Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation	)	IB Docket No. 12-343
	)	
For Consent to Transfer Control of Licenses and Authorizations	)	
	)	
Petitions for Reconsideration of Applications of Clearwire Corporation for *Pro Forma* Transfer of Control	)	ULS File Nos. 0005480932, *et al*.

MEMORANDUM OPINION AND ORDER, DECLARATORY RULING, AND ORDER ON RECONSIDERATION

Adopted: July 3, 2013 **Released: July 5, 2013**

By the Commission: Acting Chairwoman Clyburn and Commissioner Pai issuing separate statements.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, we consider the applications of SOFTBANK CORP. ("SoftBank"), its indirect subsidiary Starburst II, Inc. ("Starburst II"), and Sprint Nextel Corporation ("Sprint" and, together with SoftBank and Starburst II, the "Applicants") for Commission consent to transfer control to SoftBank and Starburst II of various wireless licenses and leases, domestic and international section 214 authorizations, earth station authorizations, interests in submarine cable licenses, and cable television relay service station licenses held by Sprint and its subsidiaries, and the various wireless licenses and leases held by Clearwire Corporation ("Clearwire").[1] The Applicants also request a declaratory ruling that it is in the public interest for the foreign ownership of Sprint and its licensee subsidiaries to exceed the 25 percent foreign ownership benchmark in section 310(b)(4) of the Communications Act of 1934, as amended (the "Act").[2]

2. Based on the record before us and our review of the competitive effects of the proposed transactions – the acquisition of Sprint by SoftBank and Sprint's acquisition of 100 percent of the stock of Clearwire – we find that approval of the transactions will serve the public interest. We note at the outset that the investment by SoftBank in the U.S. market differs from wireless transactions in which two domestic competitors with overlapping service areas or spectrum holdings are seeking approval to merge, thereby eliminating an existing competitor. Rather, SoftBank, which has no attributable interests in any spectrum licenses in the United States, is seeking approval, *inter alia*, to use approximately $16.64 billion to purchase shares from existing Sprint shareholders, and plans to provide an additional $5 billion to Sprint that it can invest in its network and use to provide wireless broadband service.[3]

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[1] *See 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, Public Notice, DA 12-1924, 27 FCC Rcd 14924 (Int'l Bur. 2012) ("*Nov. 30, 2012 Public Notice*"). Applicants amended the applications to reflect an agreement by Sprint to acquire the remaining shares of Clearwire that Sprint does not already own, on the condition that the Commission approves SoftBank's applications to acquire control of Sprint. *See SoftBank and Sprint File Amendment to Their Previously Filed Applications to Reflect Acquisition of De Facto Control of Clearwire,* IB Docket No. 12-343, Public Notice, DA 12-2090, 27 FCC Rcd 16056 (Int'l Bur. 2012) ("*Dec. 27, 2012 Public Notice*").

[2] 47 U.S.C. § 310(b)(4); Petition for Declaratory Ruling, File No. ISP-PDR-20121115-00007 ("Petition"); *see also Nov. 30 2012 Public Notice*, 27 FCC Rcd at 14931-32.

[3] Letter from Regina M. Keeney, counsel for Sprint, and John R. Feore, counsel for SoftBank, Starburst I, and Starburst II, to Marlene H. Dortch, Secretary, FCC at 1, dated June 11, 2013 ("Applicants June 11, 2013 *Ex Parte*").

3. We find that these proposed transactions are not likely to result in competitive or other public interest harms in the provision of mobile wireless services. In addition, we anticipate that the proposed transactions likely will result in key public interest benefits, acceleration of deployment of advanced mobile broadband services and enhanced competition in the mobile wireless market, through the increased investment by Softbank in the Sprint and Clearwire networks.

4. Further, we find that the indirect foreign ownership of Sprint and its licensee subsidiaries by SoftBank complies with section 310(b)(4) of the Act. Finally, in response to petitions for reconsideration, we affirm that the Wireless Telecommunications Bureau (the "Wireless Bureau") properly processed as *pro forma* the applications that were filed to effectuate the transfer of the shares in Clearwire held by Eagle River Holdings, LLC to Sprint. Thus, we conclude that the transactions are in the public interest, and we approve them subject to the conditions contained herein.

