

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

In the Matter of

Applications of Sprint Nextel Corporation
Transferor

SOFTBANK CORP., and Starburst II, Inc.,
Transferees

for Consent to Transfer of Control of Licenses
and Authorizations.

IB Docket No. 12-343

**REPLY OF CREST FINANCIAL LIMITED
IN SUPPORT OF PETITION TO DENY**

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REPLY IN SUPPORT OF PETITION TO DENY

Pursuant to 47 C.F.R § 1.939 and § 1.45(c), Crest Financial Limited (“Crest”) submits this reply in support of its Petition to Deny the Application of Sprint Nextel Corporation (“Sprint”), SoftBank Corporation (“SoftBank”), Starburst I, Inc. and Starburst II, Inc. (collectively, the “Applicants”) for consent to transfer control of licenses, authorizations, and spectrum leases held by Sprint and Clearwire Corporation (“Clearwire”). Through this proposed transaction (the “Proposed Transaction”), Sprint would merge with Clearwire after SoftBank would acquire control of Sprint.

INTRODUCTION

Applicants’ opposition studiously avoids any substantive discussion of the serious concerns Crest has raised; Applicants instead proceed on the apparent assumption that the Commission’s review of the Proposed Transaction is a mere formality and its approval inevitable. In the scant instances where Applicants deign to address head-on Crest’s presentation of facts and arguments, they do so largely through bare denials. By doing so, Applicants deprive the Commission and the public of an understanding of how Applicants plan to prevent the risks that several petitioners and commenters have raised. Contrary to Applicants’ premise, the Commission is not a rubber stamp for approval, and it should diligently exercise its authority and duty to guard the public interest where, as here, the proponents of combination argue by slogan and *ad hominem*.

Notwithstanding Applicants’ protestations to the contrary, Crest demonstrated in its Petition to Deny that the Proposed Transaction will harm the public through the continued under-utilization of Clearwire’s spectrum. Additionally, Crest demonstrated that the Proposed Transaction will work to reduce prospective sellers’ incentives to part with usage rights in

incentive auctions, thereby undermining the Commission’s efforts to unlock additional spectrum and exacerbating the spectrum crunch.¹ Crest also detailed the Applicants’ course of conduct to acquire Clearwire through misdirection and subterfuge, rather than through a direct purchase at a fair market price—a course of conduct now confirmed by the Clearwire and Softbank preliminary proxy statements. But rather than address these concerns, Sprint’s opposition essentially asks for the Commission’s trust, notwithstanding Applicants’ history of making statements to the public and the Commission that are contradictory with what their preliminary proxy statements now confirm to have been true. After asking for the Commission’s trust, Applicants resort to tropes and unsupported assertions, followed by baseless contentions that Crest’s claims do not even merit Commission review. In doing so, Applicants attempt to deflect attention from, and fail even to engage, let alone put to rest, the numerous and direct public interest concerns that Crest has raised.

First, Crest demonstrated in its Petition that the Proposed Transaction will harm the public by preventing the full deployment of Clearwire’s spectrum and interfering with efforts to put this spectrum to its best use consistent with the public interest. Approval of the Proposed Transaction would entrust the single largest portfolio of United States spectrum to a license holder that has shown itself willing to keep spectrum underdeveloped and, by setting an artificially low benchmark price for spectrum, drastically undermine the Commission’s efforts to unlock additional spectrum through future transactions or auctions.² Sprint denies this, but offers little explanation beyond stating that Clearwire “operates as a separate company with

¹ See Petition to Deny of Crest Financial Limited 11–16, IB Docket No. 12-343 (FCC Jan. 28, 2013) (hereinafter “Petition”).

² See *id.* at 18–22.

independent management[.]”³ Sprint also seeks to avoid having to discuss its history of undermining development of Clearwire’s spectrum by suggesting that the Commission’s approval of the combination of Sprint’s and Clearwire’s spectrum in 2008 prevents the Commission from reviewing such aggregation again—notwithstanding that Clearwire’s spectrum usage plans have changed drastically since 2008 and that Sprint has divested and reacquired its controlling interest since 2008. For those reasons, as discussed further below, Applicants are mistaken in their reliance on the Commission’s 2008 review process as a shield against further scrutiny.

Second, with the Proposed Transaction, Sprint has reached the culmination of its multi-stage scheme to depress Clearwire’s perceived value in order to acquire all of Clearwire’s spectrum for itself on the cheap. Sprint’s success in this scheme has led to the Proposed Transaction’s undervaluation of Clearwire’s spectrum. But, as shown below and in the attached report,⁴ Clearwire’s spectrum is in fact easily and demonstrably worth *at least* \$0.40 to \$0.70 per MHz POP—more than *two or three times* as much as the maximum value of Clearwire’s spectrum contemplated by the Proposed Transaction.

Third, both SoftBank and Sprint are highly leveraged, and the excessive debt burden that will result from any combination of SoftBank and either or both of Sprint and Clearwire poses a significant risk that the public will be damaged by approval of the Proposed Transaction. But in response, Sprint simply repeats the mantra that SoftBank’s investment in Sprint “directly addresses” the debt concerns (ignoring the fact that SoftBank itself is under great pressure from

³ Joint Opposition to Petitions to Deny and Reply to Comments 33 & n.104, IB Docket No. 12-343 (Feb. 12, 2013) (hereinafter “Opp.”); *id.* at 37 n.115.

⁴ See Martyn Roetter, D. Phil. & Alan Pearce, Ph.D., *Valuation of Clearwire’s 2.5 GHz Band Spectrum Assets* 3, 7–10 (2013) (hereinafter “IAE Report”) (attached as Exhibit A).

its own debt) and falsely suggests that consideration of debt is, in any event, beyond the Commission's purview when reviewing a license transfer request.

Finally, Applicants conclude their opposition with yet an additional request for the Commission to abdicate its review responsibilities, charging Crest with “seek[ing] to raise private business disputes that have nothing to do with these transactions or to bolster positions in pending shareholder litigation that lie well beyond this Commission's jurisdiction”⁵ in order to “enrich” itself.⁶ But this attempt to impute impure motives to Crest is false and in fact the opposite is true: In no instance has Crest suggested that it is simply seeking a higher price from Applicants, and Crest has declined a lead role in the class action litigation to which Sprint refers *precisely because Crest is not seeking to cash out of Clearwire but instead is determined to preserve an independent Clearwire for the wireless market*. Throughout its Petition, Crest makes clear that it has been a long-term investor in Clearwire because of a belief that Clearwire is well positioned to deploy its vast spectrum resources to the benefit of broadband consumers throughout the United States.⁷ Independent of Sprint's control, and uniquely positioned to exploit LTE-TDD technology, Clearwire will have the ability and resources to satisfy its commitments to the Commission and best serve the public interest.

For all these reasons, the Proposed Transaction should be denied. Approval of the Proposed Transaction would give to a proven bad steward control over a spectrum portfolio that is larger than either AT&T or Verizon's spectrum holdings.⁸ This aggregation even raises serious questions concerning the national security of the United States, a grave matter deserving

⁵ Opp. at ii.

⁶ *Id.* at 32.

⁷ *See* Petition at 2–5, 38–43.

⁸ *See* Petition at 15.

of far more scrutiny than suggested by Applicants’ breezy assertion that “there is no need for additional Commission involvement or investigation into national security questions.”⁹ This is no answer to the questions raised by placing the nation’s largest spectrum portfolio in hands ill-equipped to serve the best interests of the country. And the unusual affidavit from SoftBank’s network engineer that Applicants attach to their opposition in a naked attempt to diminish security concerns also raises more questions than answers.¹⁰ Applicants have a heavy burden to assuage the many public interest concerns that Crest and others have raised—a burden they have yet to discharge.

ARGUMENT

I. Sprint’s Continued Control of Clearwire’s Spectrum Will Further Delay Spectrum Deployment.

In its opposition, Sprint largely ignores the central public interest concern that Crest raised in its Petition to Deny—that the Proposed Transaction will perpetuate the isolation of Clearwire’s vast spectrum beyond the public’s reach. As Crest explained, Sprint, rather than using its control of Clearwire’s board to develop fully Clearwire’s vast spectrum in a time of spectrum scarcity, has instead engaged in a pattern of blocking the build-out of a 4G LTE network and repudiating proposals that would ensure a successful build-out of the network and greater consumer access to unused, excess spectrum.¹¹ By doing so, Sprint has sought to depress Clearwire’s perceived value in order to acquire it on the cheap, efforts that proved so successful that Sprint now asserts a “market price” for Clearwire that is far below Clearwire’s true value.¹² Through this scheme, Sprint has not only damaged Clearwire, but also the Commission’s highest

⁹ Opp. at 23.

¹⁰ See Opp. at Exhibit 1.

¹¹ See Petition at 11–15.

¹² See *infra* at Section II.

priority policy goals, as the depressed spectrum price will have a direct negative effect on Commission initiatives designed to unlock spectrum in the incentive auctions.¹³ But instead of addressing head-on these concerns, Applicants incorrectly suggest that the Commission’s 2008 review of Sprint’s control of Clearwire is dispositive today.

A. Sprint’s Scheme to Depress Clearwire’s Value Has Harmed the Public.

Sprint has carried out an elaborate scheme to underfund and underdevelop Clearwire and its spectrum ultimately in order to acquire unilateral control of Clearwire on the cheap. In response to concerns that this underdevelopment will continue, Applicants have offered no substantive explanation as to why it will not persist upon approval of the Proposed Transaction. Rather, Applicants suggest that these concerns are simply “built on misstatements of the facts and unsupported leaps of logic[,]” and deny that Sprint “coerced Clearwire into a transaction that ... undervalued Clearwire and its spectrum and prevented Clearwire from pursuing alternative transactions.”¹⁴ To “refute[] the core allegations underlying the Crest” Petition, Applicants rely substantially on statements made in the preliminary proxy statement that Clearwire filed with the Securities and Exchange Commission on February 1, 2013.¹⁵ But neither Applicants’ opposition nor Clearwire’s preliminary proxy statement provides any reason to believe that Sprint has been acting with the public’s best interest in mind through its multi-year scheme to keep Clearwire’s spectrum underdeveloped, or that Sprint will now begin to develop Clearwire’s spectrum for the public’s benefit. What is more, these documents do nothing to assuage concerns that Sprint has been putting its own interests above the public’s through the continued isolation of Clearwire’s

¹³ *See id.*

¹⁴ Opp. at 32.

¹⁵ *See* Opp. at 33-34 (summarizing the steps taken by Clearwire’s Board and Special Committee).

spectrum—going so far as to prevent Clearwire from negotiating a truly arm’s length transaction for a fair valuation of Clearwire’s spectrum.¹⁶ And most importantly, neither Sprint’s opposition nor Clearwire’s preliminary proxy statement offer any reason to believe that the Proposed Transaction will finally cause Sprint to develop fully Clearwire’s network. In fact, these documents demonstrate just the opposite—they support Crest’s allegations.¹⁷

As Crest explained in its Petition, Sprint has sought to keep Clearwire’s spectrum fallow, and has scuttled critical opportunities for Clearwire to deploy its next-generation network, in part by using its control of Clearwire to prevent Clearwire from engaging in a thorough review of alternative transactions. Applicants attempt to rebut this by suggesting that Clearwire “reviewe[d] available strategic alternatives over the course of the last two years[.]”¹⁸ If true, this simply underscores Crest’s concern: Clearwire has acknowledged that it holds excess spectrum and is in dire need of capital, but even when confronted with “available strategic alternatives over the course of the last two years,”¹⁹ the Sprint-controlled Clearwire board failed to take advantage of these opportunities.

Applicants also attempt to rebut Crest’s concern by suggesting that Sprint’s acquisition of Clearwire “was unanimously approved by Clearwire’s board of directors upon the unanimous recommendation of a special committee of the Clearwire board consisting of disinterested

¹⁶ See Sprint Nextel Corp., Preliminary Proxy Statement, (Form Prem 14A) (Feb. 1, 2013) (hereinafter “Clearwire Proxy”); see also Starburst II, Inc., Registration Statement (Form S-4) (Feb. 4, 2013) (hereinafter “Sprint Softbank Proxy”); *infra* at Sections II & IV.

¹⁷ See *infra* at Sections II & IV.

¹⁸ Opp. at 33.

