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

In the Matter of	)	
	)	
Applications of Sprint Nextel Corporation, Transferor	)	IB Docket No. 12-343
	)	
SoftBank Corp., and Starburst II, Inc., Transferees	)	
	)	
Joint Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations; and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as amended	)	

SUPPLEMENT TO REQUEST TO HOLD PROCEEDING IN ABEYANCE

I. INTRODUCTION AND SUMMARY

DISH Network Corporation ("DISH") hereby submits this supplement to the previously filed request (the "Request")[1] to hold the above-captioned proceeding in abeyance in light of an important new development that both increases the uncertainty surrounding SoftBank Corporation's ("SoftBank") proposed acquisition of Sprint Nextel Corporation ("Sprint")[2] and renders moot key arguments previously made by Sprint against holding the proceeding in abeyance.

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[1] *See* DISH Network L.L.C., Request to Hold Proceeding in Abeyance, IB Docket No. 12-343 (Jan. 16, 2013) ("Request"). The Request was filed by DISH's wholly-owned subsidiary DISH Network L.L.C.

[2] *See* SoftBank and Sprint File Amendment to Their Previously Filed Applications to Reflect Sprint's Proposed Acquisition of *De Facto* Control of Clearwire, Public Notice, DA 12-2090 (rel. Dec. 27, 2012); SoftBank and Sprint Seek FCC Consent to the Transfer of Control of Various Licenses, Leases, and Authorizations from Sprint to SoftBank, and to the Grant of a Declaratory Ruling Under Section 310(b)(4) of the Communications Act, Public Notice, IB Docket No. 12-343, DA-12-1924 (rel. Nov. 30, 2012) (the "Applications").

Specifically, on April 15, 2013, DISH submitted a merger proposal to the Board of Directors of Sprint for a total cash and stock consideration of $25.5 billion. As DISH's merger proposal explains, a combined DISH/Sprint "will benefit from a significantly enhanced strategic position and substantial synergies that are not attainable through the pending SoftBank proposal."[3] The combined cash and stock merger proposal made by DISH represents a substantial premium over the proposal made by SoftBank for Sprint's shareholders, and provides significant cost and capital expenditure savings and other substantial synergies and growth opportunities not attainable under the existing SoftBank proposal. Simply put, DISH's merger proposal is better for the American consumer, better for Sprint's shareholders, and better for U.S. national security than the SoftBank proposal.

Further, DISH's merger proposal introduces a substantial question as to the ultimate disposition of Sprint's shares. Sprint's Board of Directors must now evaluate that proposal and decide whether to accept it and its accompanying benefits. The Commission's exercise of discretion to allow this competitive process to play out is fully supported by policy and precedent.[4] Therefore, the Commission is fully justified in holding the SoftBank-Sprint proceeding in abeyance as requested.

II. DISH'S SUPERIOR OFFER INTRODUCES SIGNIFICANT ADDITIONAL UNCERTAINTY TO THE FATE OF THE SOFTBANK-SPRINT DEAL

On April 15, 2013, DISH submitted a merger proposal to the Board of Directors of Sprint for "a total consideration of $25.5 billion, consisting of $17.3 billion in cash and $8.2 billion in

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[3] *See* Letter from Charlie Ergen, Chairman, DISH Network Corp., to Board of Directors, Sprint Nextel Corp. (Apr. 15, 2013), http://completedishsolution.com/media/resources/offer-letter/ ("Offer Letter"); *see also* Sinead Carew and Liana B. Baker, *Dish Tries to Trump SoftBank with $25.5 Billion Sprint Bid*, Reuters (Apr. 15, 2013), http://www.reuters.com/article/2013/04/15/us-sprint-offer-idUSBRE93E0E620130415.

[4] *See* Tender Offers and Proxy Statements, MM Docket No. 85-218, *Policy Statement*, FCC 86-67 (rel. Mar. 17, 1986) ("*Tender/Proxy Statement*").

stock. Sprint shareholders would receive $7.00 per share, based upon DISH's closing price on Friday, April 12, 2013. This consists of $4.76 per share in cash and 0.05953 DISH shares per Sprint share."[5] The cash portion of DISH's merger proposal represents an 18% premium over the cash portion of SoftBank's proposal, and the stock consideration allows existing Sprint shareholders to retain a larger proportion of the combined company than they would under SoftBank's proposal.[6] In total, the cash and stock consideration under DISH's merger proposal represents a substantial premium over the SoftBank proposal. The merger proposal indicates DISH is prepared to enter into a definitive merger agreement with Sprint on terms and conditions "substantially similar" to those agreed upon by Sprint and SoftBank, and is not conditioned upon the outcome of Sprint's application to acquire the remaining outstanding shares of Clearwire.[7]

The premium inherent in DISH's offer over that of SoftBank is further augmented by the long-term benefits for Sprint shareholders from a combined DISH-Sprint, which cannot be matched by SoftBank. These include an estimated $37 billion in net present value synergies and growth opportunities that cannot be matched through acquisition by a foreign carrier with little existing in-market infrastructure.[8] In all respects, the DISH merger proposal is a real and substantial offer for Sprint to which the Sprint Board of Directors must give all due consideration, as it represents substantial, positive benefits over the SoftBank proposal in the near and long term for Sprint's shareholders and members of the public alike. DISH's merger proposal is better for American consumers, better for Sprint shareholders, and better for U.S.

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[5] Offer Letter.