II. BACKGROUND

A. Description of the Applicants

1. SoftBank Corp. and Starburst II, Inc.

5. SoftBank is a publicly traded holding company organized and existing under the laws of Japan. SoftBank and its subsidiaries are engaged in various information technology and Internet-related businesses in Japan, including mobile communications, broadband infrastructure, fixed-line telecommunications, e-commerce, and web portals. SoftBank also invests in Internet-based companies throughout the world. SoftBank's wholly owned subsidiary, SOFTBANK MOBILE Corp. ("SoftBank Mobile"), is the third largest wireless carrier in Japan, with approximately 30.5 million wireless subscribers, giving it approximately 22 percent of the Japanese market as of September 30, 2012.[4] SoftBank also provides wireline broadband and telecommunications services in Japan through two wholly owned subsidiaries, SOFTBANK BB Corp. ("SoftBank BB") and SOFTBANK TELECOM Corp. ("SoftBank Telecom").[5]

6. SoftBank has no attributable interests in any spectrum licensees in the United States. SoftBank's only telecommunications interest in the United States is Japan Telecom America Inc. ("JTA"), a wholly owned subsidiary of SoftBank Telecom, which holds an international section 214 authorization.[6] JTA provides limited private line services to its sole customer, SoftBank Telecom, and has no U.S. customers. SoftBank Telecom also holds minority interests in a number of submarine cables, including the cable landing station in Maruyama, Japan used for the Japan-U.S. Cable and the Australia-Japan Cable.[7]

7. Starburst II is an indirect wholly owned subsidiary of SoftBank. It is a Delaware corporation that was created specifically in connection with this transaction.[8]

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[4] 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, Public Interest Statement, at 5 ("Public Interest Statement").

[5] *Id.* at 4-5. SoftBank BB provides residential wireline broadband service to approximately 4.22 million customers in Japan, and SoftBank Telecom provides direct connection service to approximately 1.7 million primarily corporate subscribers in Japan. *Id*. at 5.

[6] ITC-214-19970307 (old file number ITC-97-146), ITC-214-19970804-00461 (old file number ITC-97-449), and ITC-214-20040129-00035.

[7] Public Interest Statement at 6.

[8] *Id.*

2. Sprint Nextel Corporation

8. Sprint is a publicly traded Kansas corporation. Through its subsidiaries, it offers a range of wireless and wireline voice and data products and services in all 50 states.[9] Sprint is the third largest mobile wireless service provider in the United States with over 56 million customers.[10] In addition, Sprint subsidiaries hold domestic and international section 214 authorizations, earth station licenses, cable television relay service station licenses, and are licensees on nine cable landing licenses.

9. Sprint has held an ownership interest in Clearwire since 2008. That ownership interest has fluctuated, but currently is approximately 50.45 percent.[11]

3. Clearwire Corporation

10. Clearwire is a publicly traded corporation,[12] headquartered in Bellevue, Washington.[13] Although Sprint currently holds a voting interest of just over 50 percent of Clearwire, its governance is controlled by an Equityholders' Agreement, which sets forth the terms, conditions, rights and obligations of its various strategic investors.[14]

11. Clearwire provides wholesale and retail advanced mobile broadband services, and its network covers over 135.4 million people in approximately 71 markets. As of December 31, 2012, its systems served approximately 1.4 million retail subscribers and 8.2 million wholesale subscribers. Clearwire owns Broadcast Radio Service ("BRS") licenses and leases excess capacity from other BRS and Educational Broadband Service ("EBS") licensees. Clearwire does not hold any common carrier licenses nor does it provide any common carrier services.

B. Description of the Transactions

1. SoftBank Acquisition of Sprint Nextel

12. Sprint and SoftBank originally entered into agreements through which SoftBank would have paid approximately $12.1 billion to purchase shares from existing Sprint shareholders and would have invested an additional $8 billion directly in Sprint.[15] In so doing, SoftBank would have acquired

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[9] Sprint's subsidiaries include Sprint Communications Company, L.P., Virgin Mobile, L.P., and Sprint Spectrum, L.P. *See* Public Interest Statement at 3, n.3. Sprint recently acquired Personal Communications Service ("PCS") spectrum licenses and customers from U.S. Cellular in certain markets. *See Wireless Telecommunications Bureau Grants Consent to the Assignment of Portions or all of Three Personal Communications Service Licenses Covering Parts of Illinois, Indiana, Michigan, Missouri, and Ohio from United States Cellular Corporation to Sprint Nextel Corporation*, Public Notice, DA 13-522, 28 FCC Rcd 3077 (WTB 2013).

[10] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Annual Mobile Wireless Competition Report, 28 FCC Rcd 3700, 3754, ¶ 53 (rel. Mar. 21, 2012) ("*Sixteenth Annual Competition Report*").

[11] 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, Amendment at 2-3, dated Dec. 20, 2012 ("Amendment").

[12] Letter from Angela Y. Kung, Mintz Levin, counsel for Clearwire Corporation, to Marlene H. Dortch, Secretary, FCC, dated Apr. 4, 2013 ("Clearwire Apr. 4, 2013 *Ex Parte*").

[13] Public Interest Statement at 4.

[14] Clearwire Apr. 4, 2013 *Ex Parte* at 1.

