum (in at least one county) in 101 CMAs,” and that quantity of spectrum “represents almost half of the total AWS-1 spectrum.”<sup>30</sup> The Commission expressed concern that “rival service providers would likely be foreclosed from acquiring AWS-1 spectrum, which is crucial for certain rivals’ LTE deployment and broadband growth,” and noted that “there is little or no other greenfield spectrum with a developed ecosystem that is currently available.”<sup>31</sup> The Commission noted that if “Verizon Wireless does not need the spectrum it is acquiring, at least in the near term, and the result is that Verizon Wireless does not in fact put the spectrum to use, the Applicants’ asserted benefits would be undermined” and therefore the Commission was willing to “substantially credit the public interest benefits claimed by the Applicants” only when “Verizon Wireless . . . committed to undertake an aggressive build-out schedule of the spectrum it is acquiring through these transactions.”<sup>32</sup> Given that Sprint controls nearly all of the Broadband Radio Service/Educational Broadband Service (“BRS/EBS”) spectrum in the United States, the same concern should apply even more forcefully to this transaction.

*AWS-4 proceeding.* Even more recently, the FCC adopted similarly stringent build-out requirements in the context of the AWS-4 proceeding. In that proceeding, based upon a commitment by DISH Network Corporation (“DISH”) to “aggressively build-out a broadband network”<sup>33</sup> if they received terrestrial authority to operate in the AWS-4 band, the FCC required the

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<sup>29</sup> *Verizon Wireless-SpectrumCo Order* at 121.

<sup>30</sup> *Id.* at 74.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 110.

<sup>33</sup> Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-

AWS-4 licensee to cover: (i) 40 percent of the total population in the aggregate AWS-4 licensed area within 4 years; and (ii) 70 percent of the total population in each licensed EA within 7 years.<sup>34</sup>

*2.3 GHz Wireless Communications Service (“WCS”).* In this band, licensees are required to serve: (i) 40 percent of the population per license in 4 years and (ii) 75 percent of the population per license after 6 ½ years.<sup>35</sup>

*700 MHz auction.* Likewise, licensees that acquired spectrum in the most recent 700 MHz auction were required to meet similarly stringent build-out requirements.<sup>36</sup>

*“H-Block” Notice of Proposed Rule Making.* The FCC has proposed substantially identical requirements in its recent H-block proposed rule.<sup>37</sup>

The FCC should not approve the proposed transaction unless and until Sprint commits to concrete build-out requirements fleshing out its vague promises of network enhancement. Consistent with Commission precedent, the Commission should require Sprint within the next three years to cover 30 percent of the population in every EA where it holds BRS/EBS spectrum, incorporating in its network frequencies from each license it holds or leases. Sprint should also separately commit to cover, within that same three-year period, 30 percent of the population of each EA using its G Block license. At the seven year benchmark, Sprint should be required to serve, on a

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70 (2012) at 195.

<sup>34</sup> *Id.* at 187.

<sup>35</sup> Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, WT Docket No. 07-293, IB Docket No. 95-91, Order on Reconsideration, 27 FCC Rcd 13651 at 13702-06 at 127-135 (2012).

<sup>36</sup> 47 C.F.R. § 27.14.

<sup>37</sup> Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, WT Docket 12-357 (2012) at 81.

license by license basis in each EA, 70 percent of the population using both its BRS/EBS and G Block spectrum.

### **III. THE COMMISSION MUST ENSURE THAT THE PROPOSED TRANSACTION DOES NOT POSE A RISK TO OUR NATIONAL SECURITY**

The Commission must ensure that the proposed transaction does not pose a security threat to our nation. The national security concerns implicated by the Softbank/Sprint/Clearwire transaction relate to Softbank's and Clearwire's close association with two Chinese equipment vendors, Huawei and ZTE. Huawei and ZTE are helping to build Softbank's next generation 4G wireless network in Japan.<sup>38</sup> Huawei also helped build wireless networks for Clearwire.<sup>39</sup> Clearwire recently announced that it has selected Huawei as a major vendor in the upgrade of its wireless network.<sup>40</sup>

