



May 1, 2013

**VIA ELECTRONIC FILING**

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

Re: *Applications of Sprint Nextel Corporation, Transferor, and  
SOFTBANK CORP. and Starburst II, Inc., Transferees, for  
Consent to Transfer of Control of Licenses and Authorizations*  
IB Docket No. 12-343; IBFS File No. ISP-PDR-20121115-00007

Dear Ms. Dortch:

On April 29, 2013, DISH Network Corporation (“DISH”) filed an *ex parte* letter claiming that nearly four-year old settlements involving a U.S company called UTStarcom, Inc., (“UTSI”), are relevant, in ways wholly unexplained, to this proceeding.<sup>1</sup> They are not. Those settlements do not involve SoftBank Corp. (“SoftBank”) or Mr. Masayoshi Son, Chairman and CEO of SoftBank. The settlement documents do not name, implicate, or otherwise relate to SoftBank or Mr. Son, and are legally and factually irrelevant to this proceeding.

DISH’s letter recounts selected statements from press reports and an agreement under which the Department of Justice (the “DoJ”), due to UTSI’s “timely, voluntary and complete disclosure of facts” and “extensive remedial efforts,” decided not to prosecute UTSI under the Foreign Corrupt Practices Act (the “FCPA”) for actions arising from the conduct of a former manager of a UTSI subsidiary. The letter also cites a civil consent decree with the Securities and Exchange Commission (the “SEC”) regarding the same conduct.

DISH suggests that these settlements raise a potential issue in this proceeding because Mr. Son at one time served as the Chairman of the Board of UTSI.<sup>2</sup> Neither the DoJ or SEC settlement documents, however, even mention SoftBank or Mr. Son. This is hardly surprising. Mr. Son was not an operating officer of UTSI at any time and the alleged violations came to light

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<sup>1</sup> Letter from Pantelis Michalopoulos, Counsel for DISH Network Corporation, to Marlene Dortch, Secretary, FCC, IB Docket no. 12-343 (filed April 29, 2013) (“DISH Ex Parte”).

<sup>2</sup> Mr. Son served as a Director of UTSI from October 1995 to September 2004, and served as Chairman from October 1995 to March 2003. The settlement documents refer to misconduct occurring between 2002 and 2007.

years after Mr. Son left the Board, which he did in 2004. The FCPA-related misconduct, according to the settlement documents, involved an executive of the company's Chinese subsidiary, UTStarcom China Co., Ltd.<sup>3</sup>

Even if SoftBank had any involvement, which it did not, these matters would have no relevance to the current proceeding. The Commission consistently has held that non-adjudicated claims of non-FCC misconduct, such as those involving UTSI, are not relevant to the Commission's determinations in a transfer of control proceeding:

We will not take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity, and antitrust or anticompetitive misconduct unless it is adjudicated. In this regard, there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.<sup>4</sup>

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<sup>3</sup> DISH Ex Parte, Appendix A of Exhibit 1 at II.3. (“Executive A”, UTS-China’s CEO, approved all major business transactions entered into by UTS-China, including systems contracts. Executive A is a United States citizen.”).

<sup>4</sup> See *Policy Regarding Character Qualifications in Broadcasting Licensing*, 102 FCC 2d 1179, 1205 (1986) (sub. history omitted). See also FCC Form 603, Items 101, 102 (requiring disclosure only in the case of felony convictions or a court verdict of guilty for unlawfully monopolizing or attempting to monopolize radio communications.) The Commission had stated that it will look to its broadcast character policy rules for guidance in the wireless context. See, e.g., *In the Matter of Application of Atlantic TeleNetwork, Inc. and Cellco Partnership D/B/A Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3776 ¶ 25 (2010); *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509 (1988). The Commission has also stated that it “does not consider matters resolved in consent decrees adjudicated misconduct for purposes of assessing an applicant’s character qualifications.” *In the Matter of AT&T Wireless Services Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21550, ¶ 53 (2004).

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There have been no adverse final adjudications involving UTSI and absolutely no allegations whatsoever against SoftBank or Mr. Son. Given the utter absence of any claims against, let alone adjudicated violations involving, SoftBank or Mr. Son, the Commission has no reason to delay this proceeding or to do anything but promptly grant the pending applications.<sup>5</sup>

**SOFTBANK CORP.  
STARBURST I, INC.  
STARBURST II, INC.**

/s/ John R. Feore

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<sup>5</sup> See, e.g., *In the Matter of ACC Licensee, Inc.* 22 FCC Rcd 18535 (2007) (rejecting claims that a guilty plea by a bank in which persons controlling the licensee held positions in the bank such as Chairman of the Board and CEO during the relevant time raised a *prima facie* case that the licensee's application was not in the public interest where the individuals were not mentioned in the plea agreement as engaging in any misconduct.) SoftBank also notes that, even though the matters described in DISH's *ex parte* letter occurred four years ago, DISH chose not to provide this information until months after the pleading cycle had closed, in violation of the admonition in the public notice for this proceeding that "petitioners and commenters should raise all issues in their initial filings." Public Notice, *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*, IB Docket No. 12-343, DA 12-1924 (rel. Nov. 30, 2012) at 10.