[15] Public Interest Statement at 1.

approximately a 70 percent indirect interest in Sprint, with the remaining interest held by existing Sprint shareholders.[16] On June 10, 2013, however, SoftBank and Sprint modified their merger agreement to change certain terms related to the purchase of Sprint shares.[17] The payment for Sprint shares has increased from approximately $12.1 billion to $16.64 billion, and SoftBank will acquire approximately a 78 percent ownership in Sprint upon closing.[18] SoftBank's direct investment in Sprint will be reduced to $5 billion.[19] The total value of the transaction will increase from approximately $20.1 billion to $21.6 billion.[20] On June 25, 2013, the Sprint shareholders approved the SoftBank offer.[21]

13. Under the agreements, SoftBank has established a U.S. holding company, Starburst I and two additional U.S. subsidiaries, Starburst II, which is wholly owned by Starburst I, and Starburst III, Inc. ("Merger Sub"), which is wholly owned by Starburst II.[22] As part of the proposed transaction, Sprint will merge with Merger Sub, with Sprint being the surviving entity.[23] After consummation of the transaction, Starburst II will wholly own and control Sprint. SoftBank, through Starburst I, will own approximately 78 percent of the shares of Starburst II,[24] and the existing shareholders of Sprint will own the remaining shares of Starburst II.[25] Sprint and its subsidiaries will continue to hold all of the Commission authorizations they currently hold.[26] The Applicants state that, by virtue of SoftBank's acquisition of an approximately 78 percent indirect interest in Sprint, SoftBank also will indirectly acquire Sprint's interest in Clearwire.[27]

14. The Applicants assert that the proposed transaction will benefit consumers by promoting greater wireless competition and broadband innovation and deployment. They note that the money that SoftBank will invest in Sprint will allow it to strengthen its balance sheet and invest in its network and its broadband wireless service.[28] The Applicants also assert that Sprint's proposed acquisition of complete ownership of Clearwire (described below), while not a prerequisite to SoftBank's acquisition of Sprint, will increase the public interest benefits associated with the SoftBank acquisition by providing the financial resources needed to transition Clearwire's network to Long Term Evolution ("LTE") technology

[16] *Id.* at 6-7.

[17] Applicants June 11, 2013 *Ex Parte*. *See* Sprint Nextel Corporation Schedule 14A, *at* http://www.sec.gov/Archives/edgar/data/101830/000119312513254881/d552426ddefa14a.htm.

[18] Applicants June 11, 2013 *Ex Parte* at 1.

[19] *Id.* at 1 n.1.

[20] *Id.* at 2.

[21] *See* Sprint Shareholders Overwhelmingly Approve Merger Agreement with SoftBank, Sprint News Release, dated June 25, 2013, *available at* http://newsroom.sprint.com/news-releases/sprint-shareholders-overwhelmingly-approve-merger-agreement-with-softbank.htm.

[22] Applicants June 11, 2013 *Ex Parte* at 7.

[23] *Id*.

[24] SoftBank will have the right to designate six of Starburst II's 10 directors. The remaining directors will consist of the CEO and three other current directors of Sprint. *Id*. at n.11.

[25] Applicants June 11, 2013 *Ex Parte* at 1.

[26] Public Interest Statement, Attachment 1 (illustrating the structure of the proposed transaction).

[27] Public Interest Statement at 9.

[28] SoftBank has already invested $3.1 billion in the form of newly issued convertible bonds. Public Interest Statement at 8.

and improve wireless broadband service to Clearwire and Sprint customers and enable Sprint to use Clearwire's 2.5 GHz spectrum more effectively.[29] The Applicants also contend that, because SoftBank and Sprint are not competitors, and SoftBank has no attributable interests in any other domestic wireless carriers, its acquisition of a controlling interest in Sprint will not have adverse competitive effects or other public interest harms.[30]

2. Sprint Nextel Acquisition of Clearwire

15. After the applications for the SoftBank acquisition of Sprint were filed, Sprint proposed to acquire the remaining shares of Clearwire that Sprint does not already own for $2.97 per share, an aggregate purchase price of approximately $2.2 billion,[31] on the condition that the Commission approve SoftBank's applications to acquire control of Sprint.[32] On December 20, 2012, Applicants filed an amendment to their applications seeking approval of this transaction.[33] On January 8, 2013, DISH Network Corporation ("DISH") stated that it had approached Clearwire with an offer to purchase all of the Clearwire shares at $3.30 per share.[34] In response to the offer from DISH, on May 21, 2013, Sprint increased its offer for the remaining shares of Clearwire to $3.40 per share.[35] DISH then issued a tender offer for Clearwire shares on May 29, 2013,[36] which the Clearwire Board endorsed, at a price of $4.40 per share.[37] On June 20, 2013, Sprint increased its offer for the remaining Clearwire shares it does not own to $5.00 per share, and the Clearwire Board changed its recommendation to endorse the Sprint proposal.[38] On June 26, 2013, DISH withdrew its tender offer for Clearwire shares.[39] The Clearwire shareholders are currently scheduled to vote on the final Sprint offer on July 8, 2013.[40]

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[29] Amendment at 4-6.

