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April 14, 2013

## **EX PARTE PRESENTATION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Ex Parte Presentation in IB Docket No. 12-343, *Applications of Sprint Nextel Corporation, SoftBank Corp., and Starburst II, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing two meetings on Friday, April 12, 2013 as follows:

- A meeting with Chairman Julius Genachowski; Zachary Katz, Chief of Staff for Chairman Genachowski; Charles Mathias, Special Counsel for Chairman Genachowski; Mindel de la Torre, Chief, International Bureau; Ruth Milkman, Chief, Wireless Telecommunications Bureau; and Jim Schlichting, Deputy Chief, Wireless Telecommunications Bureau.
- A meeting with Commissioner Jessica Rosenworcel and David Goldman, Senior Legal Adviser for Commissioner Rosenworcel.

Present on behalf of DISH for both meetings were Charlie Ergen, Chairman; Stanton Dodge, Executive Vice President and General Counsel; Jeffrey Blum, Senior Vice President and Deputy General Counsel; and Mariam Sorond, Vice President, Technology Development.

During the meetings, DISH discussed its prior submission urging the Commission to require SoftBank and Sprint (together, the "Applicants") to immediately submit additional information regarding their plans to use the more than 200 MHz of mobile broadband spectrum at stake in the above-referenced transactions.<sup>1</sup> To date, there is insufficient information in the record for the Commission to conduct a full public interest analysis, as required by the

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<sup>1</sup> See Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (Mar. 19, 2013); Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (Apr. 5, 2013).

Communications Act.<sup>2</sup> Among other things, the Applicants should submit a market-by-market breakdown of their spectrum holdings post-transaction. In addition, the Applicants should provide information regarding their spectrum utilization plans. Sprint as an entrenched and long-established incumbent should be required to make these showings, much as AT&T and Verizon do when they propose to acquire new spectrum.<sup>3</sup> A full review of these issues is necessary to ensure that the unprecedented amount of spectrum at issue is fully utilized.

***Market-by-Market Analysis and Spectrum Aggregation.*** The Applicants should be required to submit a market-by-market analysis of their post-transaction spectrum holdings, so that the Commission can fully analyze the competitive implications of these transactions. This type of data is routinely required in spectrum transactions,<sup>4</sup> and Sprint itself has called for parties in other wireless transactions to provide similar showings.<sup>5</sup> Once this information is furnished, the Commission will be able to determine whether divestitures or other remedial conditions are appropriate.

Such a supplemental showing is important, given that the proposed transactions would put more U.S. spectrum than anyone else holds in the hands of a single, foreign-owned company. The Applicants' main argument in support of the public interest benefits of the transactions relies on SoftBank's alleged record of strengthening competition and lowering prices in Japan, but Japan's size and market conditions differ widely from the U.S. and the Applicants have thus far

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<sup>2</sup> See 47 U.S.C. § 310(d).

<sup>3</sup> See, e.g., AT&T, Cellco Partnership d/b/a/ Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC, ULS File No. 0005627587, Description of the Transaction and Public Interest Statement at 22-23 (Feb. 6, 2013); Acquisition of T-Mobile USA, Inc. by AT&T Inc., WT Docket No. 11-65, Description of the Transaction and Public Interest Statement at Appendix A (April 21, 2011); Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC, WT Docket No. 12-4, Description of the Transaction and Public Interest Statement at Exhibit 5 (Dec. 16, 2011); Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC, WT Docket No. 12-4, Description of the Transaction and Public Interest Statement at Exhibit 5 (Dec. 21, 2011).

<sup>4</sup> See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd. 10698, 10721-22 ¶ 64 (2012); Applications of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, *Order*, 26 FCC Rcd. 17589, 17602 ¶ 31 (2011); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, 21552 ¶ 58 (2004).