Huawei and ZTE pose considerable security risk to the United States, according to a recent report from the U.S. House of Representatives Permanent Select Committee on Intelligence. After a 13-month investigation into the security risks posed by Huawei and ZTE, the Committee on Intelligence concluded that "risks associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national security interests."<sup>41</sup> The Intelligence

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<sup>38</sup> Bloomberg News, "ZTE Says It's Softbank's 'Primary' Partner for Japan 4G Network," Sept. 29, 2011 (<http://www.businessweek.com/news/2011-09-29/zte-says-it-s-softbank-s-primary-partner-for-japan-4g-network.html>); Huawei Press Release, "Softbank Group Company Selects Huawei to Power Its AXGP Commercial Network," Sept. 29, 2011 (<http://www.huawei.com/en/about-huawei/newsroom/press-release/hw-103209-japanwcpcommercial.htm>).

<sup>39</sup> See Huawei website: "As the world's leading WiMAX vendor, we [Huawei] have built ... commercial WiMAX networks for operators like Clearwire in the U.S." (<http://www.huawei.com/en/solutions/broader-smarter/hw-076562-wimax-telecom-grade-evolution-htm>)

<sup>40</sup> "Clearwire Selects Huawei as one of its LTE Vendors," *Fierce Wireless*, Oct. 26, 2012, (<http://www.fiercewireless.com/story/clearwire-selects-huawei-one-its-lte-vendors/2012-10-26>)

<sup>41</sup> "Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE," A report by Chairman Mike Rogers and Ranking Member C.A. Dutch Ruppersberger of the Permanent



Committee emphasized that the telecommunications sector plays a critical role in the safety and security of our nation, and is thus a target of foreign intelligence services. The Intelligence Committee further noted that Huawei and ZTE may be influenced by the Chinese government and military to provide Chinese intelligence services access to foreign telecommunications networks. Thus, penetration of Huawei and ZTE network equipment into the U.S. market “provides an opportunity for further economic and foreign espionage by a foreign nation-state already known to be a major perpetrator of cyber espionage.”<sup>42</sup>

To protect U.S. security interests, the House Intelligence Committee made the following recommendations regarding Huawei and ZTE in the U.S. market that are directly implicated in this proceeding:

- The United States should view with suspicion the continued penetration of the U.S. telecommunications market by Chinese telecommunications companies.
- The Committee on Foreign Investment in the United States (CFIUS) must block acquisitions, takeovers, or mergers involving Huawei and ZTE given the threat to U.S. national security interests.
- U.S. government systems, particularly sensitive systems, should not include Huawei or ZTE equipment, including component parts. Similarly, government contractors – particularly those working on contracts for sensitive U.S. programs – should exclude ZTE or Huawei equipment in their systems.
- Private-sector entities in the United States are strongly encouraged to consider the long-term security risks associated with doing business with either ZTE or Huawei for equipment or services. U.S. network providers and systems developers are strongly encouraged to seek other vendors for their projects. Based on available classified and unclassified information, Huawei and ZTE cannot be trusted to be free of foreign state influence and thus pose a security threat to the United States and to our systems.<sup>43</sup>

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Select Committee on Intelligence, U.S. House of Representatives, Oct. 8, 2012  
(<http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/Huawei-ZTE%20Investigative%20Report%20%28FINAL%29.pdf>)

<sup>42</sup> *Id.*, at iv.

<sup>43</sup> *Id.* at vi-vii.

Sprint is a major government contractor, with more than \$1 billion in U.S. government telecommunications contracts over the past six years. Sprint's largest government contracts are with the Defense Information Systems Agency, the Department of the Navy, and the Department of the Army.<sup>44</sup>

In light of the Intelligence Committee's recommendations against acquisitions involving Huawei or ZTE, use of Huawei or ZTE equipment in U.S. government systems or in those of government contractors, and private companies' doing business with Huawei or ZTE, the Commission should be very concerned about the security implications of a Softbank/Sprint/Clearwire deal. Huawei and ZTE are major equipment suppliers to Softbank in Japan. Clearwire has selected Huawei to supply base stations in the upgrade of its wireless network.