[30] Public Interest Statement at 13-30.

[31] Amendment at 3. *See also* Sprint to Acquire 100 Percent Ownership of Clearwire for $2.97 per Share, Sprint News Release, dated Dec. 17, 2012, *available at* http://newsroom.sprint.com/news-releases/sprint-to-acquire-100-percent-ownership-of-clearwire-for-297-per-share.htm.

[32] Amendment at 1-4.

[33] *Id.* at 1.

[34] DISH Statement Regarding Clearwire, DISH News Release, dated January 8, 2013, *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=732322.

[35] *See* Sprint Submits Increased Offer for Clearwire, Sprint News Release, dated May 21, 2013, *available at* http://newsroom.sprint.com/news-releases/sprint-submits-increased-offer-for-clearwire.htm.

[36] *See* DISH Network Announces Tender Offer in Letter to Clearwire Board of Directors, DISH news release, dated May 29, 2013, *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=767990. *See also* DISH Network Corporation Offer to Purchase *at* http://www.sec.gov/Archives/edgar/data/1001082/000104746913006617/a2215502zex-99_a1i.htm.

[37] Clearwire Special Committee and Board of Directors Unanimously Recommend Stockholders Tender Into DISH Network $4.40 Per Share Tender Offer, Clearwire news release, dated June 12, 2013, *available at* http://corporate.clearwire.com/releases.cfm.

[38] Letter from Regina M. Keeney, counsel for Sprint, Howard J. Symons, counsel for Clearwire, and John R. Feore, counsel for SoftBank, Starburst I, and Starburst II, to Marlene H. Dortch, Secretary, FCC, dated June 20, 2013, at 1 ("Sprint/Clearwire/SoftBank June 20, 2013 *Ex Parte*").

[39] DISH Network Announces Withdrawal of Clearwire Tender Offer, DISH News Release dated June 26, 2103, available at http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=774018.

[40] *See* Sprint/Clearwire/SoftBank June 20, 2013 *Ex Parte* at 1.

16. Under the agreement, Collie Acquisition Corp., a wholly owned subsidiary of Sprint, will be merged into Clearwire, with Clearwire as the surviving corporation.[41] After consummation of the merger, Sprint, which will be controlled by SoftBank, will have 100 percent stock ownership in and control of Clearwire, and the Equityholders' Agreement among Clearwire, Sprint and the other strategic investors in Clearwire that currently determines the governance of Clearwire will be terminated.[42]

17. The Applicants claim that the transaction will eliminate the inefficiencies created by the current ownership and governance current structure of Clearwire and allow Clearwire's customers to benefit fully from not only Sprint's resources and expertise, but also SoftBank's resources and expertise.[43] The Applicants further claim that increasing Sprint's approximately 50.45 percent interest in Clearwire to 100 percent will have no adverse competitive effects and that similarly, SoftBank's indirect acquisition of a controlling interest in Clearwire raises no competitive concerns.[44]

C. Transaction Review Process

18. On November 16, 2012, the Applicants filed applications pursuant to sections 214 and 310(d) of the Act[45] and the Cable Landing License Act[46] seeking Commission consent to the transfer of control of various wireless licenses and leases, domestic section 214 authority, international section 214 authorizations, earth station authorizations, interests in submarine cable licenses, and cable television relay service station licenses held by Sprint and its subsidiaries, and by Clearwire to SoftBank and Starburst II.[47] On November 30, 2012, the International Bureau released a public notice announcing that the applications were accepted for filing and sought comment on the proposed transaction, establishing a docket for the proposed transaction, IB Docket No. 12-343, and designating the *ex parte* status of the Applications as permit-but-disclose under the Commission's rules.[48]

19. On December 20, 2012, the Applicants filed an Amendment to supplement their previously filed applications to reflect Sprint's proposed acquisition of control of Clearwire.[49] On December 27, 2012, the International Bureau issued a public notice seeking comment on this Amendment and revised the comment cycle in the proceeding.[50] Petitions to deny were due January 28, 2013,

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[41] Amendment at 3. For a description of the agreement, *see generally* Amendment; *Agreement and Plan Of Merger By and Among Sprint Nextel Corporation, Collie Acquisition Corp. and Clearwire Corporation*, dated as of December 17, 2012, attached as Exhibit 2.1 to Form 8-K of Sprint Nextel Corporation, Dec. 18, 2012, *available at* http://www.sec.gov/Archives/edgar/data/101830/000119312512505717/d456262dex21.htm ("Merger Agreement").

[42] *Id.* at 4.

[43] *Id.* at 5-6.

[44] *Id.* at 6-7.

[45] 47 U.S.C. §§ 214, 310(d).

[46] 47 U.S.C. §§ 34-39.

[47] Public Interest Statement.

[48] *Nov. 30, 2012 Public Notice*.

[49] *See generally* Amendment.

