

May 1, 2013

Via Electronic Filing

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: IB Docket No. 12-343; IBFS File No. ISP-PDR-20121115-00007;
ULS File No. 0005480932 – Written *Ex Parte* Presentation

Dear Ms. Dortch:

Verizon, Crest Financial Limited (“Crest”), DISH Network Corporation (“DISH”), and two Educational Broadband Service licensees (the “Consortium”) recently filed *ex parte* notices in the above-referenced proceeding concerning the Commission’s spectrum screen and private shareholder disputes. These filings rehash arguments previously made by these parties or seek to raise issues that are irrelevant to the Commission’s review of the SoftBank/Sprint and Sprint/Clearwire merger transactions. The Commission should dismiss these arguments, conclude its review of the transactions, and promptly approve them as in the public interest.

Spectrum Screen Arguments. In its recent filings, Verizon proposes substantial changes to the Commission’s spectrum screen that would allow both Verizon and AT&T Inc. (“AT&T”) to increase their already large share of mobile broadband spectrum.¹ DISH and the Consortium similarly propose changes to the spectrum screen and claim that the Applicants should submit additional spectrum holdings data.²

These arguments are irrelevant to this proceeding. The Commission applies the spectrum screen only to transactions that increase spectrum aggregation to help it assess the potential effect on the input market for spectrum. Because the SoftBank/Sprint and Sprint/Clearwire transactions will not increase spectrum aggregation, they will have no impact on the input market for spectrum.³ Indeed, the SoftBank/Sprint and Sprint/Clearwire transactions will not increase

¹ Letter from Tamara Preiss, Verizon, to Marlene Dortch, FCC Secretary (April 26, 2013); Letter from Tamara Preiss, Verizon, to Marlene Dortch, FCC Secretary (April 18, 2013); Letter from Tamara Preiss, Verizon, to Marlene Dortch, FCC Secretary (April 8, 2013). Unless otherwise indicated, all filings referenced in this letter were filed in IB Docket No. 12-343.

² Letter from Rudolph Geist, Counsel to Consortium, to Marlene Dortch, FCC Secretary (April 15, 2013); Letter from Jeffrey Blum, DISH, to Marlene Dortch, FCC Secretary (April 26, 2013); Letter from Jeffrey Blum, DISH, to Marlene Dortch, FCC Secretary (April 14, 2013, filed April 15, 2013); Letter from Jeffrey Blum, DISH, to Marlene Dortch, FCC Secretary (April 5, 2013).

³ Verizon cites an order approving AT&T’s acquisition of Wireless Communications Service (WCS) licenses, but, unlike the proposed SoftBank/Sprint and Sprint/Clearwire transactions, the AT&T WCS transaction increased the aggregation of spectrum. *Applications of AT&T Mobility Spectrum LLC, et al.*, Memorandum Opinion and Order, 27 FCC Rcd 16459 (2012). In fact, Verizon has not submitted spectrum holdings data or been subject to

spectrum aggregation by a single megahertz – SoftBank holds no attributable interest in U.S. spectrum licenses or leases, and Clearwire’s spectrum already is attributed to Sprint for spectrum screen and competitive analysis purposes.⁴ There consequently is no reason to apply the spectrum screen or consider modifications to the spectrum screen in this proceeding.⁵

Not only are these arguments irrelevant to this merger review proceeding, they raise issues already under consideration by the Commission in its pending spectrum holdings rulemaking.⁶ The rulemaking proceeding is the proper forum for addressing the complex, far-reaching, and potentially anti-competitive spectrum screen proposals advanced by Verizon, DISH and the Consortium.⁷

Private Shareholder Disputes. Crest is attempting to use the Commission to advance its private agenda to extract a higher price for its Clearwire shares.⁸ More recently, it has reiterated its previous allegation that the Commission should reconsider its December 6, 2012 approval of Sprint’s acquisition of Clearwire shares from Eagle River Holdings, LLC (“ERIV”).⁹

a spectrum screen analysis in markets unaffected by increases in spectrum holdings in a proposed merger transaction. *See, e.g.*, ULS File No. 0001938332, FCC Form 603, Exhibit 5 (spectrum data submitted by Verizon Wireless and NextWave limited to spectrum overlap areas in which Verizon Wireless’s spectrum holdings would increase as result of transaction).

⁴ Clearwire’s spectrum has been attributed to Sprint since the Commission’s 2008 order approving Sprint’s acquisition of a *de jure* controlling interest in Clearwire. *Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008), *aff’d*, Order on Reconsideration, 27 FCC Rcd 16478 (2012). Clearwire’s post-2008 acquisitions have also been subject to Commission review and approval and attributed to Sprint. *See* Letter from Angela Kung, Counsel to Clearwire, to Marlene Dortch, FCC Secretary (March 26, 2013).