¹⁹ *Id.*

directors not appointed by Sprint.”²⁰ This misses the point. The fact of board approval does not offer any response to the concern that Sprint’s poor stewardship of Clearwire’s spectrum will persist and that the board failed to consider Sprint’s delinquency when evaluating the Proposed Transaction. But further, Sprint is mistaken. The allegedly independent special committee of the Clearwire board was hardly disinterested in fact: Two of the three were nominated by large investors who had already contractually obligated themselves to support the Proposed Transaction, and the third was a former longtime Sprint executive.²¹ And the full Clearwire board was no more independent. Not only has the Sprint-controlled Clearwire board kept Clearwire’s spectrum underdeveloped and its excess spectrum unused, it also blocked Clearwire’s attempts to raise the capital necessary to develop its 4G LTE built-out program.²²

As Crest explained in its Petition, the Sprint-controlled Clearwire board has continuously failed to properly to capitalize Clearwire. By October 25, 2012, it was reported that “[g]iven their annual cash burn, [Clearwire] could be a going-concern risk late this year or in early 2013 without another cash infusion.”²³ But despite the company’s announcement of its ominous financial situation, and notwithstanding the urging of investors to issue additional common shares or sell excess spectrum, the Sprint-controlled board did nothing, resulting in further depression of the value of Clearwire’s spectrum, and playing directly into Sprint’s self-interested takeover at a distressed price far below the actual value of Clearwire’s spectrum.

²⁰ See Opp. at 33 (*quoting* Press Release, Clearwire, Sprint to Acquire 100 Percent Ownership of Clearwire for \$2.97 per Share (Dec. 17, 2012), <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=727143>).

²¹ See Petition at 34 n.89.

²² See *id.* at 11–16.

²³ Chris Nolter, *SoftBank’s Money Burns a Hole in Sprint’s Coffers*, The DealPipeline (Oct. 25, 2012), <http://www.thedeal.com/content/tmt/softbanks-money-burns-a-hole-in-sprints-coffers.php>.

Now, even after the merger agreement and its artificially depressed price have been announced, the Sprint-controlled Clearwire board *continues* to leverage perceptions of Clearwire’s distress on behalf of Sprint by threatening that Clearwire will fall into bankruptcy if shareholders should vote against the merger. Indeed, Clearwire’s proxy states in no uncertain terms—immediately following its discussion of the vote, and emphasized in bold-faced font—that “[i]f the Merger is not completed, we may be forced to explore all available alternatives, including financial restructuring, which could include seeking protection under the provisions of the United States Bankruptcy Code.”²⁴

Crest provided the Commission with a detailed explanation of the lengths to which Sprint was willing to go to depress Clearwire’s perceived value in furtherance of its goal to acquire all of Clearwire for itself. These efforts have resulted in the underuse of Clearwire’s spectrum, at a time of severe spectrum scarcity, and threaten to deny potential competitors an essential input to the provision of wireless service.²⁵ At every step, the public has been damaged by the continued isolation of Clearwire’s spectrum, and will continue to be damaged should the Commission approve the Proposed Transaction.

B. Applicants’ Reliance on the Commission’s 2008 Review Is Misplaced.

In addition to pointing to the Clearwire preliminary proxy statement’s discussion of the negotiations that led to the Proposed Transaction, Applicants insist that consideration of concerns about Sprint’s ownership of Clearwire’s spectrum is impermissible because of the Commission’s 2008 conclusion that aggregation of Sprint’s and Clearwire’s spectrum holdings

²⁴ Clearwire Proxy at 4.

²⁵ *See* Petition at 11–16.

served the public interest.²⁶ This reliance is not only misplaced, it raises serious concerns about whether the public will be further harmed by Sprint’s actions. Having shown itself willing to keep spectrum undeveloped, Sprint might have used its opposition to detail how it will build-out the nation’s largest spectrum portfolio and how it intends to dispose of the 60 to 80 MHz of spectrum that Clearwire itself has identified as “excess.”²⁷ But, instead, Applicants avoid such an explanation, leading only to the conclusion that the Applicants continue to regard Clearwire’s spectrum in the same manner as Sprint has in the five years since the Commission last reviewed its control of Clearwire and intend to continue the same treatment.

Applicants not only suggest that the Commission’s 2008 decision is dispositive as a matter of Commission practice, they also charge Crest with “fail[ing] to explain” how any developments since 2008, or any failure on the part of Sprint to “live[] up to statements they made in their 2008 merger application concerning the deployment of broadband services in the 2.5 GHz band[,]” warrant meaningful examination of Sprint’s application for control of Clearwire.²⁸ But other than simply repeating three times that Crest has supposedly “fail[ed] to explain,”²⁹ Applicants ignore the significant events of the past five years, including Sprint’s negligent behavior since 2008, changes in Sprint’s control of Clearwire, and today’s changed marketplace realities. In light of these changes, the public interest is served through the Commission fulfilling its duty to review Sprint’s control of Clearwire’s spectrum.

²⁶ See Opp. at 25 (“reexamin[ation of] Sprint’s interest in Clearwire’s spectrum” would be “pointless”).

²⁷ See Petition at 14–16.

²⁸ Opp. at 27–28.

²⁹ See Opp at 27 (“fail to explain”); *id.* at 28 (“fails to explain”); *id.* at 28 n. 91 (“does not explain”).

First, the Commission’s 2008 review is not dispositive of Sprint’s interest in Clearwire because since that review Sprint has demonstrated its willingness to warehouse Clearwire’s vast spectrum holdings rather than making the inventory available for consumer use.³⁰ As a consequence, Sprint’s actions give every indication that, should the Commission entrust it with Clearwire’s entire spectrum portfolio, Sprint will continue to allow Clearwire’s excess spectrum to lay fallow. Such spectrum warehousing denies actual and potential competitors—both incumbent licensees and new entrants—access to an essential input to the provision of wireless service. Applicants simply deny that Sprint has “hoard[ed]” spectrum, without attempting to explain why Clearwire’s spectrum remains underdeveloped (or why the Commission can expect this to change under Sprint’s continued control), and offers only vague assurances that Applicants have “every incentive to develop this spectrum” and put it to competitive use.³¹ And when such improper spectrum stewardship has been shown since the Commission’s last review, the Commission must discharge its duty to review the new transaction to determine whether it advances the public interest.

Second, the substantial changes in Sprint’s ownership of Clearwire since 2008 further necessitate Commission examination of the effects of the Proposed Transaction on the public interest. Although the Commission approved Sprint’s *de jure* control over Clearwire in 2008, three years later, in 2011, Sprint surrendered *de jure* control of Clearwire by giving up millions of shares to Clearwire in 2011.³² Sprint only recently *reacquired de jure* control of Clearwire through its purchase of the Eagle River shares in December of 2012—a transaction through

³⁰ See Petition at 11–15; *see also infra* at Section I-A.

³¹ Opp. at 37 n.116.

³² See Sprint Nextel Corp., Quarterly Report (Form 10-Q), at 11 (June 30, 2011).

which Sprint acquired *de facto* control of Clearwire, as well.³³ Applicants cite no support for the proposition, and Crest is aware of none, that an applicant may cede control of a licensee, but then be immunized from full Commission review should it choose to reacquire that licensee at some later time. Such a rule would neuter the Commission's oversight powers. Of course, such a rule does not exist, and the Commission's finding in 2008 cannot obviate further review in 2013 after such a substantial change in the control of Clearwire within that period. Notwithstanding their attempted reliance on the 2008 Commission review, Applicants' actions acknowledge that such approval does not in fact preclude review of the Proposed Transaction, because if Applicants truly believed this proposition, they would have simply filed for *pro forma* approval of the Sprint-Clearwire transaction. But, instead, Applicants amended their application upon announcement of the Sprint-Clearwire transaction to request Commission approval of the

³³ Crest has petitioned for reconsideration of the Wireless Bureau's decision to approve the Eagle River transaction through *pro forma* procedures. The Eagle River transaction freed Sprint from the "requirement that one of its seven designees [on Clearwire's 13-member board of directors] be ... an independent director of Sprint," and thereby empowered Sprint to nominate a majority of non-independent directors to the Clearwire Board. Sprint Nextel Corp., Quarterly Report (Form 10-Q), at 22 (Sept. 30, 2012). The effect of this power grab was simple: Sprint acquired the ability to prevent Clearwire from making any major corporate change unless it met with Sprint's approval, and so may veto any plan except the one that it prefers. SoftBank's preliminary proxy statement reveals that SoftBank had demanded that Sprint purchase additional shares in Clearwire *precisely* so that it would have board control without having to appoint an independent director, ensuring Applicants ultimate takeover of all of Clearwire. *See* Sprint Softbank Proxy at 83; *infra* Section IV. For this reason, and for other reasons discussed in Crest's Petition to Deny, *see* Petition at 30–31, the applicants are therefore wrong when they argue that the "transaction did not give Sprint *de facto* control over Clearwire or the 'unilateral' power to block consideration of any offer but Sprint's," Opp. at 53. Applicants point to the Clearwire Special Committee's evaluation of the DISH proposal. But that evaluation proves nothing, as evidenced by Sprint's rejection of DISH's proposal. *See* Press Release, Clearwire, Clearwire Corporation Provides Transaction Update (Jan. 8, 2013), [http://corporate.clearwire.com/releasedetail.cfm?](http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=732316)

[ReleaseID=732316](http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=732316). (noting that Sprint informed Clearwire it was prohibited from entering into a service agreement with DISH and prohibited from selling spectrum assets). Sprint has demonstrated its lack of fitness to have such control over Clearwire's spectrum, and the Wireless Bureau's approval of the Eagle River transaction should be reversed to ensure Clearwire's independence.

transfer of *de facto* and *de jure* control of Clearwire’s licenses, leases, and authorizations to SoftBank, through its proposed 70% ownership of Sprint.

Third, circumstances have changed substantially since 2008, and Sprint and Clearwire now envision a network that is entirely different from the type of broadband deployment that the Commission considered in 2008. And the Commission must review the Applicants’ purported plan for use of spectrum, just as it did in 2008. In 2008, Clearwire proposed to develop a nationwide Worldwide Inter-Operability for Microwave Access (“WiMAX”) mobile broadband network. But that technology failed to gain widespread adoption.³⁴ With WiMAX obsolete, Clearwire is now positioned to deploy a 4G LTE mobile broadband network, an entirely different technology raising different spectrum aggregation considerations. As the Commission is well aware, five years in the wireless industry may contain dramatic developments, providing little reason to rely on a determination made at a very different time for an industry presenting very different technological and regulatory complexities.

Finally, in support of their position that the Commission should not supplement its 2008 decision and revise the outcome here as appropriate, Applicants argue that doing so would be “contrary to Commission policy” because the “Commission does not reassess its approval of attributable spectrum holdings arising from a license transfer once its approval becomes final.”³⁵ In support of this proposition, for which no authority is cited, Applicants attempt to analogize the Proposed Transaction to the merger of SBC Communications, Inc. and BellSouth Corp into their “Cingular” joint venture and subsequent acquisition of BellSouth by SBS, then AT&T.³⁶ In that

³⁴ See Petition at 12 n.26.

³⁵ Opp. at 25.

³⁶ *In re of AT&T Inc. & BellSouth Corp.*, Application for Transfer of Control, 22 FCC Rcd 5662 (2007).

matter, the Commission found the aggregation of the applicants' spectrum holdings in the public interest, and approved the merger. Six years later, when AT&T filed its application to acquire BellSouth, the Commission forewent a public interest review of AT&T's aggregation of Cingular's spectrum because, Sprint maintains, "AT&T's acquisition of a 100 percent interest in Cingular's spectrum was a non-issue because the FCC already had approved AT&T's attributable interest in Cingular years before."³⁷

But unlike Sprint's proposed *reacquisition* of a controlling interest in Clearwire, as discussed *supra*, AT&T never surrendered its initial interest in Cingular. And AT&T did not plan to use the transaction for a completely different form of network development. Moreover, in that case, as the Commission emphasized that "*Cingular d[id] not hold WCS, BRS or EBS licenses or lease or otherwise own or control WCS, BRS, or EBS spectrum,*"³⁸ and it was the aggregation of AT&T's and BellSouth's holdings of Broadband Radio Service (BRS) spectrum in the 2.5 GHz band and Wireless Communications Services (WCS) spectrum in the 2.3 GHz band that commenters had alleged would result in competitive harms.³⁹

In short, rather than address head-on the concerning record of Sprint's behavior and its implications for Sprint's control of the entirety of Clearwire's spectrum, the substantial changes in Sprint's control of Clearwire since 2008, and the changes in the wireless industry since that time, Applicants suggest that the Commission's own policy forbids any examination of Sprint's past performance, and offer only vague promises respecting its development plans for

³⁷ Opp. at 26–27.

³⁸ *In re AT&T Inc.*, 22 FCC Rcd 5662, ¶ 177 n.474(emphasis added).