[50] *Dec. 27, 2012 Public Notice*. DISH alleges that the June 10, 2013 amendment to the merger agreement between Softbank and Sprint (described in paragraph 12 *supra*) requires a revised public notice period as a major amendment to the pending applications. Letter from Pantelis Michalopoulos, counsel for DISH, to Marlene H. Dortch, Secretary, FCC, dated June 12, 2013 ("DISH June 12, 2013 *Ex Parte*"). DISH cites section 1.927(h) of the Commission's rules, which requires a new public notice period for major amendments. *See id*. at 1; 47 C.F.R. § 1.927(h). The Applicants contest DISH's argument, asserting that the revised merger agreement does not constitute (continued….)

oppositions due February 12, 2013, and replies due February 25, 2013. In response to the public notice, the Commission received several petitions to deny, comments, oppositions, and reply comments.[51]

20. *Standing.* The Applicants argue that the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania ("EBS Petitioners"), Crest Financial Limited ("Crest"), Taran Asset Management ("Taran"), Crow Creek Sioux Tribe Authority ("Crow Creek Sioux"), the Communications Workers of America ("CWA"), and the CLEC Petitioners all fail to demonstrate standing to be a party to this proceeding. In particular, the Applicants contend that these parties did not show they would suffer a "direct injury" that is "distinct and palpable"; that this injury is "fairly traceable" to the Commission's grant of the challenged application; and "that it is likely, as opposed to merely speculative, that the alleged injury would be prevented or redressed" if the application were denied.[52] EBS Licensee Hispanic Information and Telecommunications Network, Inc. ("HITN") states that the two EBS Petitioners do not have standing because they have no connection to the markets they examine and are not affected by the showings for which they seek review.[53] The two EBS Petitioners and Crest both dispute the Applicants' contentions regarding standing.[54] The Applicants also argue that an *ex parte* letter filed by the Minority Media and Telecommunications Council ("MMTC")[55] is untimely and the Commission should not consider the issues raised by MMTC.[56] Given the nature of the concerns these entities raise, we do not consider it necessary to resolve the issue of their standing or the timeliness of the MMTC letter; rather, we will address their arguments as part of our review of the transaction.

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a major amendment. Letter from Regina M. Keeney, counsel for Sprint, John R. Feore, counsel for SoftBank, to Marlene H. Dortch, Secretary, FCC, dated June 13, 2013 at 1 ("Applicants June 13, 2013 *Ex Parte*"). We reject DISH's claim that the revised merger agreement constitutes a major amendment under the Commission's rules that warrants a new public notice comment period. As section 1.927(h) notes, major amendments are defined in section 1.929. Nowhere in that section is an amendment to a merger agreement like that now before us included in its provisions. Section 1.929(k) provides that any change not specifically listed in the preceding sections of 1.929 are considered to be minor amendments, which are not subject to an additional public notice comment period.

[51] A list of the filings in this proceeding is contained in Appendix A. On March 26, 2013, Line Systems, Inc. ("LSI") filed a request to withdraw its petition, and on April 16, 2013, amended its request. *See* Letters from James C. Falvey, Eckert Seamans, counsel for LSI, to Marlene Dortch, Secretary, FCC, dated Mar. 26. 2013 and Apr. 16, 2013 ("LSI Mar. 26, 2013 *Ex Parte*" and "LSI Apr. 16, 2013 *Ex Parte*"). Pursuant to section 1.935 of the Commission's rules, LSI submitted a declaration from an officer of LSI certifying that LSI did not receive any consideration for its withdrawal of its Petition. 47 C.F.R. § 1.935. In the Affidavit, Mr. Kevin McGeary, LSI Vice President, explains that Sprint Nextel and LSI reached an agreement to settle an access charge dispute pending in federal court, that LSI unilaterally decided to withdraw its petition, and that the agreement includes no discussion or consideration for LSI's withdrawal of its petition filed in this transaction. LSI Apr. 16, 2013 *Ex Parte*, McGeary Affidavit. Based on our review of LSI's petition, its withdrawal request, and the related declaration under section 1.935, we find that withdrawal of the LSI Petition will further the public interest, and we hereby approve the withdrawal.

[52] Sprint Nextel Corporation, SOFTBANK CORP., Starburst I, Inc., Starburst II, Inc., Joint Opposition to Petitions to Deny and Reply to Comments at 55-58, dated Feb. 12, 2013 ("Joint Opposition").

[53] HITN Opposition at 3.

[54] EBS Petitioners Petition at 2, n.2; EBS Petitioners Reply at 1-2; Crest Reply at 29, n.95.

[55] Letter from David Honig, President, Minority Media and Telecommunications Council, to Chairwoman Mignon Clyburn, FCC, dated May 28, 2013 ("MMTC May 28, 2013 *Ex Parte*").

[56] Letter from Antoinette Cook Bush, counsel for Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, dated May 30, 2013 ("Sprint Nextel May 30, 2013 *Ex Parte*").

