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Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands, AU Docket No. 13-178; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269

Dear Ms. Dortch:

This summer, Sprint's CEO stated that its deployment of a nationwide LTE network on its 2.5 GHz spectrum will help give Sprint "competitive parity" with its rivals.¹ It is time for the Commission to provide "regulatory parity" across the wireless industry by adding all suitable and available spectrum to its spectrum screen.

The Commission must update the screen to include the remaining Broadband Radio Service (BRS) spectrum, the Educational Broadband Service (EBS) spectrum, and the AWS-4 spectrum *before* the H block auction process starts. On September 13, the FCC announced that the PCS H Block auction will start in four months – with applications to participate in the auction now due in only six weeks.² As it stands today, however, the spectrum screen cannot accurately evaluate potential competitive harms from spectrum concentration because it omits substantial amounts of spectrum that are being used to provide commercial mobile broadband services. In fact, the same two companies that have publicly expressed their intent to bid for H Block licenses already hold substantial spectrum that is *not* included in the screen, but should be.

First, the Commission must add 132 MHz of BRS and EBS spectrum in the 2.5 GHz band to the screen, in addition to the 56 MHz that is currently included, for a total of 188 MHz from the 2.5 GHz band. As numerous parties have made clear in prior filings, the 2.5 GHz spectrum is –

¹ Phil Goldstein, *Sprint plans to use 2.5 GHz spectrum to catch up to Verizon, AT&T in LTE*, FierceWireless, Aug. 29, 2013, available at <http://www.fiercewireless.com/story/sprint-plans-use-25-ghz-spectrum-catch-verizon-at-t/2013-08-29#ixzz2edLQFuJi> (last visited Sept. 23, 2013).

² *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014*, AU Docket No. 13-178, Public Notice, DA 13-1885 (Sept. 13, 2013). The Public Notice states that short-form applications are due November 5, 2013.

and has been – suitable and available for commercial mobile use.³ Moreover, the Commission itself has identified the full 194 MHz of BRS/EBS spectrum as among the “most commonly deployed [mobile broadband spectrum] bands” in the United States and declared that it is “available for mobile broadband” in this country.⁴

Not only is this spectrum available for commercial use, but *it has in fact already been put to use to provide mobile services*. By its own account, prior to its acquisition by Sprint this year, Clearwire stated that it has “approximately 140 MHz of spectrum on average across [its] national spectrum footprint”⁵ and had deployed “a capacity-rich 4G mobile broadband network” that “relies upon BRS licenses and excess capacity leases from other BRS and EBS licensees” across much of the country.⁶

To the extent any doubt remains that this spectrum should be included in the spectrum screen, the closing of the Sprint-Clearwire-Softbank transaction and Sprint’s subsequent announcements regarding its planned use of the 2.5 GHz spectrum removes it. As Sprint explained, “Clearwire’s spectrum, when combined with Sprint’s, will provide Sprint with an enhanced spectrum portfolio that will strengthen its position and increase competitiveness in the U.S. wireless industry. Sprint’s Network Vision architecture should allow for better strategic alignment and *the full utilization and integration of Clearwire’s complementary 2.5 GHz spectrum assets.*”⁷

Since closing the Sprint-Clearwire-Softbank transaction, Sprint continues to emphasize the importance of the 2.5 GHz spectrum to its LTE network plans. Deutsche Bank recently reported, based on an interview with Sprint’s CEO, that Sprint’s “primary long-term strategy is to compete on network quality by leveraging its 2.5 GHz spectrum.” According to Deutsche Bank, “Sprint believes that its 2.5 GHz licenses will enable it to achieve much faster network speeds than all of its peers by 2016 due to its ability to deploy the widest channels.”⁸

³ See, e.g., *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Comments of Verizon Wireless (filed Nov. 28, 2012), at 22-27; Reply Comments of Verizon Wireless (filed Jan. 7, 2013), at 8-14.

⁴ FCC White Paper, *The Mobile Broadband Spectrum Challenge: International Comparisons*, at 5 (Figure 1), 8 (Table 5) (Feb. 2013) (emphasis added), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-318485A1.pdf (last visited Sept. 23, 2013); see *id.* at 6 (Table 3).

⁵ Clearwire Corp. Form 10-K, at 14 (Feb. 16, 2012) (for period ending Dec. 31, 2011).

⁶ *Globalstar, Inc. Petition for Rulemaking to Reform the Commission’s Regulatory Framework for Terrestrial Use of the Big LEO MSS Band*, RM-11685, Comments of Clearwire Corporation, at 7 (filed Jan. 14, 2013).

⁷ News Release, Sprint Nextel, *Sprint to Acquire 100 Percent Ownership of Clearwire for \$2.97 per Share* (Dec. 17, 2012) (emphasis added), http://newsroom.sprint.com/article_display.cfm?article_id=2477 (last visited Sept. 23, 2013); see also *id.* (quoting Sprint CEO Dan Hesse as saying that “[t]oday’s transaction marks yet another significant step in Sprint’s improved competitive position and ... Sprint is uniquely positioned to maximize the value of Clearwire’s spectrum and efficiently deploy it to increase Sprint’s network capacity”).

⁸ Deutsche Bank Markets Research, *Takeaways from meetings with CEO*, at 1 (Sept. 10, 2013).