³⁹ *See id.* ¶ 175.

Clearwire.⁴⁰ Sprint sought the Commission’s trust in 2008 in the same manner, by promising, as here, that a capital infusion was the only obstacle to its ability to effectively compete with the large incumbents and to “finally unlock the potential of the 2.5 GHz band.”⁴¹ These promises went unfulfilled but Applicants now ask the Commission to rely exclusively on a proceeding in which those same promises were made and on similarly vague promises renewed in these proceedings. Applicants’ invitation, supported by little more than an appeal for the Commission to trust it (again), should be denied.

II. Applicants’ Asserted Market Price for Clearwire’s Spectrum Is Woefully Below the True Fair Market Value of Clearwire’s Spectrum and Will Undermine the Commission’s Goals.

The end result of Sprint’s scheme is a proposed purchase price for Clearwire’s spectrum that grossly undervalues Clearwire and does not remotely reflect the true market price of Clearwire’s spectrum.⁴² Sprint denies that this is so, alleging that Crest’s estimates of the value of Clearwire’s spectrum, rely on “speculation” and opining that “spectrum prices vary greatly depending on the spectrum band in question and other factors.”⁴³ But the proposition that “spectrum prices vary greatly depending on the spectrum band in question,” is *precisely* the principle upon which Crest relies to prove that Clearwire’s spectrum is being undervalued, and forms the basis of why the Applicants’ own valuation is so far off the mark.

⁴⁰ See Opp at iii (“Applicants expect to accelerate broadband deployment over the Sprint/Clearwire spectrum”); *id.* (“SoftBank has a history of completing build-outs ahead of schedule”); *id.* at 17–18.

⁴¹ Public Interest Statement at 2, *In re Application of Sprint Nextel*, Doc. No. 08-94 (Nov. 12, 2008) (hereinafter “2008 Public Interest Statement”); see Public Interest Statement 23, *In re Application of Sprint Nextel*, Doc. No. 12-343 (Nov. 15, 2012) (hereinafter “2012 Public Interest Statement”).

⁴² See Petition at 16–18.

⁴³ Opp. at 33 & n.104.

As Sprint acknowledges, one appropriate valuation benchmark for Clearwire spectrum is determined based on precedent transactions in comparable spectrum bands. Such precedents need not derive exclusively from transactions in exactly the same band, as Applicants concede,⁴⁴ but may derive from different, comparable bands that bear similar capabilities and are used for similar purposes. As demonstrated in the attached expert report prepared by Information Age Economics, transactions in the Advanced Wireless Services (“AWS”) band provide the most appropriate precedent valuations for Clearwire spectrum as AWS spectrum is comparable to the 2.5 GHz band, both offering high band frequency and targeting high volume traffic, high density, urban areas.⁴⁵ Precedent transactions from the AWS band alone easily justify a value of Clearwire’s spectrum between \$0.40 to \$0.70 per MHz POP.⁴⁶ At \$0.70 per MHz POP, the value of *half* of Clearwire (approximately 23.5 billion MHz POPs) is approximately \$11.5 billion higher than its value at \$0.21 per MHz POP, the value Sprint has asserted represents the highest possible implied valuation of Clearwire’s spectrum contained in the Proposed Transaction.⁴⁷ A \$0.70 per MHz POP valuation is corroborated by Verizon’s \$3.6 billion purchase of 20 MHz of AWS spectrum in 2012.⁴⁸ At this price, Clearwire’s spectrum—consisting of 160 MHz in the top 100 markets—would be valued at approximately \$25 billion.

In their attempts to justify the Proposed Transaction’s purchase price, neither Applicants’ opposition nor the Clearwire preliminary proxy statement discuss comparable transactions from the AWS range. This is curious, since the AWS band is the *most* comparable spectrum band to

⁴⁴ See Clearwire Proxy at 49.

⁴⁵ See IAE Report at 5, 7–10.

⁴⁶ See *id.*

⁴⁷ See Petition at 16.

⁴⁸ See IAE Report at 7–8.

the spectrum involved in the Proposed Transaction and also since the advisors reviewing the Proposed Transaction for Clearwire and its special committee *did* include an analysis of AWS band transactions in their analysis of “[p]recedent spectrum valuations[.]”⁴⁹ This analysis, which was presented to Clearwire, showed that three recent transactions in this band had values per MHz POP of \$0.69, \$0.56, and \$0.25.⁵⁰ Yet inexplicably, Clearwire’s preliminary proxy statement fails to inform its shareholders of these highly relevant transactions, excluding them from its category of precedent spectrum transactions entirely, and indicating only transaction values between \$0.18 and \$0.26 per MHz POP.⁵¹

To support their spectrum valuation, Applicants in their opposition and Clearwire in its proxy statement depend exclusively upon inapposite transaction data points involving Clearwire transactions in the 2.5 GHz band, as well as transactions in other bands that are manifestly not comparable to Clearwire’s 2.5 GHz band. The supposed comparable transactions in the 2.5 GHz band include the price that was associated when Sprint gave its 2.5 GHz spectrum to Clearwire in 2008 at \$0.25 per MHz POP.⁵² The value of 2.5 GHz spectrum at that time, therefore, was about 20% higher than what Applicants now claim the same spectrum is worth. But this implies that the value of 2.5 GHz spectrum has actually decreased in recent years when in fact the opposite is true. The value of 2.5 GHz spectrum has *increased* significantly in recent years—and is expected to appreciate substantially over the next five years—in part as a result of initiatives in

⁴⁹ See Centerview Partners, *Confidential Discussion Materials for the Special Committee of the Board of Directors of Collie*, Clearwire, Schedule 13E-3 (Form SC 13E3), at 17 (Dec. 12, 2012).

⁵⁰ See *id.*

⁵¹ See Clearwire Proxy at 48–50.

⁵² See Clearwire Proxy at 49; see also Opp. at 33 n.104 (identifying a 2007 transaction in which AT&T received \$0.17 per MHz POP in return for the assignment of 2.5 GHz holdings to Clearwire).

which Clearwire participated actively, such as the formation of the Global TD-LTE Initiative (GTI) Partner Forum two years ago.⁵³

The other transactions in the 2.5 GHz band on which Applicants rely all relate to the period in which Sprint has sought to acquire Clearwire at a depressed price: the Eagle River transaction and a proposal by DISH on December 6, 2012, to acquire certain spectrum assets of Clearwire, each with a supposed price per MHz POP of \$0.21.⁵⁴ Applicants suggest that the price per MHz POP in the Proposed Transaction is within the range of these transactions, and therefore an appropriate valuation of Clearwire spectrum.⁵⁵ But this, of course, proves nothing: Each of these data points is affected by Sprint's maneuvering to acquire Clearwire on the cheap, and show only the success of Sprint's scheme to depress the perceived value of Clearwire.

The remaining precedent transactions that Applicants selected are bands with satellite frequencies, requiring special approval from the Commission for use in terrestrial mobile broadband networks in the form of Ancillary Terrestrial Waivers.⁵⁶ These frequencies are constrained by significant regulatory and technical obstacles and, with only the *potential* for terrestrial use, are not appropriate points of comparison for frequencies that *have* been authorized

⁵³ See IAE Report at 6 & n.3, 7, 12–14.

⁵⁴ See Clearwire Proxy at 49.

⁵⁵ See *id.* (“While none of the transactions used in this analysis are identical or involve spectrum assets directly comparable to the Company’s spectrum assets or the Merger, the selected transactions were chosen because they involved spectrum blocks that were considered by Centerview to be most similar to the Company’s spectrum assets for purposes of Centerview’s analysis.”).

⁵⁶ The Clearwire Proxy also identifies a Wireless Communication Services (WCS) transaction between AT&T and Nextwave. See Clearwire Proxy at 49. WCS spectrum is in the 2.3 GHz band, but that transaction involved only 20 MHz of usable spectrum—increasing the effective price paid per MHz POP from \$0.21 to \$0.37—and “in contrast to the 2.5 GHz Band ... there is not yet an existing or rapidly developing ecosystem of equipment or portfolio of customer devices being brought to market for this band.” IAE Report at 7. Moreover, “AT&T is the only operator that will deploy FDD LTE systems in the 2.3 GHz Band, whereas large operators around the world will be deploying both versions of LTE in the 2.5 GHz Band.” *Id.*

for terrestrial use.⁵⁷ Applicants assert that Crest’s estimates rely on “transactions involving very different spectrum holdings in other bands,”⁵⁸ but that claim, as detailed above and in Crest’s Petition,⁵⁹ and as the attached report demonstrates conclusively,⁶⁰ is false.

Not only does Sprint’s undervaluation damage Clearwire, but approval of the Proposed Transaction at such a depressed price for Clearwire spectrum threatens to undermine the Commission’s goals of repurposing and reassigning spectrum through incentive auctions. In passing, Applicants reject the notion “that the Sprint/Clearwire Transaction will discourage TV broadcasters from participating in the FCC’s 600 MHz incentive auction.”⁶¹ Applicants identify the recent AT&T and Verizon transaction, which yielded a spectrum valuation of \$3.77 per MHz POP,⁶² and argue that Crest does not explain “why broadcaster incentives would be affected by a transaction involving the 2.5 GHz band but not by the very high price per MHz-POP” in the AT&T and Verizon transaction.⁶³ But Applicants’ myopic focus on a single transaction proves nothing—except, ironically, to highlight the upward trend in spectrum prices and suggest a substantially higher price per MHz POP than the price Sprint has offered.⁶⁴

Indeed, as Applicants concede, “[b]idding in an FCC auction is shaped by a wide variety of factors, not solely by the terms negotiated in any individual secondary market transaction.”⁶⁵ Crest does not claim, as Applicants suggest, that the Proposed Transaction is the *only* input that

⁵⁷ See IAE Report at 5.

⁵⁸ See Opp. at 33.

⁵⁹ See Petition at 16–18.

⁶⁰ See IAE Report at 4–10.

⁶¹ Opp. at 36–37.

⁶² See Petition at 18 n.47

⁶³ Opp. at 37 n.115.

⁶⁴ See *supra* pp. 16–17; Petition at 16–18.

⁶⁵ Opp. at 37 n.115.

will matter for setting the price of bids in the Commission’s auctions. But it will most certainly be *an* input, and at a critical time: this is the very first time that license holders have been invited to judge the attractiveness of the bidding pool. Because the Proposed Transaction would involve the sale of a large amount of spectrum at a significantly depressed price, approval of the Proposed Transaction would seriously risk setting a market price for spectrum that is too low to incentivize broadcast license holders to put their licenses up for auction, thereby undermining a central plank of the Commission’s efforts to unlock spectrum for public use. As the Commission prepares to launch its auction program, it should take seriously the concern that license holders’ willingness to participate may be affected by the Proposed Transaction.

III. The Structure of the Proposed Transaction Is Contrary to the Public Interest.

Sprint and SoftBank face serious risks from their current debt, both individually and even more so if the Proposed Transaction is consummated.⁶⁶ The highly-leveraged predicament in which both companies find themselves poses a great risk that the public interest will be harmed. But rather than providing a substantive explanation of how Sprint and SoftBank will address their current debt situations in order to alleviate these concerns, Sprint simply repeats that the Proposed Transaction “will further the FCC’s broadband goals by providing Sprint greater financial resources, scale economics, and expertise to deploy wireless broadband service more aggressively and offer consumers innovative new mobile Internet services and applications.”⁶⁷ But merely saying this does not make it so and Applicants offer no support for their assertion.

Applicants acknowledge the concerns Crest identified with respect to both SoftBank and Sprint’s debt burdens, but dismiss such concerns with conclusory assertions that “Crest is wrong,” that SoftBank’s investment of \$8 billion into the struggling Sprint “directly addresses”

⁶⁶ *See id.* at 26–27, 35–37.