21. *Abeyance Request.* DISH Network L.L.C. filed a request on January 16, 2013, to hold these proceedings in abeyance, arguing that the applications are not ripe for consideration because Sprint's acquisition of control over Clearwire is subject to, among other things, a competing offer made by DISH and a vote of the non-Sprint shareholders on whether to accept Sprint's offer in light of DISH's offer.[57] The Applicants, as well as Crest, opposed the request.[58] On April 17, 2013, DISH again asked the Commission to hold this proceeding in abeyance, this time because of the pendency of DISH's proposal to merge with Sprint.[59] The Applicants again opposed the request, arguing, among other points, that the Commission's approval of the SoftBank/Sprint applications would not prevent DISH's ability to make competing offers for Sprint.[60]

22. On June 21, 2013, DISH filed with the SEC stating that it has "decided to abandon its efforts to acquire Sprint Nextel Corporation."[61] Further, on June 26, 2013, DISH announced that it has withdrawn its tender offer for Clearwire shares.[62] Accordingly, we find the DISH requests are moot.

III. STANDARD OF REVIEW

23. Pursuant to sections 214(a) and 310(d) of the Act,[63] and the Cable Landing License Act,[64] we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses, authorizations, and spectrum leasing arrangements will serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,[65] other applicable statutes, and the Commission's rules.[66] If the

[57] DISH Network, L.L.C., Request to Hold Proceeding in Abeyance, dated Jan. 16, 2013 ("DISH Request to Hold Proceeding in Abeyance").

[58] Applicants Opposition to Petition for Abeyance, dated Jan. 23, 2013; Crest Opposition to Hold Proceeding in Abeyance, dated Jan. 25, 2013.

[59] DISH Supplement to Request to Hold Proceeding in Abeyance, dated Apr. 17, 2013.

[60] Applicants Opposition to Supplement to Request to Hold Proceeding in Abeyance, dated Apr. 19, 2013.

[61] *See* DISH Network Corporation Form 8-K, dated June 21, 2013.

[62] DISH Network Announces Withdrawal of Clearwire Tender Offer, DISH News Release, dated June 26, 2103, *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=774018.

[63] 47 U.S.C. §§ 214(a), 310(d).

[64] 47 U.S.C. §§ 34-39. The Cable Landing License Act provides that approval of a license application may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service." 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. *See, e.g., SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, ¶ 16, n.59 (2005) ("*SBC-AT&T Order*"); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18442, ¶ 16, n.58 (2005) ("*Verizon-MCI Order*").

[65] Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *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*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10710, ¶ 28 (2012) ("*Verizon Wireless-SpectrumCo Order*").

[66] *See, e.g.*, *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses*, WT Docket No. 12-240, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16463-64, ¶ 10 (2012) ("*AT&T-WCS Order*"); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710, ¶ (continued….)

transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[67] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[68] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[69]

24. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.[70] Our public interest analysis also entails assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.[71] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[72]

25. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[73] The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards

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28; *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 26 FCC Rcd 17589, 17598-99, ¶ 23 (2011) ("*AT&T-Qualcomm Order*").

[67] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16463-64, ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710, ¶ 28; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17598-99, ¶ 23.

[68] *Id.*

[69] *Id.*

[70] *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17603, ¶ 32, n.96; *AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement,* WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716, ¶ 22 (2010) ("*AT&T-Verizon Wireless Order*"); *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13928, ¶ 28 (2009) ("*AT&T-Centennial Order*"); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition For Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17461, ¶ 27 (2008) ("*Verizon Wireless-ALLTEL Order*"); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17580, ¶ 20 (2008) ("*Sprint Nextel-Clearwire Order*").

[71] *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752, ¶ 143; *AT&T-Centennial Order*, 24 FCC Rcd at 13928, ¶ 28.

[72] *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599, ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928, ¶ 28.

[73] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16464-65, ¶ 12; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10710, ¶ 29.

governing the Commission's competitive review differ somewhat from those applied by the DOJ.[74] Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction.[75] The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.[76] The DOJ review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.[77] The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[78] If the Commission is unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.[79] Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.[80]

IV. QUALIFICATIONS OF APPLICANTS

26. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[81] Therefore, we must determine whether the transferors to the proposed transactions meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the

[74] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17599-600, ¶ 25*; AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717, ¶ 24.

[75] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13929, ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462, ¶ 28.

[76] 15 U.S.C. § 18.

[77] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13929, ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462, ¶ 28.

[78] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17599, ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717, ¶ 24.

[79] 47 U.S.C. § 309(e); *see also News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3277, ¶ 22 (2008); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order*,* 17 FCC Rcd 20559, 20574, ¶ 25 (2002).

[80] 47 U.S.C. §§ 214(c) (authorizing the Commission to impose "such terms and conditions in its judgment the public convenience and necessity may require"), 303(r) (authorizing the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Communications Act); *see, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711, ¶ 30; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17600, ¶ 26; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717-18, ¶ 25.