Analysts have observed that one driver behind the Softbank/Sprint/Clearwire transaction is Softbank's interest in Clearwire, which uses the same next-generation 4G wireless technology as Softbank (a technology known as TD-LTE). This is the same technology used by China Mobile. The fact that the Sprint/Clearwire transaction is contingent on Commission approval of the Sprint/Clearwire transaction makes clear that Softbank's interest in Clearwire is a central driver in this transaction.<sup>45</sup> Clearwire is the only U.S. company that uses the same 4G wireless technology as Softbank. Huawei and ZTE are leading providers of the equipment for this wireless technology. By expanding into the U.S. market, Softbank will be able to realize economies of scale that will lower network equipment costs across its multiple markets.

The danger should be clear. Softbank's purchase of Sprint (and its related majority interest in

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<sup>44</sup> See <http://www.fedspending.org>

<sup>45</sup> See In the Matter of Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Amendment, IB Docket No. 12-343, Dec. 20, 2012 at 3 ("*Amendment to the Applications*").

and control of Clearwire) will lead to significant penetration of Huawei and ZTE into the U.S. market, with the potential to open critical U.S. infrastructure to espionage and cyber-security threats from foreign states.

Clearwire seeks to assuage fears about its use of Huawei network equipment with claims that “third party vendors” will test Huawei base stations and software to detect any security weaknesses. It should be noted that the House Intelligence Committee report did not view “third party” testing of Huawei equipment as an appropriate safeguard of U.S. security interests. Rather, the House Intelligence Committee recommended U.S. companies avoid use of Huawei and ZTE equipment and urged the Committee on Foreign Investment in the United States (CFIUS) to block any mergers with companies involving Huawei and ZTE.

The Applicants have stated their willingness to enter into a national security agreement with the Department of Justice, the Federal Bureau of Investigation and the Department of Homeland Security and to make that agreement a condition for transfer of control.<sup>46</sup> CWA urges the Commission and the national security agencies to take seriously the concerns and recommendations of the House Intelligence Committee as it reviews this transaction and, at a minimum, place restriction on the use of Huawei equipment in the Sprint/Clearwire networks. Such restrictions could have an ancillary benefit if it results in job growth for U.S. telecommunications equipment installers. Absent firm conditions to address these and other public interest issues raised by other parties, the Commission should deny the Application.

#### **IV. THE TRANSACTION WILL NOT LEAD TO JOB CREATION AT SPRINT**

The Softbank takeover of Sprint will not lead to significant job creation at Sprint. Sprint is in large part a marketing operation. The Swedish company Ericsson manages its network and Sprint

outsources its customer service operation. A significant portion of these jobs are located offshore. Sprint is the only wireless company to contract out the management of its network. The company eliminated as many as 6,000 jobs when it contracted that work to Ericsson, which sends some of those jobs to India. Sprint also outsources as much as 70 percent of its customer service work, much of it to India, the Philippines, and Mexico.<sup>47</sup> Since 2006, Sprint cut 25,000 U.S.-based jobs and closed 30 domestic call centers.<sup>48</sup> Sprint has provided no indication to this Commission that it intends to bring this work back to the United States.

Moreover, this transaction strengthens the position of Chinese communications equipment manufacturers in this country. As noted earlier, Softbank and Clearwire use equipment manufactured by the Chinese companies Huawei and ZTE. In addition to the national security concerns, deeper penetration of Chinese manufactured equipment into the U.S. market further erodes the remaining U.S.-based communications equipment industry. Huawei and ZTE are also major beneficiaries of support from the China Development Bank (“CDB”), which provides both with inexpensive export financing and which recently announced a \$20 billion line of credit to ZTE.<sup>49</sup> The decline of the critical equipment manufacturing sector in this country over the past decade is nothing short of alarming. According to the U.S. Bureau of Labor Statistics, in 2000 there were 280,000 people working in communications equipment manufacturing. By 2012, this number