⁶⁷ *Id.* at 10–11.

and “strengthen[s]” Sprint’s highly leveraged balance sheet, and that Sprint “will be in a stronger financial position as a result of the transaction with SoftBank.”⁶⁸ Applicants also assert that “[o]nce combined, SoftBank, Sprint and Clearwire will have substantial resources,” that SoftBank has a “strong record of rapidly repaying debt,” and that, in any event, “the amount of debt financing that is appropriate in the context of a corporate acquisition” is neither here nor there in the context of a public interest inquiry.⁶⁹

But this simple repetition of statements from Applicants’ Public Interest Statement, alongside an attempted recharacterization of Crest’s arguments, is no answer to the real concerns Crest has identified. Notwithstanding Applicants’ suggestion to the contrary, any additional debt that SoftBank may incur is only part of the problem: SoftBank *already* faces serious debt concerns. Indeed, SoftBank reports \$21 billion in total debt, which when expressed as a percentage of equity is 111%—nearly two times that of either AT&T or Verizon.⁷⁰ It is this serious debt burden that overwhelms SoftBank’s net cash position and requires SoftBank to take on even more debt to fund its acquisition of Sprint, and that Sprint has declined to address in its opposition.⁷¹

Moreover, although Sprint now paints a picture of the combination resulting in “greater financial stability and lower borrowing costs,” SoftBank’s own actions belie the apparent certainty with which Sprint and SoftBank promise a new Sprint that will have the means necessary to develop fully the Clearwire spectrum. Instead of taking a 100% stake in Sprint, and acquiring Sprint as a parent of a wholly-owned subsidiary, SoftBank has put itself in the position

⁶⁸ *Id.* at 12.

⁶⁹ *Id.* at 12, 13–14.

⁷⁰ *See* Petition at 26 & nn.72–73.

⁷¹ *See id.* at 35 & n.93.

of an investor and acquired only 70% percent of Sprint. This means that should Sprint become too large a drain on SoftBank's cash reserves, SoftBank may simply withdraw by selling or abandoning its interest in Sprint and write-off its losses. It also reveals SoftBank's uncertainty respecting its investment: If SoftBank *were* certain about its investment, it would have simply invested its money up front, and taken a 100% stake in Sprint. Notably, Sprint does not seek in its opposition to allay concern respecting why SoftBank acquired only 70% of Sprint, although news reports have questioned the motives behind this figure, with some reports postulating the existence of a "plan for some future dilution from a public share sale or to use shares to make acquisitions that would reduce SoftBank's share below 50%."⁷² Whatever the reason, Sprint and SoftBank have refused to offer an explanation. This silence provides yet further reason for concern that Clearwire's spectrum will lie fallow and undeveloped.

Applicants likewise attempt to paint a picture that the new Sprint entity will generate sufficient revenue to assuage any concerns about debt levels. This is particularly troubling as Crest raised specific concerns about the effect that these leverage ratios would have on the public. For instance, Crest worries that this crippling debt may cause the new Sprint entity to focus its product development on products with the greatest immediate cash flow, rather than on those that offer the greatest value to consumers.⁷³ This concern is made more acute by Applicants' suggestion that the greatest antidote to Crest's debt concerns is SoftBank's history of quickly funneling cash to pay-off debts.⁷⁴ Unfortunately, Applicants make no promises that the new Sprint will focus its products and services on consumer value over near-term cash flow.

⁷² See Joan Lappin, *Softbank's Brilliant Buy One (Sprint), Get One Free Deal (Clearwire)*, Forbes (Oct. 28, 2012), <http://www.forbes.com/sites/joanlappin/2012/10/28/softbanks-brilliant-buy-one-sprint-get-one-free-deal-clearwire/>.

⁷³ See Petition at 26.

⁷⁴ See Opp. at 13.

Finally, Applicants suggest that consideration of debt is beyond the Commission's purview when reviewing a license transfer request.⁷⁵ Needless to say, Applicants are misguided. In any transaction review, the Commission must consider the financial qualifications of an applicant.⁷⁶ In considering the Applicants' financial qualifications, it is imperative that the Commission consider the debt that each company currently carries and will carry after the transactions. By failing to consider the Applicants' debt, the Commission will not be able to evaluate the Proposed Transaction with a full picture of the Applicants' financial qualifications and their ability to deliver to the public the full promise of the spectrum they seek to control.

Applicants are also incorrect in their assertion that the Commission does not "become enmeshed" in questions of transaction financing.⁷⁷ In support of this argument, Applicants select a small number of Commission decisions that they say stand for the Commission's "general practice" of "refraining from questioning a lending institution's determination that the merged entity will be financially able to repay the loans."⁷⁸ But the Commission does consider debt levels when necessary, as the Commission's *extensive* discussion of capital structure and debt in the Nextwave transaction review shows.⁷⁹ And the Commission has repeatedly provided for an exception to its practice of refraining from weighing-in on questions of financing. To wit, the Commission recently explained that "while we believe, as a general principle, that we should not

⁷⁵ Opp. at 14.

⁷⁶ See 47 U.S.C. §§ 308(b), 309(j)(17)(A)(ii).

⁷⁷ Opp. at 14.

⁷⁸ *Id.*

⁷⁹ See *In Re Applications of Nextwave Pers. Commc'ns, Inc. for Various C-Block Broadband Pcs Licenses*, 12 F.C.C.R. 2030 (1997) (discussing extensively the debt-to-equity ratio of the applicants).

become involved in reviewing corporate financing decisions, specific allegations of fact in particular cases may warrant such an inquiry under our public interest mandate.”⁸⁰

Applicants’ attempt to sidestep serious concerns about SoftBank’s ability to continue to hold Sprint afloat must fail. Rather than assuage real concerns, at every opportunity Sprint has chosen avoidance. Indeed, rather than seek to explain why the resulting debt as a percentage of equity of post-transaction SoftBank/Sprint/Clearwire—which, at 411% of equity dwarfs both AT&T and Verizon’s, at 63% and 57%, respectively—is not a reason for concern, Sprint simply chooses a different metric for comparison, ironically choosing debt-to-EBITDA, a measure of profits notorious for hiding from view high debt levels.⁸¹ In the end, by choosing not to address Crest’s concerns head-on, Sprint leaves even more room for doubt.

IV. Applicants’ Control of Clearwire Is Not in the Public Interest.

For the reasons stated above, and at greater length in Crest’s Petition, the Proposed Transaction will result in the misuse and underuse of Clearwire’s vast spectrum and will exacerbate the spectrum crunch. In assessing the harm that the proposed transaction will cause to the public, it is instructive to consider how Clearwire’s spectrum would be treated under the Proposed Transaction compared to how the spectrum would be developed if left free of Sprint’s grip. But instead of addressing such comparisons and explaining why the public would not be harmed through the Proposed Transaction, Applicants’ opposition again resorts to asking the Commission to give them its trust that Clearwire’s spectrum will finally be developed through the Proposed Transaction. Such a request for trust is particularly troubling in light of the course

⁸⁰ *In Applications of Shareholders of Gaf Corp.*, 7 F.C.C.R. 3225 (1992); see also *In re Motient Corp. & Subsidiaries, Transferors, & Skyterra Commc’ns, Inc., Transferee*, 21 F.C.C.R. 10198, 10209 (2006) (“[w]e agree with the Applicants that, without specific allegations of harm by Highland, Commission precedent supports giving deference to the business judgments underlying the transaction.”).

⁸¹ See Opp. at 13.

of conduct Crest has detailed on the part of Applicants: a multi-stage scheme to acquire complete control of Clearwire at a drastically depressed price through misdirection and subterfuge, rather than through an open and honest direct purchase at a fair market price.

Indeed, SoftBank's and Clearwire's preliminary proxy statements now confirm what Crest forecasted in its Petition. When Applicants' filed their initial public interest statement with the Commission, they disavowed interest in Clearwire to both the public and the Commission. But it has now been revealed that, *at that same time*, Applicants were in fact privately planning a takeover of Clearwire. In short, the preliminary proxy statements demonstrate beyond doubt that SoftBank always intended to purchase Clearwire, that the central purpose of the Proposed Transaction was the acquisition of complete control of Clearwire, and that SoftBank could have done so directly from the very beginning. But, based on its course of conduct, it may be assumed that SoftBank engaged in a pattern of misrepresentations that diminished the extent to which the Proposed Transaction was perceived to focus on Clearwire in order to support its circuitous acquisition of Clearwire's spectrum on the cheap.

Applicants have consistently and falsely denied the existence of plans to purchase Clearwire, both to the public and to the Commission. In order to grasp the breadth of this misdirection, it is worth recalling the pattern of public statements. On October 15, 2012, Sprint announced its agreement with SoftBank whereby, in exchange for \$20 billion, SoftBank would acquire a 70% interest in Sprint and with it control of Clearwire. SoftBank offered a \$10 billion premium for that 70% interest, a premium that was likely related, press reports suggested, to Clearwire and its value.⁸² Nonetheless, on that same day, during an investor conference call Sprint's CEO Dan Hesse and SoftBank's CEO Masayoshi Son conveyed to the market that they

⁸² See Petition at 32 & n.84.

did not intend to purchase Clearwire. SoftBank’s CEO stated that “[n]ow, about Clearwire, there are a lot of rumors spreading” and asked Sprint’s CEO to “comment on this.” Right on cue, Sprint’s CEO stated that “there are no elements in this agreement between SoftBank and Sprint that require either party, SoftBank or Sprint, to enter into any new agreements with Clearwire or with anyone.”⁸³ And on the very same day, Sprint’s CEO stated outright that “[w]e just never made an offer to buy all of Clearwire, *that’s just not on the table.*”⁸⁴

At the very same time that Applicants were denying to the public any intention to acquire Clearwire, however, SoftBank was demanding that Sprint acquire all of Clearwire and Sprint was already actively engaged in machinations to deliver complete control of Clearwire to SoftBank. On September 13, 2012, several members of Sprint’s Finance Committee met with SoftBank’s CEO, who “indicated that SoftBank was interested in acquiring a controlling interest in Sprint and proposed that in connection therewith, Sprint consider acquiring the shares in Clearwire that Sprint did not already own.”⁸⁵ Thereafter, the Sprint board of directors “discussed SoftBank’s preference to include an acquisition by Sprint of all of the equity interests in Clearwire that Sprint did not already own as part of a transaction, and the potential timing, negotiating strategy and various issues related to such a transaction.”⁸⁶ Yet again, later in the month, “the Sprint board of directors considered and discussed with its financial advisors alternatives for Sprint, including ... an acquisition of all of the equity interests in Clearwire that

⁸³ Sprint Nextel Corp. (Form 425), at 20 (Oct. 18, 2012).

⁸⁴ Serena Saitto, *Sprint CEO Hesse May Buy More Strategic Clearwire Stakes*, Bloomberg (Oct. 19, 2012) (emphasis added), <http://www.bloomberg.com/news/2012-10-19/sprint-may-buy-more-strategic-clearwire-stakes-at-right-price.html>.

⁸⁵ Sprint Softbank Proxy at 80. *See also id.* (noting that Sprint’s board “discussed as an alternative a possible acquisition by Sprint of all of the equity interest in Clearwire that Sprint did not already own”).

⁸⁶ *Id.*

Sprint did not already own, and the proposed transaction with SoftBank.⁸⁷ Finally, to leave nothing to chance, and directly inconsistent with its public claims to have no interest in acquiring Clearwire, Softbank “proposed that as a condition to signing the deal with Sprint, Sprint would be required to enter into a binding agreement to purchase a sufficient amount of equity interests in Clearwire from one or more of the strategic Clearwire equityholders, in order to give Sprint a clear path to appoint seven non-independent directors to the Clearwire board of directors.”⁸⁸

Consistent with SoftBank’s demands, Sprint effected a scheme to acquire all of Clearwire. As part of these efforts, Sprint’s CEO spoke with Clearwire’s CEO in October, 2012—the week prior to Applicants’ express public disavowals of plans to acquire Clearwire. Sprint’s CEO “indicated that Sprint was interested in acquiring the entire Company, or, alternatively, increasing its stake by participating in a potential rights offering by the Company”⁸⁹ Again that week, Sprint’s CEO “indicated again that Sprint had often been interested in exploring acquiring the entire Company, but had never had the financial resources necessary for such a transaction. He also said that, if the potential investment by SoftBank were to materialize, that would provide Sprint with sufficient funding to potentially pursue an acquisition of the entire Company”⁹⁰

Through its machinations, and at SoftBank’s insistence,⁹¹ Sprint purchased Eagle River’s interest in Clearwire to ensure its ultimate acquisition of Clearwire. That transaction provided Sprint the power to nominate seven non-independent directors (a majority) to Clearwire’s board

⁸⁷ *Id.* at 81.

⁸⁸ *Id.* at 83.

⁸⁹ Clearwire Proxy at 19.

⁹⁰ *Id.* at 20.

⁹¹ Sprint-Softbank Proxy at 83–84.

and veto power over all proposals made to Clearwire.⁹² Upon the consummation of that transaction, Sprint immediately used its new leverage to attempt to squeeze out Clearwire's minority shareholders through a proposal to purchase all remaining Clearwire shares not already owned by Sprint at a price that had been successfully depressed through Sprint's and SoftBank's public statements. Thus, just two short months after the announcement of the Sprint-SoftBank transaction, and after the Applicants' public campaign to convince the public that they had no interest in Clearwire, Sprint and Clearwire announced agreement on a merger price of \$2.97 per share (the price SoftBank directed), for an aggregate purchase price of \$2.1 billion. As the ultimate objective of the Proposed Transaction, it is not surprising that Sprint's acquisition of Clearwire is made expressly contingent upon the consummation of the Sprint-SoftBank transaction.