<sup>5</sup> See Sprint Nextel Corporation Petition to Deny, WT Docket No. 11-65, at 119 (May 31, 2011) (The Applicants "completely fail to answer critical questions about AT&T's LTE deployment schedule, the nature of the service AT&T would offer, and what AT&T would invest to reach its deployment target."). See also Sprint Nextel Corporation Reply Comments, WT Docket No. 11-65, at 51 (June 20, 2011) ("The Applicants never provide a sufficient explanation as to why AT&T has been so slow in putting to use its unused spectrum"); *id.* at 59 ("The Applicants assert that combining the AT&T and T-Mobile networks would create various synergies, but they refuse to quantify these synergies in a manner that permits verification.").

been silent on any concrete ways for transmitting SoftBank's claimed acumen to Sprint and the U.S. market.

***Global Adoption of the 2.5 GHz Band for TDD-LTE.*** In addition, the Commission should include all of Clearwire's 2.5 GHz spectrum in the spectrum screen analysis for these transactions. Today, virtually all of Clearwire's spectrum is suitable for mobile broadband service, leaving no justification for its exclusion.

If Sprint (and SoftBank indirectly) controls Clearwire, then nearly the entire 2.5 GHz band in the U.S. will be dominated by a single entity. This would have significant effects on, among others, international carriers who use the 2.5 GHz band, because Sprint would be their only roaming partner in the U.S. for those frequencies. The 2.5 GHz band is being adopted globally for mobile services and holds promise for meeting the capacity demands of today's 4G LTE networks. In addition, the global trend towards TDD applications in the 2.5 GHz band, and the adoption of the global Band 41, illustrate the growing trend to make use of the 2.5 GHz spectrum. In fact, DISH is not aware of any other countries that have allowed a single carrier to hold all 2.5 GHz licenses within their borders, given that band's growing importance for 4G LTE networks. Many countries, such as China, have taken steps to ensure that more than one operator will have access to the 2.5 GHz band.<sup>6</sup> Given these recent technological and competitive changes, the Commission must conduct a full review of the Applicants' proposed transactions, and cannot simply rely on its 2008 approval of the Sprint-Clearwire transaction.<sup>7</sup>

***Spectrum Utilization Plans.*** As a technical matter, the Applicants face a number of limitations that impact whether they will be able to utilize all of the spectrum they propose to consolidate under a single entity. As detailed in DISH's reply comments,<sup>8</sup> Sprint devices currently do not support all of Sprint's existing 3GPP bands (notably, Sprint currently excludes Band 26 from its devices). Sprint has provided no justification for how it intends to continue to support its current spectrum holdings, while also adding the three additional bands necessary to utilize Clearwire's 2.5 GHz spectrum (Bands 7, 38 and 41) and, potentially, the H Block (which Sprint has previously expressed interest in acquiring at auction). Without the ability to accommodate all of these bands in a chipset, valuable spectrum will lie fallow. The Applicants must immediately submit evidence of their spectrum utilization plans to ensure this result is avoided, or else divest Clearwire 2.5 GHz spectrum that they do not plan to use.

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<sup>6</sup> See *China government plans to release 2,500-2,690MHz bands for TDD-LTE*, Datang Telecom, Oct. 18, 2012, available at <http://www.datang-telecom.com/templates/News%20Page/index.aspx?nodeid=177&page=ContentPage&contentid=445> ("China's Ministry of Industry and Information Technology (MIIT) plans to assign 2,500-2,690 MHz frequency bands, a total bandwidth of 190MHz, for TDD-LTE mobile communications" and the "bandwidth of 190MHz implies that more than one operators will be given an allocation, and China Telecom is the most likely second candidate" in addition to China Mobile).

<sup>7</sup> See Reply of DISH Network L.L.C to Opposition of Clearwire Corporation to Petition for Reconsideration, ULS File No. 0005480932, *et al.*, at 4-5 (Jan. 29, 2013). See also Sprint Nextel Corporation and Clearwire Corporation, *Memorandum Opinion and Order*, 23 FCC Rcd. 17570, 17617 ¶ 119 (2008) ("*Sprint-Clearwire Order*").

<sup>8</sup> See DISH Network L.L.C Reply Comments, IB Docket No. 12-343, at 23-24 (Feb. 25, 2013).

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Zachary Katz  
Charles Mathias  
David Goldman  
Mindel de la Torre  
Ruth Milkman  
Jim Schlichting