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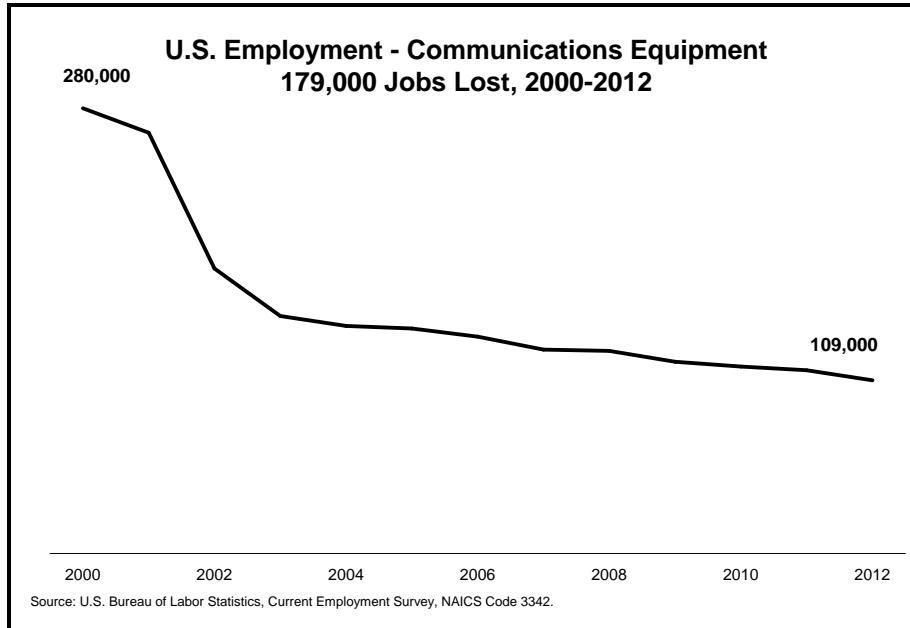
<sup>46</sup> *Public Interest Statement* at 32.

<sup>47</sup> Sprint will outsource network operations, 6,000 employees to Ericsson,” *Kansas City Business Journal*, July 9, 2009 (available at <http://www.bizjournals.com/kansascity/stories/2009/07/06/daily41.html?page=all>); “Outsourcing to India again! Ericsson to service U.S. clients using workforce in India;” Telcoma Technologies PVT Ltd, Nov. 27, 2010 (available at <http://www.telcoma.in/en/2010/11/outsourcing-to-india-again-ericsson-to-serve-u-s-clients-using-workforce-in-india/>). “Sprint Focuses on Keeping Customers Happy So They Don’t Leave,” *Los Angeles Times*, March 5, 2009 (available at <http://latimesblogs.latimes.com/technology/2009/03/sprint-and-cust.html>).

<sup>48</sup> Sprint-Nextel Corporation, SEC Form 10-K, various years; *Wall Street Journal*, July 18, 2011.

<sup>49</sup> Simon Montlake, “Chinese Policy Bank Helps ZTE, Huawei to Fly the Flag,” *Forbes*, Dec. 7, 2012 (available at

had dropped to 109,000, a decline of 171,000 jobs or 157 percent.<sup>50</sup>



## V. CONCLUSION

There are significant public interest risks implicated in this transaction. The proposed Softbank/Sprint/Clearwire transactions would dramatically change the U.S. wireless market, putting majority control of a company that owns one-third of all U.S. licensed spectrum in the hands of a foreign company. The transaction also raises serious national security concerns. Yet the Applicants seek waiver of the 25 percent foreign ownership rule and approval of this transaction based on only vague, unverifiable promises of network expansion. The Commission should not approve the Application absent specific, verifiable network build-out requirements that are consistent with recent Commission precedent and without conditions that protect against acknowledged security risks associated with Softbank/Sprint/Clearwire's use of network equipment manufactured by Chinese companies.

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<http://www.forbes.com/sites/simonmontlake/2012/12/07/chinese-policy-bank-helps-zte-huawei-to-fly-the-flag/>).

<sup>50</sup> U.S. Bureau of Labor Statistics, Current Employment Statistics survey, various years.

Respectfully Submitted,

Debbie Goldman  
George Kohl

Communications Workers of America

Dated: January 28, 2013

**CERTIFICATE OF SERVICE**

I, Debbie Goldman, hereby certify that on this 28th day of January 2013, I caused true and correct copies of the foregoing Comments to be served by electronic mail to the following:

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