In addition to the statements Applicants made to the public outright denying the existence of plans to purchase all of Clearwire, Applicants also represented to the Commission, through omission and outright indirection, that neither the Sprint-SoftBank merger nor the Eagle River transaction had anything to do with Clearwire. In its initial Public Interest Statement, filed on November 15, 2012, the Applicants make *no mention of acquiring unilateral control of Clearwire*, notwithstanding their demonstrable interest and active efforts to acquire Clearwire at the very same time.⁹³ And Sprint even portrayed Sprint's acquisition of the Eagle River shares as a *pro forma* matter, rather than as an integral step in SoftBank's ultimate acquisition of control of Clearwire, representing to Commission staff that public notice and review above the staff level were unnecessary.⁹⁴ The end result of Applicants' machinations and indirections would be

⁹² See *supra* note 30.

⁹³ See generally 2012 Public Interest Statement.

⁹⁴ See *supra* note 30.

to give all of Clearwire to SoftBank for less money than it would have cost to buy Clearwire outright (rather than through Sprint), and at a substantially discounted price. But the path to SoftBank’s control of Clearwire has always been clear: a direct arm’s length acquisition, at a fair market price, of all of Clearwire. SoftBank’s attempts to do so on the cheap, and at the expense of Clearwire, should not be rewarded.

In a final attempt to discredit Crest, Applicants seek to recast the public interest considerations Crest has identified as “fiduciary duty and corporate law claims,”⁹⁵ that are “beyond the Commission’s jurisdiction,”⁹⁶ and accuses Crest of “manipulat[ing] the Commission’s processes to gain leverage in their private shareholder dispute,”⁹⁷ and to “enrich their investors.”⁹⁸

Far from “bolster[ing] positions in pending shareholder litigation,” or levying fiduciary duty claims, Crest is fully committed to ensuring that Clearwire’s valuable asset is put to its most efficient use—a goal that Crest has supported since Clearwire’s inception. Throughout this proceeding,⁹⁹ Crest has affirmed its belief that Clearwire has a unique and important role to play

⁹⁵ Applicants also reprise this claim to argue that Crest therefore lacks standing. But as an owner of 8.34 percent of Clearwire’s outstanding Class A common stock, and for all of the public interest concerns discussed *supra*, it is hard to see how Crest’s interest in these proceedings could be more direct, traceable to the Proposed Transaction, and redressable by the Commission’s denial of the present application. In any event, other than simply restating that Crest “alleges misconduct or harms that are not ‘cognizable’ by the Commission,” Opp. at 56, Applicants do not identify a single discrete reason as to why Crest fails one, let alone each, of the individual prongs of the standing test, *see* Opp. at 56–57. At a more basic level, Applicants appear to suggest that Crest simply wants more money. But for the reasons described *infra*, Crest does *not* seek a higher price but instead the denial of the Proposed Transaction and the possibility of an independent Clearwire.

⁹⁶ *See* Opp. at 38.

⁹⁷ *Id.* at 37.

⁹⁸ *Id.* at 32.

⁹⁹ *See* Petition at 2-5, 38–43.

in preserving the nation's "global leadership in mobile innovation"¹⁰⁰ and in ameliorating the spectrum crunch. Consistent with this belief, Crest has sought to preserve Clearwire's independence from Sprint so that Clearwire's spectrum may be deployed into a vibrant nationwide 4G LTE network, thereby enabling the emergence of new competitors in the wireless market. And consistent with this belief, Crest has declined to assume the lead role in the pending shareholder class action litigation. Therefore, contrary to Applicants' assertions, Crest is decidedly not simply seeking a higher share price.

An independent Clearwire, free of restraints Sprint has imposed, is the Commission's and the public's best hope for the creation of a new vibrant entity in the wireless market. Clearwire's extraordinary value and enormous potential will only increase with the deployment of LTE-TDD technologies in the United States, which presents substantial opportunities for commercial success, because, for reasons relating primarily to the range and size of its spectrum blocks, Clearwire is uniquely positioned to exploit such new technologies. Crest's petition seeks to ensure Clearwire's freedom from Applicants' control so that Clearwire's spectrum may be fully deployed for the public's benefit.

CONCLUSION

For the foregoing reasons, and those stated in Crest's Petition to Deny, the Commission should deny the Proposed Transaction or approve it only with the conditions proposed.

¹⁰⁰ Federal Communications Commission, Statement of Chairman Genachowski on Incentive Auction Proposal (Sept. 7, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316148A1.pdf.

Respectfully submitted,

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February 25, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Crest Financial Limited's Reply in Support of Petition to Deny was served by electronic mail on February 25, 2013, to the following recipients:

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DECLARATION OF DAVID K. SCHUMACHER

I, David K. Schumacher, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the General Counsel and am authorized to make this verification on behalf of Crest Financial Limited.
2. Crest Financial Limited is a Houston-based investment company located at 6800 JPMorgan Chase Tower, Houston, TX 77002.
3. I am familiar with the contents of the foregoing Reply. The factual assertions made therein are true to the best of my knowledge and belief.
4. The foregoing Reply is filed for its stated purpose and no other.

February 25, 2013
Date



David K. Schumacher

EXHIBIT A



Valuation of Clearwire's 2.5 GHz Band Spectrum Assets

A Report by

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Washington, DC

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February 2013



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Executive Summary

This report focuses on what is a present day value of Clearwire's spectrum assets in the 2.5 GHz Band. It finds that both bids by Sprint Nextel (Sprint) and DISH Network understate the true value. Sprint's stated estimated value of \$0.21 per MHz-POP is reflected in the \$2.97 per share for the Clearwire shares that Sprint does not already own, in its proposal to acquire full control of Clearwire as part of a consolidation deal among Sprint, Clearwire and SoftBank. DISH put forth a marginally higher price in a separate and competing non-binding offer.

We have analyzed the value of Clearwire's spectrum based on comparable transactions *and* the documented record of significant increases in the prices of spectrum allocated to mobile communications in the U.S. in several Bands since 2007-8. These price increases are primarily a result of progress in technology and rapidly rising volumes of mobile broadband traffic that are putting an increasing premium on the value of access to finite and scarce spectrum resources.

This analysis produces a range of values between \$0.40 and \$0.70 per MHz-POP. Even the bottom end of this range is substantially higher than Sprint's valuation, which is also lower than the value ascribed to the 2.5 GHz frequencies that Sprint itself transferred to Clearwire in 2008. A spectrum valuation of \$0.70 per MHz-POP increases the value of almost half of Clearwire by about \$11.5 billion (an increase of \$23 billion in Total Enterprise Value or TEV) according to the same methodology employed by Clearwire's financial advisers. This TEV yields an implied share price, projected for September 30, 2013, of \$17.86, using estimates of debt and cash balances as of that future date, that were included in Evercore Partners' Presentation to the Clearwire Board of Directors on December 12, 2012. At \$0.40 per MHz-POP the implied share price is \$8.44. These prices are much higher than the \$2.97 per share in Sprint's bid for Clearwire and the \$3.30 per share in DISH's proposed transaction

This report also presents evidence that Sprint and Clearwire are concurrently delivering contradictory statements to the Federal Communications Commission (FCC), which is currently reviewing the proposed Sprint-Clearwire and Sprint-SoftBank transactions, and to the investment community about the "value" of Clearwire's 2.5 GHz spectrum. Their filings with the FCC regarding the proposed transactions disparage the value of Clearwire's 2.5 GHz spectrum and say that it is not comparable to, i.e., is lower in value than, other frequencies allocated to commercial mobile communications services. In contrast, their presentations to the investment community say that this spectrum is uniquely valuable, and will put a combined Sprint-Clearwire in a competitively viable position with respect to spectrum for the deployment of new and greater LTE-based capacity compared to their much larger rivals Verizon Wireless and AT&T Mobility.

Information from Sprint and Clearwire about their plans to deploy TD-LTE in Clearwire's leased and/or licensed 2.5 GHz frequencies should provide evidence necessary to determine which of these statements is true. On the basis of this information it would be possible to assess whether the claims by



Sprint and Clearwire of substantial limitations on the use, and hence the value, of 2.5 GHz for commercial mobile broadband networks are justified. It would also be possible to establish whether there is any spectrum that is surplus to Sprint's needs and would possibly continue to lie unexploited for years to come if left entirely in its hands, to the detriment of the public interest during a period of rapid overall growth in the demand for increases in mobile broadband capacity. It would be in the public interest to make such surplus spectrum available for use by other mobile services providers, who currently have insufficient spectrum at their disposal, or are companies that may be interested in entering the mobile services market if they can gain access to spectrum that has been left unexploited for many years by Clearwire and its majority shareholder Sprint.

Furthermore, information from Sprint about the content of its past discussions and negotiations with former and potential partners, such as the major U.S. cable TV operators and LightSquared would resolve another key issue that has arisen in this Sprint-Clearwire transaction, namely whether as Sprint claims all other reasonable opportunities for itself, and for Clearwire, have been diligently pursued and have led nowhere. Therefore, according to Sprint, the ONLY remaining practical alternative includes the proposed Sprint-Clearwire transaction, and there is no other credible or significant competitive interest in Clearwire's spectrum than Sprint's.

Assessment of Precedent Spectrum Transactions Invoked in Sprint Bid

Sprint's bid of \$2.97 per Clearwire share attributes a value of \$0.21 per MHz-POP to Clearwire's 2.5 GHz licenses. There are two sources that we have analyzed for the precedent spectrum transactions, or "comparables", that have been used as the bases for the value of Clearwire's 2.5 GHz spectrum that is embedded in Sprint's bid of \$2.97/share -- namely \$0.21 per MHz-POP. These sources are the presentations given by the financial adviser to Clearwire's Board of Directors on December 12, 2012 (Evercore Partners) and by the financial adviser to the Special Committee of the Board of Directors of Clearwire on December 3, 2012 (Centerview Partners). Both advisers concluded that the range of prices paid in appropriate spectrum transactions for comparison with Clearwire's spectrum fell in the range of \$0.18-0.26 per MHz-POP. These precedent transactions are identified in the Appendix to this report. They are included in preliminary Proxy statements filed with the SEC (Securities and Exchange Commission) by Clearwire and approved by Sprint.¹

The transactions referred to in the two presentations by the financial advisers have significant but not complete overlap. They include five transactions in the 2.5 GHz Band, one in the WCS (Wireless

¹ At: <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dsc13e3.htm>; <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dex99c3.htm>; <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dex99c4.htm>; <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dex99c5.htm>; <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dex99c6.htm>; <http://www.sec.gov/Archives/edgar/data/101830/000119312513033783/d476164dex99c7.htm>; and "Sprint Issues Statement on Clearwire's Proxy Filing, http://newsroom.sprint.com/article_display.cfm?article_id=2509



Communication Services) Band (2.3 GHz), three in the AWS (Advanced Wireless Services) Band (Centerview only), one in the MSS (Mobile Satellite Service) L-Band (1.5/1.6 GHz), and four in the MSS S-Band (2-2.2 GHz). Evercore Partners also refers to the satellite operator GlobalStar as a trading comparable with Clearwire that has an implied spectrum value in the 1.6/2.4 GHz Band of \$0.17 per MHz-POP.

However, with the exception of the AWS spectrum transactions, whose values lie higher than the range considered by the two financial advisers, all of these other spectrum transactions or valuations on which these financial advisers relied, invoked as setting bases for comparison with the value of Clearwire's 2.5 GHz spectrum holdings, are in our opinion inappropriate comparisons for Sprint's valuation of Clearwire as factually explained below.

Mobile Satellite Service Frequencies

MSS frequencies require FCC approval in the ATC (Ancillary Terrestrial Component) waiver process for use in terrestrial mobile broadband networks. Operators and service providers who wish to exploit ATC services do not yet have access to an ecosystem of equipment and devices, e.g., smart phones, etc., that can compete with those available for terrestrial mobile frequencies, including now the 2.5 GHz Band.

Consequently, MSS frequencies do not have the same value to services providers as, nor can they be considered comparable to, the 2.5 GHz Band, whose superior characteristics and prospects are analyzed in the following section.