⁵ *See* Joint Opposition of Verizon Wireless, SpectrumCo, and Cox TMI Wireless, WT Docket No. 12-4, at 64 (Mar. 2, 2012) (“The Commission does not address or weigh alleged harms in the context of a transaction unless they are ‘transaction-specific’ – *i.e.*, unless they directly ‘arise from the transaction.’”).

⁶ *See Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012). Sprint and Clearwire have submitted comments in the pending rulemaking proceeding explaining why the Commission should reaffirm its long-standing decision that it would be inconsistent with the public interest to increase the amount of 2.5 GHz spectrum counted under the screen. *See, e.g.*, Sprint Reply Comments, WT Docket No. 12-269, at 19-28 (Jan. 7, 2013); Clearwire Comments, WT Docket No. 12-269, at 5-7 (Nov. 28, 2012); Clearwire Reply Comments, WT Docket No. 12-269, at 2-6 (Jan. 7, 2013).

⁷ *See also* Joint Opposition to Petitions to Deny and Reply to Comments of Sprint Nextel Corporation, Starburst I, Inc., Starburst II, Inc. and SOFTBANK CORP (the “Applicants”) at 28-32 (Feb. 12, 2013) (“Applicants’ Opposition”); Applicants’ Joint Reply to Comments at 3-5 (Feb. 25, 2013).

⁸ For instance, Crest has submitting flawed studies that purport to place a higher value on Clearwire’s spectrum than the implied value in the Sprint-Clearwire transaction. Letter from Viet Dinh, Counsel to Crest, to Marlene Dortch, FCC Secretary (Apr. 8, 2013); Letter from Viet Dinh, Counsel to Crest, to Marlene Dortch, FCC Secretary (Mar. 12, 2013). *See* Applicants’ Opposition at 32-33, 36-37 (responding to Crest’s prior spectrum valuation claims).

⁹ Letter from Viet Dinh, Counsel to Crest, to Marlene Dortch, FCC Secretary (Apr. 19, 2013) (Crest April 19 Letter).

Crest offers a mishmash of disconnected allegations regarding corporate control and alternative business transactions that it claims Clearwire should pursue, but none of them are relevant to the FCC's review. For example, it tries to link the Sprint/ERIV, SoftBank/Sprint, and Sprint/Clearwire transactions as some sort of conspiracy to seize control of Clearwire's spectrum. Crest ignores that the Sprint/ERIV and Sprint/Clearwire transactions were negotiated *after* Clearwire's nearly two-year long effort to enter into a spectrum sale, joint venture or other arrangement that might improve its business prospects.¹⁰ It also ignores that each transaction was negotiated separately between different sets of independent parties.

Contrary to Crest's suggestions, the SoftBank/Sprint transaction is not contingent on the closing of the Sprint/Clearwire transaction. Moreover, the ERIV transaction did not give Sprint *de facto* control of Clearwire.¹¹ Clearwire is an independently managed company, and its decision to enter into the Sprint/Clearwire transaction was approved unanimously by Clearwire's board upon the unanimous recommendation of a special committee of the board consisting of disinterested directors.¹² Indeed, the Commission properly processed the Sprint/ERIV application on a *pro forma* basis under well-established Commission precedent that Crest does not even acknowledge in its filing.

Crest also continues to ignore section 310(d) of the Communications Act by asking the Commission to deny the applications in order to enable "interested parties . . . to publicly compete for Clearwire and its spectrum."¹³ This is plainly contrary to Section 310(d), under which the Commission "cannot consider whether some other proposal might comparatively better serve the public interest."¹⁴ In any event, the Commission's continued review of the transactions before it in no way prevents Crest from pursuing its business strategies.

In light of these considerations, the Commission should grant the Softbank/Sprint and Sprint/Clearwire applications promptly.

¹⁰ Crest makes a number of vague arguments based on a February 4, 2013, SEC filing that describes the negotiations between Sprint and SoftBank, including discussions about Sprint's interest in Clearwire. Crest April 19 Letter at 3. It is hardly surprising that, among the many other issues they discussed in negotiating their transaction, SoftBank and Sprint would also discuss Clearwire's ownership structure given that Sprint is Clearwire's largest shareholder and wholesale customer. None of the statements in the SEC filing supports Crest's arguments. Starburst II, Inc., Registration Statement (Form S-4), at 79-80, 83 (Feb. 4, 2013), <http://www.sec.gov/Archives/edgar/data/1560158/000119312513036887/d425100ds4.htm>.

¹¹ See Opposition of Clearwire, ULS File No. 0005480932 (Jan. 14, 2013) (opposing Crest petition for reconsideration of approval of ERIV transaction).

¹² See Applicants' Opposition at 32-34; Opposition of Clearwire, ULS File No. 0005480932, at 5-6 (Jan. 14, 2013).

¹³ Crest April 19 Letter at 5.

¹⁴ *Application of Citadel Communications Co. and Act III Broadcasting of Buffalo, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 3842, ¶ 16 (1990); see also SoftBank/Sprint Opposition at 34-38.

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Respectfully submitted,

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