[81] 47 U.S.C. §§ 308, 310(d); *see also*, *e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712, ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600, ¶ 27.

Commission's rules.[82] Section 310(d) also obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.[83]

27. *Discussion.* The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.[84] As noted above, the Commission also considers the qualifications of the proposed transferee. In this case, several parties have raised concerns regarding the qualifications of SoftBank and Sprint, in addition to certain foreign ownership considerations that we address in Section VII below.[85] As we discuss below, we find that the concerns do not warrant a finding that SoftBank is not qualified to indirectly hold the licenses and authorizations held by Sprint and Clearwire because those claims are either speculative or otherwise adequately addressed. We also find no basis to question the qualifications of Sprint and Clearwire.

28. Crest argues that both SoftBank and Sprint face serious financial risks from their current level of debt and that this will be exacerbated if the transactions are consummated.[86] Crest asserts that SoftBank faces serious debt concerns that will become more acute after SoftBank takes on Sprint's debt.[87] According to Crest, this creates a risk that Sprint will be "forced not to develop products and services that create lasting value to consumers, but rather only to develop products and services that will result in the greatest immediate cash flow."[88] In addition, Crest contends that the Commission must consider the financial qualifications of the Applicants and that it considers debt levels when necessary, as it did in its review of the NextWave transaction.[89] Crest also maintains that the Commission has repeatedly provided for an exception to its practice of refraining from weighing in on questions of financing when there are specific allegations of fact that warrant such an inquiry under the Commission's public interest mandate.[90]

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[82] *See* 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; *see also, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712, ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 175600-01, ¶ 27.

[83] *See, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712, ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 175601, ¶ 28; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720, ¶ 29.

[84] *See, e.g.*, *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.*, WT Docket No. 06-114, Memorandum Opinion and Order, 21 FCC Rcd 14863, 14872, ¶ 16 (2006); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, WT Docket No. 06-96, Memorandum Opinion and Order, 21 FCC Rcd 13580, 13589-90, ¶ 14 (2006).

[85] As explained in Section VII below, we find that the level of foreign ownership in Sprint and its Licensee Subsidiaries that would result from the transactions would not pose a risk to competition; nor would it serve the public interest to prohibit this level of indirect foreign ownership under section 310(b)(4) of the Act.

[86] *See* Crest Reply at 20-22.

[87] Crest Petition to Deny at 26, 35-36; Crest Reply at 20-24.

[88] Crest Petition to Deny at 26.

[89] Crest Reply at 23 (citing 47 U.S.C. §§ 308(b), 309(j)(17)(A)(ii) and *Applications of NextWave Personal Communications, Inc. for Various C-Block Broadband PCS Licenses*, Memorandum Opinion and Order, 12 FCC Rcd 2030 (WTB 1997)).

[90] Crest Reply at 23-24 (citing *Applications of Shareholders of GAF Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3225 (1992) and *Motient Corp. & Subsidiaries, Transferors, & SkyTerra Communications, Transferee*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10209 (Int'l Bur., WTB, and OET 2006)).

29. The Applicants respond that Sprint will be in a stronger financial position as a result of the transaction with SoftBank and that SoftBank is a strong, financially sound company that can accommodate the additional debt it will incur to finance its investment in Sprint.[91] Further, the Applicants claim that SoftBank has a strong record of rapidly repaying debt.[92] They also assert that as a policy matter, the Commission generally does not become "enmeshed" in evaluating the amount of debt financing that is appropriate in a corporate acquisition.[93]

30. Crest also alleges that the Applicants have "jumped the gun" and have been acting as if SoftBank already owns Sprint even through the transaction was still pending with the Commission.[94] Crest cites press reports that Mr. Masayoshi Son, the CEO of SoftBank, has been making public statements regarding the post-transaction Sprint and the composition of its board of directors, meeting with Sprint representatives to plan "the synergies" of the merged company, and that SoftBank has been involved with Sprint's offer to acquire Clearwire.[95] The Applicants respond that none of these activities demonstrates that Sprint has ceded control to SoftBank but rather are appropriate activities to allow the Applicants to prepare for post-closing activities to optimize the transaction once it is consummated.[96] Further they note that the SoftBank approval rights regarding Sprint's offer for Clearwire are similar to protective covenants to block major transactions during a transaction that the Commission has previously found not to constitute an unauthorized transfer of control.[97]

31. DISH also raises concerns regarding SoftBank's reported association with UTStarcom, Inc. ("UTStarcom"). DISH cites a press report that DOJ had investigated UTStarcom for illegal bribes to employees of Chinese government-controlled telecommunications companies.[98] DISH notes that UTStarcom had entered into a non-prosecution agreement with DOJ and a consent decree with the Securities Exchange Commission ("SEC") regarding conduct encompassing bribery and failure to properly account for a payment in its financial records.[99] DISH further contends that there was a close relationship between SoftBank and UTStarcom.[100] SoftBank responds the UTStarcom settlements with DOJ and SEC do not involve either SoftBank or Mr. Son and are not relevant to this proceeding.[101]

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[91] Joint Opposition at 11-12.