Sprint itself, which in mid-2010 signed an agreement to host LightSquared's planned terrestrial L-Band network, understands the formidable and multi-faceted nature of the regulatory, technical and commercial obstacles that stand in the way of a commercially successful terrestrial deployment of MSS frequencies under an ATC waiver. Indeed, in February 2012, the FCC withdrew its preliminary approval of LightSquared's ATC application, issued in early 2011, following powerful and vocal opposition to its proposal from both private and public sector users, along with the GPS sector, and the Department of Defense, the Federal Aviation Administration, among others.

DISH's purchase of S-Band frequencies from TerreStar was a distressed sale, as indeed Centerview Partners acknowledged, which alone should disqualify it as a basis for a comparative valuation of Clearwire's spectrum. Terrestrial use of these frequencies is also subject to FCC approval of an ATC waiver, with build out obligations that can only be met if DISH, like LightSquared before it, finds a partner with existing terrestrial infrastructure to host a national deployment.

Sprint has intervened in DISH's attempt to win its ATC waiver, seeking to impose conditions on the terrestrial use of DISH's frequencies to which DISH objects, on the grounds that they are necessary to protect Sprint's own LTE service in the adjacent PCS (Personal Communication Service, 1.9 GHz) Band. In light of all the well-known problems, with which Sprint is well acquainted, that are associated with the terrestrial use of the spectrum involved in the MSS transactions, their use as proxies for a fair price for Clearwire's 2.5 GHz spectrum, that has none of these problems and to whose use Sprint has no



objections, is not appropriate. Therefore, finding that the value of Clearwire's spectrum is the same or slightly lower than the price of the MSS frequencies is not justified.

Other 2.5 GHz transactions

The 2.5 GHz transactions cited are as inappropriate as the MSS examples as a basis for comparison with Sprint's current bid for Clearwire, although for different reasons.

The Sprint/Eagle River transaction and the DISH/Clearwire proposal are both intimately linked to Sprint's own ongoing financial and corporate strategies, and cannot be regarded as providing an independent basis for valuation of Clearwire's spectrum in an open, competitive market environment. The two other 2.5 GHz transactions cited (between Sprint and Clearwire in 2008, and Clearwire and BellSouth in 2007) are almost five and six years old respectively. Developments since that time, including the rapid growth in mobile traffic (the first iPhone was launched in mid-2007), and the widely recognized phenomenon of increases in the value of all spectrum licenses for mobile networks, mean that the prices paid in 2007-8 undervalue the same spectrum today.

The value of 2.5 GHz spectrum in 2008, when Sprint transferred its holdings in this band to Clearwire, was just over 20% *higher* than the price Sprint is now prepared to pay for this spectrum, despite evidence of a general increase in spectrum values since then².

WCS Band

The WCS transaction between AT&T and NextWave appears at first glance to be a reasonable comparable for the purpose of valuing Clearwire's 2.5 GHz spectrum, since it is close in frequency. However, on analysis it can be demonstrated that the NextWave frequencies have a substantially lower value than 2.5 GHz.

First, the amount of usable spectrum included in this transaction, and available for terrestrial mobile broadband services, is only 20 MHz, which increases the effective price paid to \$0.37 per MHz-POP. Second, in contrast to the 2.5 GHz Band (see following section), there is not yet an existing or rapidly developing ecosystem of equipment or portfolio of customer devices being brought to market for this band. Outside the U.S. the structure of the 2.3 GHz Band is defined for unpaired frequencies, i.e., for TDD deployments, whereas in the U.S. 2.3 GHz frequencies will be paired for FDD systems. It is not unreasonable to expect that at some point FDD LTE, as well as TDD LTE, and combined FDD/TDD devices, will be forthcoming for 2.3 GHz frequencies. The first TDD LTE systems at 2.3 GHz are already being deployed in India. However, today, unlike the 2.5 GHz Band, the 2.3 GHz Band is not ready for optimal development and use, which makes it currently less valuable for exploitation to handle the rapidly growing volume of mobile broadband traffic.

² Clearwire itself acknowledged this increase in spectrum values in the fall of 2012: Clearwire Investor Presentation, Hope Cochran, CFO, http://files.shareholder.com/downloads/CLWR/2297982194x0x600991/32db5f93-ac2a-4ead-958e-7a2cbe9fd9ae/2012%209%2019%20Communacopia_Hope.pdf, slide 3.



Furthermore, AT&T is the ONLY operator that will deploy FDD LTE systems in the 2.3 GHz Band, whereas large operators around the world will be deploying both versions of LTE in the 2.5 GHz Band. Equipment, device and semiconductor vendors will likely give a lower priority to meeting specific AT&T-only needs as compared to the much larger common needs of operators across the globe. In terms of size by number of subscribers, AT&T is today in about 18th place in global service provider rankings. Given the later, and less certain, timing of the availability of equipment for deployment, and of a rich and competitive portfolio of 2.3 GHz devices to offer its customers, the value of this spectrum to AT&T is lower than the value of the spectrum at 2.5 GHz.

Evaluation of Appropriately Comparable Spectrum Transactions

Appropriate sources of U.S. secondary market spectrum transactions as reliable indicators of a fair price for Clearwire's 2.5 GHz spectrum assets are those that involve AWS spectrum. The AWS Band is one of the important and valuable high bands that is rapidly becoming global, and will expand substantially in the U.S., and in other major national markets, as a band for the deployment of LTE, in this case FDD LTE. A significant ecosystem is developing for the necessary equipment and devices for AWS LTE networks, earlier than for the 2.5 GHz Band, but more limited in the number of countries where it will play a role. These countries are all in the Americas (excluding Brazil) or ITU (International Telecommunication Union) Region 2, but unlike the 2.5 GHz Band, do not extend to cover major markets in Europe and Asia as well. Major operators, notably Verizon and T-Mobile in the U.S., as well as Telcel (America Movil) in Mexico, and Rogers in Canada, provide the motivation in terms of addressable market volume for suppliers to include the AWS band as a priority in their LTE product development plans and portfolios.

Recently, Verizon has been the major acquirer of AWS spectrum, through complementary transactions announced at the end of 2011 and consummated in 2012 with four major cable TV multiple system operators (MSOs). The prices paid were \$0.695 per MHz-POP for the larger transaction with the joint venture SpectrumCo (Comcast, Time Warner Cable and Bright House Networks) and \$0.563 per MHz-POP for the much smaller transaction with Cox Communications. These prices represent an average increase of about 63% over the prices paid for the same spectrum in September 2006 in FCC Auction 66. This data point r-reflects the increasing value of spectrum over the past six-to-seven years.

Prices paid in these AWS transactions are therefore much more accurate and comparable surrogates for the value of Clearwire's 2.5 GHz spectrum than the transactions considered in the analyses performed by Clearwire's two financial advisers. Sprint itself does not hold any AWS spectrum and failed to gain access to the AWS spectrum held by its erstwhile partners the cable operators. **The 2.5 GHz Band would play the same role for Sprint in providing the rapidly growing broadband capacity it will need in high traffic areas as the AWS Band plays for other U.S. mobile operators.**

A variation on this comparison is to apply the increase in value of the AWS spectrum over the past few years to the price paid for 2.5 GHz several years ago, before it emerged as a key global band for LTE deployments, and before the huge increase in mobile broadband data volumes became visible. In 2008



Sprint's 2.5 GHz spectrum transferred to Clearwire (see Appendix) was valued at \$0.255 per MHz-POP. A 63% increase in value would bring it up to \$0.416 per MHz-POP.

Another historical benchmark occurred In September 2007 when Clearwire signed a lease with Beebe Public Schools, for its Little Rock, Arkansas EBS (Educational Broadcast Service) 2.5 GHz license, that paid \$0.30 per MHz-POP on a net present value basis over 30 years, including a \$2 million upfront payment, excluding service credits, for the spectrum, plus \$3,000 in service credit payments³. This spectrum (EBS) is in the portion of the 2.5 GHz Band that both Sprint and Clearwire argue in filings with the FCC is "encumbered" and hence not worth as much as commercial wireless spectrum. Therefore, according to their own statements, any valuation assigned to it should be lower than the value of other portions of the 2.5 GHz Band. Moreover, spectrum in Little Rock is generally worth less and priced lower than spectrum acquired in the largest urban markets. A 63% increase in the value of this EBS spectrum as has occurred in the AWS Band translates to a current value of \$0.489 per MHz-POP.

A further consideration in the value of 2.5 GHz is whether Sprint's specific business and competitive circumstances make these frequencies of even higher value for its current and future needs and purposes than they are for other potential acquirers or users. There is a *prima facie* case for this finding based on Sprint's immediate need for access to this spectrum for additional LTE capacity, if it is to be competitive with its three national rivals in delivering increasingly important LTE-based mobile broadband access services. Clearwire's 2.5 GHz is now the ONLY feasible alternative for Sprint to deliver competitive LTE capacity in a total of 20-40 MHz in the short-to-medium-term.

This capacity will have to be operational in major U.S. markets by the end of 2014 in order to keep up with Sprint's three national competitors, Verizon Wireless, AT&T Mobility and T-Mobile USA. Sprint now finds itself in a spectrum deficit position similar to that which led Verizon to acquire more AWS spectrum in 2012 at a substantially increased price over its value in 2006, and AT&T to acquire more Lower 700 MHz Band spectrum in early 2013 at a significantly increased price⁴ over its value in 2008. In both cases these two major national operators needed additional spectrum in order to expand the coverage and capacity within their LTE deployments. For example Verizon will now be able to deploy 2x10 MHz of LTE capacity across much of the nation to supplement its 2x10 MHz LTE network in Band Class 13 in the Upper 700 MHz band, which will reach 300 million POPs during 2013. Because of its recent transactions, AT&T will soon be able to deploy 2x10 MHz LTE in its Lower 700 MHz band

³ Beebe County School District, June 30, 2008, Auditor's Report, at page 17, note 11, at arklegaudit.gov/showfile.php?t=webaudit&fid=EDSD39708.

⁴ This price is well over \$4 per MHz-POP if the value of the AWS spectrum A&T proposes to transfer to Verizon as part of the transaction is included, compared to the \$3.69 per MHz-POP Verizon paid for these Lower 700 MHz Block B licenses in 2008.



frequencies. Even T-Mobile, a relative latecomer to LTE, will be in position to deploy 2x10 or even 2x20 MHz LTE across its footprint in the AWS band during 2013 and 2014⁵.

At least for now, Sprint is only able to deploy 2x 5 MHz LTE in its PCS band Block G. While there is the possibility that it may succeed in acquiring an additional 2x5 MHz in the adjacent PCS Block H, due to be auctioned in 2013, Sprint's success in this auction cannot be guaranteed. After shutdown of its Nextel iDEN (integrated Digital Enhanced Network) at 800 MHz in mid-2013, Sprint will be able to deploy another 2x5 MHz LTE system in these frequencies, plus a 1.25 MHz CDMA/EVDO (Code Division Multiple Access/Evolution Data Optimized) carrier. This deployment could begin before the end of 2014. Nonetheless, absent access to significant TDD-LTE capacity at 2.5 GHz in the highest traffic areas, Sprint will be hard pressed to deliver competitive amounts of LTE capacity in the relatively short-to-medium term.

Sprint says that it and Clearwire have diligently investigated all reasonable business options and possibilities, both for Sprint to secure access to more spectrum, and to find other buyers or users of Clearwire's spectrum. Lack of success in all these endeavors leaves the Sprint-Clearwire deal as the only remaining alternative. However, Sprint's support of LightSquared, and the decision of its cable TV MSO partners, who held significant AWS spectrum, to partner with their traditional competitive rival, Verizon, in collaborating and cooperating in their core businesses (whereas Sprint does not compete in these core businesses) gives rise to legitimate doubts whether Sprint and Clearwire made an effective and credible effort to pursue a business relationship work with SpectrumCo, i.e., the Cable MSOs.

The results of this valuation of Clearwire's 2.5 GHz assets support a range of values in the \$0.40-0.70 per MHz-POP range. Moreover, this "value range" is derived from prices paid in actual spectrum transactions by operators in less difficult capacity-challenged competitive and network situations than Sprint finds itself today. In our opinion these Sprint-specific circumstances as of early 2013 would likely increase the value of Clearwire's spectrum to Sprint today even further.

Drivers of the Increased and Increasing Value of 2.5 GHz Spectrum

The recent and continuing drivers of increased value of the 2.5 GHz Band, which Clearwire holds, include:

- The rising demand for more spectrum to handle the rapidly growing volume of mobile broadband traffic, which grew globally by 70% in 2012, and is forecast to grow 13 fold between 2012 and 2017⁶, shrinking the supply of usable spectrum in relation to the traffic it will have to carry (there are other tools operators are using to cope with this anticipated tsunami of data,

⁵ T-Mobile promises 20x20 MHz LTE network with MetroPCS spectrum, <http://www.fiercebroadbandwireless.com/story/t-mobile-promises-20x20-mhz-lte-network-metropcs-spectrum/2012-10-03>

⁶ Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2012–2017, http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf



from Wi-Fi “offloading” to the introduction of a host of new technologies in LTE and LTE-Advanced to improve spectral efficiency and innovative small cell network architectures).