[6] *Id.*

[7] *Id.*

[8] DISH Network Corporation and Sprint Nextel Corporation, Fact Sheet (Apr. 15, 2013), http://completedishsolution.com/media/resources/fact-sheet/.

national security than the SoftBank proposal. As a result, DISH's superior merger proposal introduces substantial uncertainty about the fate of the SoftBank proposal.

III. DISH'S OFFER RENDERS MOOT KEY SPRINT ARGUMENTS AGAINST ABEYANCE

Not only does DISH's merger proposal with Sprint lend significant weight in favor of abeyance; it also further tips the scales in favor of granting the Request by mooting Sprint's key arguments against allowing the commercial process to play itself out.

The Request, and Sprint's Opposition to it, focused on the uncertainties surrounding Sprint's underlying acquisition of Clearwire Corporation ("Clearwire") and various irregularities in prior Clearwire share transactions. Sprint's foremost argument was that these uncertainties were irrelevant because the "SoftBank/Sprint Transaction is not contingent on the closing of the Sprint/Clearwire Transaction."[9] Sprint went on to emphasize the nature of Sprint's pending transaction with Clearwire itself, noting that the agreement requires the parties to "take all actions to 'consummate and make effective'" the Sprint/Clearwire deal.[10] Sprint also raised questions about the firmness of DISH's bid for Clearwire, calling the DISH offer "illusory" and "non-viable,"[11] and urged the Commission to avoid delaying the proceedings on account of DISH's interest in Clearwire, despite the fact that the Special Committee of the Clearwire Board of Directors was actively engaged—consistent with its fiduciary duties—in evaluating DISH's proposal.[12]

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[9] Sprint Nextel Corporation, Softbank Corp., and Starburst II, Inc., Opposition to Request to Hold Proceeding in Abeyance, IB Docket No. 12-343, at 2-3 (Jan. 24, 2013) ("Opposition").

[10] *Id.* at 3.

[11] *Id.* at 4.

[12] *Id.*

But whatever the correct disposition of Sprint's key arguments against letting the market process play out with respect to Clearwire, they are now moot. This is because DISH has made an unquestionable merger proposal for Sprint to the Sprint Board of Directors on "substantially similar" terms and conditions as the SoftBank-Sprint acquisition agreement,[13] but with the significant valuation premiums and enhanced shareholder benefits noted above. DISH's merger proposal for Sprint has created more uncertainty over the pending SoftBank-Sprint proposal itself. Today, the critical issue is whether Sprint will accept DISH's merger proposal and its accompanying benefits for shareholders and the general public, not concerns and arguments about the closing of the Sprint/Clearwire Transaction.[14]

IV. COMMISSION POLICY AND PRECEDENT SUPPORT ABEYANCE

DISH is not asking the Commission to intervene in a proceeding on behalf of one party over another. Rather, DISH is seeking to have the Commission follow an orderly and deliberative process. Although ripeness concerns addressed by federal courts are not binding on administrative agency decisions,[15] such concepts provide a "useful analogy" in determining whether the Commission should exercise its discretion to act where ripeness may be an issue.[16] Applying this analogy, the Commission has concluded that it will not rule on unripe issues unless unusual and compelling circumstances are present.[17] Because DISH's merger proposal is

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[13] Offer Letter.

[14] Opposition at 4.

[15] *Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154, 1161 (D.C. Cir. 1995).

[16] *See* Omnipoint Communications, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd. 10785, 10789 ¶ 9 (1996) ("*Omnipoint*").

[17] *See id.* (refraining from reaching the question of which technology must be deployed to satisfy a milestone due to a lack of ripeness). *Cf.* Fox Television Stations, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd. 5341, 5343-5344 (1993) (while the question of Fox's cross-ownership with a newspaper was not ripe, the Commission addressed it, reasoning that this was warranted

currently before the Sprint Board of Directors, the question of what transaction the Commission ultimately should be deciding is unsettled. Therefore, prudence dictates waiting until this uncertainty is resolved. Otherwise, the Commission will expend substantial time and resources to complete its review of the Applications, all of which could be unnecessary given it is far from clear that the pending Sprint-Softbank proposal will move forward.

Moreover, as the Request explained, this approach respects the principles of ripeness and is fully consistent with Commission precedent.[18] In contrast, if the Commission were to act on the pending SoftBank-Sprint proposal before market issues are settled, the Commission's actions could have the perverse effect of undermining its policy of strict neutrality in corporate valuation contests by giving a leg up to one of the contestants.[19]

V. CONCLUSION

DISH's superior proposal for a merger between DISH and Sprint creates significant uncertainty over the ultimate disposition of Sprint's shares and renders moot Sprint's key arguments against holding this proceeding in abeyance. DISH respectfully requests that the Commission exercise its discretion to wait and defer issuing a decision on the SoftBank/Sprint transaction in order to allow Sprint to evaluate the competing merger proposal before it without undue interference in this important market process.

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by "unique and severe financial situation"), *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995).

[18] *Request* at 2; *Omnipoint*, 11 FCC Rcd. at 10789 ¶ 9.

[19] *See Tender/Proxy Statement* ¶ 6 ("It is not in the public interest for our administrative processes to be utilized, either by design or by unintended result, in a manner which favors either the incumbent or the challenger in disputes over corporate control. We believe that marketplace considerations, rather than the artificial dictates of governmental procedures, should influence the decisions of the shareholders in tender offers and proxy contests.").

Respectfully submitted,

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April 17, 2013

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of April 2013, a copy of the foregoing Supplement to the Request to Hold the Proceeding in Abeyance was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via First Class† and/or electronic mail*:

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