Sprint is not only touting its 2.5 GHz spectrum but putting it to use, developing and offering handsets that use this spectrum, and offering new unlimited service plans that are possible because of Sprint's 2.5 GHz spectrum depth:

- After closing the Sprint-Softbank transaction, Sprint announced that it plans to activate several thousand 2.5 GHz LTE base stations across the country this year.⁹ These base stations will add to the 2,000 LTE sites that Clearwire has already deployed.¹⁰ In addition, Sprint has announced that it ultimately plans to include its 2.5 GHz spectrum on 38,000 cell sites nationwide as well as on small cells and other types of deployments.¹¹ Some parties expect Sprint's 2.5 GHz deployment could reach between 50,000 and 60,000 sites.¹²
- Sprint further announced that several of its LTE handsets will include the 2.5 GHz spectrum in 2013 and that by 2014 all of its new handsets will include this spectrum.¹³ For example, Sprint plans to launch the LG G2 later this year, which will incorporate both FDD LTE and TDD LTE technologies that operate over its 2.5 GHz spectrum, as well as its 800 MHz and 1.9 GHz spectrum.¹⁴ Thus, Sprint's customers will soon be using the 2.5 GHz spectrum for LTE broadband.
- Using the capacity advantages of its 2.5 GHz spectrum, Sprint recently launched two new unlimited plans that guarantee customers unlimited talk, text, and data.¹⁵ In launching these plans, according to news reports, Sprint's CEO "said he had to complete the Clearwire deal so Sprint could have 'the capacity to be able to offer an unlimited guarantee for life'" and that "[w]ithout Clearwire's airwaves, . . . Sprint

⁹ Stephen Lawson, *Sprint promises wide rollout and device support for ex-Clearwire spectrum*, CIO (July 30, 2013), available at http://www.cio.com/article/737298/Sprint_promises_wide_rollout_and_device_support_for_ex_Clearwire_spectrum (last visited Sept. 23, 2013) ("Lawson Article").

¹⁰ *Id.*

¹¹ Phil Goldstein, *Analyst: Sprint's nationwide 2.5 GHz LTE network could be boon for tower companies* (Aug. 1, 2013), available at <http://www.fiercewireless.com/story/analyst-sprints-nationwide-25-ghz-lte-network-could-be-boon-tower-companies/2013-08-01> (last visited Sept. 23, 2013).

¹² *See, e.g., id.*

¹³ Lawson Article.

¹⁴ Kevin Fitchard, *LG's gift to Sprint: The G2 will span all of Sprint's crazy LTE networks*, GigaOm (Aug. 7, 2013), available at <http://gigaom.com/2013/08/07/lgs-gift-to-sprint-the-g2-will-span-all-of-sprints-crazy-lte-networks/> (last visited Sept. 23, 2013).

¹⁵ News Release, Sprint, *Sprint Launches Unlimited Guarantee and New Unlimited, My Way Plan* (July 11, 2013), available at <http://newsroom.sprint.com/news-releases/sprint-launches-unlimited-guarantee-and-new-unlimited-my-way-plan.htm> (last visited Sept. 23, 2013).

‘would have run out of gas’ on capacity in a few years.”¹⁶ In short, Sprint is relying on its massive BRS/EBS spectrum position to compete.

Second, the Commission must add the 40 MHz of AWS-4 spectrum to the screen. In 2012, the Commission created the AWS-4 designation for the 2000-2020 and 2180-2200 MHz bands, and expressly authorized the use of these bands for terrestrial use.¹⁷ The order confirms that the AWS-4 spectrum is both suitable and available for mobile services:

With this Report and Order, we increase the Nation’s supply of spectrum for mobile broadband by adopting flexible use rules for 40 megahertz of spectrum in the 2 GHz band. . . . Specifically, we remove regulatory barriers to mobile broadband use of this spectrum, and adopt service, technical and licensing rules that will encourage innovation and investment in mobile broadband and provide certainty and a stable regulatory regime in which broadband deployment can rapidly occur.¹⁸

In addition, AWS-4 licensees are required to begin deploying service soon, as the FCC’s rules require licensees to reach 40 percent of the population across their AWS-4 footprint by March 2017.¹⁹ In a recent Waiver Petition, Dish also confirmed that it plans to use the AWS-4 spectrum “to pursue new strategic initiatives that will facilitate its entry into the wireless market.”²⁰ Thus, the AWS-4 spectrum is both suitable and available for mobile use and should be included in the spectrum screen.

This letter is being filed pursuant to Section 1.1206 of the Commission’s rules. Please contact me with any questions.

Sincerely,



¹⁶ Sinead Carew, *Sprint promises a lifetime of unlimited data service*, Reuters (July 11, 2013), available at <http://news.yahoo.com/sprint-tweaks-pricing-promises-life-time-unlimited-data-193218448.html> (last visited Sept. 23, 2013).

¹⁷ *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz bands*, Report and Order and Order of Proposed Modification, FCC 12-151, 27 FCC Rcd. 16102 (2012).

¹⁸ *Id.* at para. 1.

¹⁹ 47 C.F.R. § 27.14(q).

²⁰ Dish, Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time, WT Docket No. 13-225, at 3 (filed Sept. 10, 2013).