- The total capacity in the 2.5 GHz Band, which amounts to some 190 MHz, more than any other individual frequency band for mobile communications.
- The spread of intercontinental, as well as international, regional commitments to harmonized band structures for the 2.5 GHz Band, (referred to outside North America as the 2.6 GHz Band) establishing it in a unique position to become a quasi-global band for broadband roaming⁷.
- The commitment of major equipment, device and semi-conductor vendors and standards organizations to develop and commercialize a global supply ecosystem to enable operators and mobile customers to benefit from very large economies of scale, as well as widely available, accessible, and hopefully affordable interoperability in and across both FDD and TDD LTE networks.

Substantial progress has been achieved in these last three areas as a result of recent and planned regulatory decisions and 2.5 GHz spectrum allocations and assignments as well as commercial or private sector initiatives in Europe, Asia and elsewhere. As recently as 5 years ago, when Sprint transferred its 2.5 GHz licenses to Clearwire, the picture for LTE, and in particular its role in, and for, the 2.5 GHz Band, were not well defined or obvious, certainly not to Sprint or Clearwire.⁸ Now, with these developments, the value of the 2.5 GHz Band is clear and thus its value is increasing.

The value of AWS spectrum has increased by about two thirds since FCC Auction 66 in 2006, ironically the year in which Sprint announced its choice of WiMAX (Worldwide Interoperability for Microwave Access) as the mobile broadband technology to deploy at 2.5 GHz. WiMAX is now recognized as at most a niche technology, the further development and commercialization of which has been abandoned by all major equipment, device and semi-conductor suppliers in favor of LTE.

Contradictory Statements of Sprint and Clearwire on Spectrum Values

Sprint and Clearwire both take opposed positions on the value of Clearwire’s 2.5 GHz spectrum, depending on the audience that they are addressing, whether it is the FCC or the investment community. To the FCC, both Sprint and Clearwire present the limitations and encumbrances of 2.5 GHz frequencies that in their view disqualify, and should continue to disqualify, the majority of this bandwidth (about 135 MHz or over two thirds of the total of 194 MHz) from inclusion in the FCC’s spectrum screen. The FCC uses its spectrum screen as a guideline to assess whether, in order to sustain competition, an operator should be limited in the total amount of spectrum that it can hold and acquire because spectrum is a finite, publically-owned resource, and is an essential input for mobile communications. The factors cited by Sprint and Clearwire to the FCC include a wide range of technical, regulatory and licensing issues that they say make 2.5 GHz spectrum significantly more problematic for

⁷ “The 2.6 GHz Spectrum Band - An Opportunity for Global Mobile Broadband,” GSM Association, <http://www.gsma.com/spectrum/the-2-6ghz-spectrum-band-an-opportunity-for-global-mobile-broadband-3>

⁸ “Sprint and Clearwire to combine WiMAX businesses, creating a new mobile broadband company,” <http://corporate.clearwire.com/releasedetail.cfm?ReleaseID=551197>



use in mobile broadband network deployments, and therefore presumably less valuable, than frequencies in other bands.^{9,10}

Simultaneously, both Sprint and Clearwire say that the depth of spectrum that Clearwire holds at 2.5 GHz, i.e., 160 MHz in the top 100 markets, gives, or will give, a fully combined Sprint-Clearwire a substantial competitive advantage in delivering broadband capacity to mobile customers. According to Clearwire's Chief Technology Officer¹¹:

"This is the future of mobile broadband," says Dr. John Saw, Clearwire's Chief Technology Officer. "We believe our LTE Advanced-ready network design, which leverages our deep spectrum with wide channels, can achieve greater speeds and capacity than other networks. We believe Clearwire is the only carrier with the unencumbered spectrum portfolio required to achieve this level of speed and capacity in the United States."

"In addition, the 2.5 GHz spectrum band and TDD-LTE technology that we have chosen has rapidly become a common configuration worldwide for 4G deployments, creating a potentially robust, cost-effective and global ecosystem that could serve billions of devices," Saw added. "We anticipate that the economies of scale derived from this global ecosystem will act as a catalyst for the development of thousands of low-cost devices and applications'."

The Sprint-Clearwire investor presentation¹² in mid-December, 2012 referred to the goals and benefits of Sprint's acquisition of full control of Clearwire in the following language (emphasis in the original):

*"Gain **full control** of valuable spectrum resource and LTE deployment"*

*"Timing of the transaction enables **the efficient** deployment of LTE on 2.5 with the greatest expected efficiencies"*

"Creates Robust spectrum portfolio"

"LTE-TD Depth enables capacity and speed"

"Valuable", "robust", "efficient deployment", "greatest expected efficiencies" and "LTE-TD depth" are not consistent with the list of encumbrances which Sprint and Clearwire have invoked in their regulatory filings in January and February, 2013 to justify downgrading the value of 2.5 GHz frequencies. For example in Reply Comments filed on January 7 in FCC Docket 12-269, Sprint describes 112.5 MHz of this

⁹ Reply Comments of Clearwire Corporation, FCC Docket 12-269, January 7, 2013, <http://apps.fcc.gov/ecfs/document/view?id=7022099941> - "The Unique Characteristics Of The 2.5 GHz Band Continue To Support The Commission's Decision To Exclude A Portion of The 2.5 GHz Band From The Spectrum Screen".

¹⁰ JOINT OPPOSITION TO PETITIONS TO DENY AND REPLY TO COMMENTS, FCC Docket 12-343, February 12, 2013, <http://apps.fcc.gov/ecfs/document/view?id=7022121075>; Reply Comments of Sprint Nextel, FCC Docket 12-269, January 7, 2013, pp. 21-28, <http://apps.fcc.gov/ecfs/document/view?id=7022099989> - "... there are technical factors as well as regulatory and licensing issues that continue to diminish the utility of all 2.5 GHz spectrum."

¹¹ Clearwire's 4G/LTE Network, <http://www.clearwire.com/company/featured-story>

¹² Sprint/Clearwire Investor Call, December 17, 2012, <http://investors.sprint.com/Cache/1500044985.PDF?D=&O=PDF&IID=4057219&Y=&T=&FID=1500044985>



spectrum (almost 60% of the total bandwidth) with the phrase, “EBS spectrum therefore cannot be equated with commercial wireless spectrum.” In a recent filing that analyzed Clearwire's actual wireless broadband deployments, EBS licensees have pointed out that the allegedly significant encumbrances to use of these frequencies for mobile broadband services are in reality of minor consequence, and are being exaggerated by Sprint.¹³ Furthermore, the filing describes the healthy competition for EBS spectrum that would follow if it were made available to other wireless operators, who are in need of additional capacity. This open competition would lead to higher prices for EBS licenses than are claimed to represent their market value in Sprint's proposal to acquire full control of Clearwire including its EBS leases.

Sprint's CEO Dan Hesse is also quoted as saying in reference to gaining full control of Clearwire (emphasis added):

“Today's transaction marks yet another significant step in Sprint's improved competitive position and ability to offer customers better products, more choices and better services. **Sprint is uniquely positioned to maximize the value of Clearwire's spectrum and efficiently deploy it to increase Sprint's network capacity.** We believe this transaction, particularly when leveraged with our SoftBank relationship, is further validation of our strategy and allows Sprint to control its network destiny.”¹⁴

These assessments of the value of Clearwire's spectrum, targeted separately at the FCC and the investment community by both Sprint and Clearwire, are irreconcilable. Sprint appears to be downplaying the worth of the 2.5 GHz licenses, held and leased by Clearwire, to the FCC. At the same time Sprint's portrayal to the investment community that its full control of Clearwire's 2.5 GHz spectrum assets will give it future competitive superiority over even Verizon and AT&T, makes no reference to any idea that the assets are “encumbered”.

Conclusions

Sprint's stated valuation of \$0.21 per MHz-POP embedded in its bid of \$2.97 per share for the Clearwire shares it does not own, and even the slightly greater value implied in DISH's 11% higher bid of \$3.30 per share, underestimate the value of the 2.5 GHz spectrum in today's U.S. mobile broadband market and competitive circumstances.

The financial advisers retained by Clearwire have failed to demonstrate that the price offered is fair, and have used irrelevant comparisons with other spectrum transactions in their attempts to do so. As they admit in their disclaimers, they have not performed any independent validation of the information they were provided by management.

¹³ “Comments of EBS licensees supporting Verizon Request,”

<http://apps.fcc.gov/ecfs/document/view?id=7022121109>

¹⁴ http://newsroom.sprint.com/article_display.cfm?article_id=2477



In contrast, a rational and independent assessment of the value of Clearwire's spectrum assets yields a range of values between \$0.40-0.70 per MHz-POP, even without taking into account the situation, and imperative need for access to this spectrum, for LTE capacity in which Sprint uniquely finds itself today. Due to Sprint's failure to pursue other business alliances to gain access to more high band spectrum, Clearwire's 2.5 GHz Band asset is now the only alternative that Sprint has to be able to deploy competitive LTE capacity in a total of 20-40 MHz, thus making it even more valuable to Sprint and SoftBank. This capacity will have to be operational in major U.S. markets by the end of 2014 if Sprint is to keep up with its three national competitors, Verizon Wireless, AT&T Mobility and T-Mobile USA.

Sprint and Clearwire have asserted before the FCC that the latter's 2.5 GHz spectrum is less valuable than other bands for a variety of technology, regulatory and licensing reasons, at the same time as they assert that a combined Sprint-Clearwire would be in the most powerful spectrum and potential mobile broadband capacity position of any U.S. operator. A new and truly independent and objective valuation of Clearwire's spectrum assets should be carried out because those submitted by Evercore Partners and Centerview Partners are not credible and are indeed contradicted by the evidence that they have thus far presented. Subject to appropriate safeguards of confidential material, Sprint and Clearwire must be required to reveal their plans and expectations for use of this spectrum in order to determine whether the array of encumbrances they refer to in the 2.5 GHz Band are significant, or of minor concern, and easily overcome or explained away. This information would also settle the question of whether there is significant "surplus" spectrum for Sprint's needs in Clearwire's holdings at 2.5 GHz that in the public interest could be put to productive use by other operators and not left unused for several more years. Sprint and Clearwire must also be required to reveal information about their separate and joint failed attempts to secure access to other high band spectrum (for Sprint) and customers (for Clearwire) in order to independently assess, verify and validate the contention that the proposed Sprint-Clearwire transaction is the only legitimate practical alternative for Clearwire.

Clearwire and Sprint represent a key element in SoftBank's interest in Sprint that should also be reflected in the value Clearwire's non-Sprint investors receive for selling their shares. Table 1 presents the implied share price for Clearwire based on the range of spectrum valuations developed in this report, plus the mid-point of the range of spectrum valuations considered in the Evercore presentation:



Table 1: Implied Share Price of Clearwire

\$ per MHz-POP for 2.5 GHz Spectrum					
	0.22*	0.40	0.50	0.60	0.70
Adjusted TEV¹, \$ million	10,171	18,800	23,500	28,200	32,900
<i>Less NPV of Spectrum Leases², \$ million</i>	(1,800)	(1,800)	(1,800)	(1,800)	(1,800)
Net Proceeds, \$ million	8,371	17,000	21,700	26,400	31,100
<i>Less Debt^{3,4} (12/31/2012), \$ million</i>	(4,486)	(4,486)	(4,486)	(4,486)	(4,486)
<i>Plus cash⁴ (12/31/2012), \$ million</i>	828	828	828	828	828
Implied Equity Value, \$ million	4,714	13,342	18,042	22,742	27,443
Implied Share Price (12/31/2012)	\$3.15	\$8.92	\$12.06	\$15.20	\$18.34
Implied Share Price (9/30/2013)⁵	\$2.67	\$8.44	\$11.58	\$14.72	\$17.86

* Mid-point of Evercore range of spectrum valuation.

The notes are taken from the Evercore Partners Presentation (see Appendix) included in Clearwire's preliminary proxy statement to the SEC:

1. Total Enterprise Value based on a sale of all spectrum (47 billion MHz-POPs).
2. 2012 lease payments of \$180 million, with 2.0% perpetuity growth rate discounted at yield of 1st lien debt 12% assuming payments are made into perpetuity.
3. Debt amount excludes Sprint promissory note of \$150 million for LTE expansion
4. Based on management estimates for debt and cash.
5. Based on estimated debt balance of \$4,471 million and estimated cash balance of \$92 million at 9/30/2013.



Appendix: Precedent Transactions Used by Clearwire's Financial Advisers to Value Its Spectrum

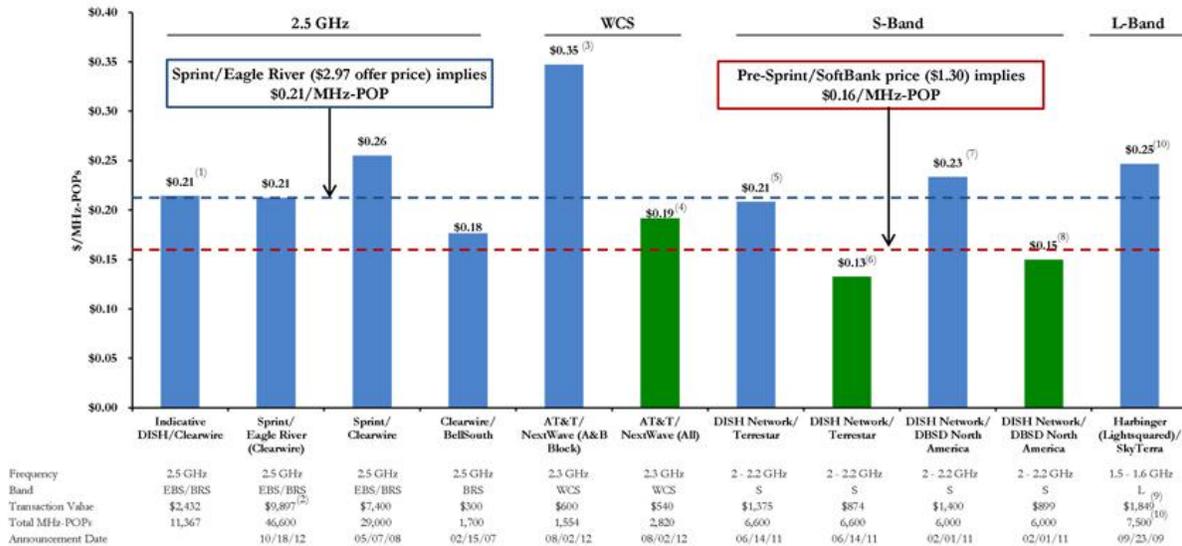
A1: Evercore Partners

Valuation Analysis

Preliminary Draft - Confidential

Precedent Spectrum Transactions

(\$ in millions)



Sources: Company Filings, Wall Street Research

- (1) \$0.216/MHz-POP blended price for both owned and leased spectrum, based on Dish "Thoughts" document
- (2) Implied Transaction Value - Uses implied share price of \$2.97; FDSD of 1,495mm; Debt of \$4,486mm; Cash of \$828mm; NPV of Leases of \$1,800mm
- (3) Calculated using WCS A & B only; Assumes \$60mm (\$0.69 per MHz-POP) value for AWS included in the transaction; assumes \$0 for WCS C&D; If \$0 value is attributed to the AWS, \$/MHz POP is \$0.39
- (4) Calculated using WCS A, B, C, & D; Assumes \$60mm (\$0.69 per MHz-POP) value for AWS included in the transaction; If \$0 value is attributed to the AWS, \$/MHz POP is \$0.21
- (5) Using US & Canada Population (330mm)
- (6) Adjusted for Net Book Value of Terrestar-1 Satellite (\$501.2mm)
- (7) Using US Population only (300mm)
- (8) Adjusted for Net Book Value of DBSD-G1 Satellite (\$501.3mm)
- (9) Sourced from Skyterra News Release
- (10) Valuation based on total MHz-POPs from the Skyterra proxy dated 2/26/10

EVERCORE PARTNERS

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Source: Evercore Partners Presentation to Clearwire Board of Directors, December 12, 2012.



Table A1: Implied Share Price of Clearwire according to Evercore Partners

Appendix

Preliminary Draft - Confidential

Implied Share Price Based on Spectrum Valuation

(\$ in millions)

	\$ / MHz-POP		
	\$0.18	\$0.22	\$0.26
Adjusted TEV (1)	\$8,460	\$10,171	\$12,220
Less: NPV of Spectrum Leases (2)	(1,800)	(1,800)	(1,800)
Net Proceeds	\$6,660	\$8,371	\$10,420
Less: Debt (12/31/12) (3)(4)	(4,486)	(4,486)	(4,486)
Plus: Cash (12/31/12) (4)	828	828	828
Implied Equity Value	\$3,003	\$4,714	\$6,763
Implied Share Price (12/31/12)	\$2.01	\$3.15	\$4.52
Implied Share Price (9/30/13) (5)	\$1.53	\$2.67	\$4.04

Source: Company filings; Management estimates

Note: Assumes no value for net assets and includes no costs associated with on-going commitments and liabilities, based on Management guidance

(1) Based on a sale of all spectrum (47.0bn MHz-POPs)

(2) 2012 annual lease payments of \$180mm with 2.0% perpetuity growth rate discounted at yield of 1st lien debt, 12.0% assuming payments are made into perpetuity

(3) Debt amount excludes Sprint promissory note of \$150mm for LTE expansion

(4) Based on Management estimates for debt and cash

(5) Based on SCC: estimated 9/30/13 debt balance of \$4.471mm and estimated 9/30/13 cash balance of \$92mm



A2: Centerview Partners

Table A2: Precedent Spectrum Transactions Invoked by Centerview Partners to Value Clearwire's Spectrum

Frequency	Buyer	Target	\$/MHz-POP	Date Announced	Transn. Value, \$ millions	Total MHz-POP, x10 ⁶	Comments
2.5 GHz	Clearwire	Sprint's spectrum	0.255	5/07/08	7,400 ¹	28,989 ²	Price for spectrum Sprint contributed for stake in Clearwire
	DISH	Clearwire	0.214	N/A	2,433	11,367	Preliminary DISH proposal
	Sprint	Eagle River (Clearwire)	0.210	10/17/2012	9,893	47,000	Based on \$2.97/share
	Clearwire	BellSouth	0.176	2/15/2007	300	1,700	Required Divestiture for AT&T-BellSouth acquisition
WCS (2.3 GHz)	AT&T	NextWave ³	0.211	8/2/2012	600	2,846 ⁴	Price with usable spectrum only is \$0.37; Subject to FCC approval of AT&T/Sirius plan
MSS (S and L-Band)	Harbinger (LightSquared)	SkyTerra	0.247	9/23/2009	1,849	5,180	See note 5
	DISH	DBSD	0.227	2/1/2011	1,364 ⁵	6,000	See note 5
	DISH	TerreStar	0.209	6/14/2011	1,382 ⁵	6,600	See note 5



Frequency	Buyer	Target	\$/MHz-POP	Date Announced	Transn. Value, \$ million	Total MHz-POP, x10 ⁶	Comments
AWS (1.7/2.1 GHz)	Verizon	SpectrumCo (Comcast, Time Warner Cable, Bright House Networks)	0.695	12/2/2011	3,600	5,180	Contiguous with current frequency holdings; Able to deploy immediately; Part of extensive joint development, and sales agreements with cable operators
	Verizon	Cox	0.563	12/16/2011	315	560	Contiguous with current frequency holdings; Able to deploy immediately; Complements SpectrumCo transaction
	Verizon	NextWave spectrum	0.253	7/17/2008	150	593 ⁶	

Source: Adapted from Centerview Partners Discussion Materials for the Special Committee of the Board of Directors of Clearwire, December 3, 2012.

Notes:

1. Reflects total transaction size at "headline" target price of \$20/share (price after post-closing adjustments to be with \$17-23 range).
2. Reflects Sprint spectrum to be contributed as of 4/30/2008. Merger agreement specifies a minimum of 27.540 billion MHz-POPs at closing.
3. Transaction was primarily WCS but also included AWS spectrum.
4. Includes unusable C/D blocks due to requirement for guard bands with Sirius satellite radio transmissions – 1.607 billion MHz-POPs excluding these blocks.
5. Final closing prices as per Q1 2012 10-Q.
6. Divestiture included both 10 and 20 MHz blocks, assumes average of 15 MHz as per Wall Street research.



Glossary

\$ per MHz-POP: A metric commonly used to express the value of spectrum. It is the price paid for a spectrum license divided by the product of the amount of bandwidth (in megahertz) included in the license, multiplied by the population (POP) in the area that the license covers. In the U.S., spectrum licenses for mobile communications services are awarded within areas of varying sizes, not on a national basis as in many other countries. Currently the U.S. has a total of some 310 million POPs. For example, national coverage of the U.S., with a spectrum depth of 10 MHz, involves 3.1 billion MHz-POPs, so if the total price paid for all the licenses is \$2 billion, the spectrum is valued at \$0.645 per MHz-POP.

FDD: Frequency Division Duplex – a transmission scheme in which upstream (subscriber to base station), occupy different channels or frequencies than downstream (base station to subscriber) transmissions.

LTE: Long Term Evolution – a broadband mobile communications cellular standard developed by the 3rd Generation Partnership Project (3GPP) which has emerged as the worldwide standard for next generation (4G or fourth generation) mobile networks.

TDD: Time Division Duplex - a transmission scheme in which both directions of transmission share the same channel, or frequency, and have to be separated in time. TDD is most efficient in high traffic areas where the distance between subscribers and the base station serving them is small.

Research Team

Martyn Roetter, D.Phil.

Dr. Roetter is a former Vice President at Arthur D. Little Inc., and has over 30 years of global consulting experience at a number of U.S. and Europe-based firms, as well as his own sole proprietorship, with business strategy, technology-related issues, and public policy. He has frequently dealt with the interactions between business, technology, and finance, as well as regulation, politics, and public policy. He has carried out strategy assessment and implementation work as well as project due diligence for network operators, service providers, components and equipment vendors, and their investors. His clients and their target geographies have ranged extensively across the Americas, Europe, Asia, and the Middle East and Africa. Most recently he has been concentrating on the economics, markets, and business plans of wireless communications operators, including techno-economic comparisons of new broadband wireless technologies such as WiMAX, HSPA, EV-DO, and LTE, as well as, in the broader arena of ICT, next generation Web services and the implications of all-IP networks for fixed/mobile competition and convergence and related regulatory issues. He has tackled a number of projects involving competitive and other business dynamics that reflect the changing shape of globalization, i.e. the “globalization of globalization”, in which the traditional economic powerhouses of North America, Western Europe, and Japan have been joined by major actors such as China, India, and Brazil, as well as financial investors from the Middle East.



He served as a non-executive member on the Board of Directors of Allen Telecom (leading global supplier of wireless subsystems) from 1998 until its acquisition by Andrew Corp. in 2003. He was educated in England, Germany, and the U.S., and holds a doctorate in physics from the University of Oxford. A U.S. citizen, he speaks English, French and German.

Alan Pearce, Ph.D.

Dr. Pearce founded Information Age Economics, a Washington, DC research company, in 1979 after a senior-level public policy career at the Federal Communications Commission, the US Congress, and the Executive Office of the President. At the FCC he was one of the prime architects that helped lay the foundation of a new information era. During a five-year tenure in the Office of the Chairman, Pearce helped oversee the investigation of AT&T and Western Electric, et al., which eventually led to the breakup of the Bell System in 1984; the early policies that encouraged the convergence of computers and communications; the launching of domestic satellites to provide telecommunications-information-entertainment services; the beginning of public policies encouraging the development of cable TV; investigations into the business and profits of children's TV programming, and business relationships between the Hollywood movie and program production industry and the TV networks; the economic effects, if any, of the sports anti-blackout legislation on professional football basketball, baseball, and ice hockey; and wireless and spectrum policies that resulted in the creation of universally available services at affordable prices.

Since leaving the government, Dr. Pearce has provided professional services to telecommunications, wireless, satellite, cable TV, movie and program production companies, and radio and TV broadcasting corporations, along with software and equipment manufacturers. He has also consulted with a wide variety of government organizations at the international, federal, state, and local levels. A prolific writer and researcher, he has also lectured on privatizations and appropriate regulatory structures, spectrum auctions, antitrust issues and actions, mergers and acquisitions, appraisals and valuations, franchises and service rates throughout the world.

Prior to coming to the United States, Dr. Pearce was both an undergraduate and graduate student at The London School of Economics, leaving with bachelors and masters degrees, and has a doctorate in business and telecommunications from Indiana University.