[92] *Id.* at 13.

[93] *Id.* at 14 (quoting *Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 6838, 6842, ¶ 26 (Comm. Car. Bur. and Mass Media Bur.), *aff'd*, 4 FCC Rcd 8243 (1989)).

[94] Letter from Viet D. Dinh, counsel for Crest Financial Limited, to Marlene H. Dortch, Secretary, FCC, dated May 28, 2013.

[95] *Id.* at 3-4.

[96] Letter from Regina M. Keeney, counsel for Sprint Nextel Corporation, and John R. Feore, counsel for SoftBank Corp., to Marlene H. Dortch, Secretary, FCC, dated June 6, 2013.

[97] *Id.* at 2, n.7.

[98] Letter from Pantelis Michalopoulos, counsel for DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, dated Apr. 29, 2013.

[99] *Id.* A copy of the non-prosecution agreement with DOJ and the consent with the SEC are attached as Exhibits to the letter.

[100] *Id.* at 3.

[101] Letter from John R. Feore, counsel for SoftBank Corp., to Marlene H. Dortch, Secretary, FCC, dated May 1, 2013 ("SoftBank May 1, 2013 *Ex Parte*").

SoftBank asserts that the Commission has consistently held that non-adjudicated claims of non-FCC misconduct, such as those involving UTStarcom, are not relevant to transfer of control proceedings.[102] DISH replies that the Commission will consider *nolo contendere* pleas and non-FCC misconduct related to dishonesty and fraudulent conduct when assessing character qualifications.[103]

32. MediaFreedom.org and DISH filed letters citing press reports that SoftBank may have threatened banks in order to dissuade them from funding DISH's offer for Sprint. According to the cited press reports, SoftBank allegedly would hurt these banks' chances to participate in an initial public offering ("IPO") for a Chinese company in which SoftBank holds an ownership interest.[104] SoftBank responds that SoftBank is not in the position to affect the IPO of the company in question and even if it were, the claims raised by MediaFreedom.org and DISH are not relevant to this proceeding.[105]

33. Upon review of the record, we find that the allegations questioning the qualifications of the Applicants are speculative and do not provide a basis to find that either SoftBank or Sprint are not qualified. There is no evidence in the record that the level of debt that either SoftBank or Sprint would incur as a result of these transactions would likely result in any public interest harms. Nor is there evidence in the record that SoftBank has been exercising control over Sprint during the pendency of these applications. Additionally, we do not find that the alleged connection between SoftBank and the UTStarcom bribery issue is relevant to this proceeding. The Commission has previously found that consent decrees, such as the non-prosecution agreement and consent decree that UTStarcom entered into with DOJ and the SEC, will not be considered as adjudicated misconduct for the purposes of assessing an applicant's character.[106] Further, these agreements only involve UTStarcom and do not even mention SoftBank or Mr. Son. DISH merely speculates as to any relationship SoftBank or Mr. Son may have had with UTStarcom on the actions in question. As to any activities by SoftBank regarding DISH's dealing with banks to secure credit for DISH's offer for Sprint, we find these allegations to be speculative as they are based on press reports of actions that SoftBank "may have taken,"[107] and DISH has not provided any other evidence. Further, as we discuss below, we do not find the indirect foreign ownership of the post-transaction Sprint raises any public interest concerns.[108] Therefore we find nothing in the record that would undermine the basic qualifications of Sprint or SoftBank.

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[102] *Id.* at 2 (citing *Policy Regarding Character Qualifications in Broadcasting Licensing,* GN Docket No. 81-500, Report, Order and Policy Statement, 102 FCC 2d 1179, 1205 (1986) ("*Character Policy Statement*")).

[103] Letter from Pantelis Michalopoulos, counsel for DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, dated May 6, 2013.

[104] Letter from Mike Wendy, President, MediaFreedom.org, to Marlene H. Dortch, Secretary, FCC, dated May 19, 2013; Letter from Pantelis Michalopoulos, counsel for DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, dated May 16, 2013 ("DISH May 16, 2013 *Ex Parte*").

[105] Letter from John R. Feore, counsel for SoftBank Corp., to Marlene H. Dortch, Secretary, FCC, dated May 23, 2013 ("SoftBank May 23, 2013 *Ex Parte*").

[106] *Character Policy Statement,* 102 FCC 2d at 1205.

[107] We note that despite these allegations, DISH appears to have secured financing for its offer for Sprint. *See*, *e.g.*, Chicago Tribune, Dish lines up banks to finance Sprint bid: sources, dated May 15, 2013, *at* http://articles.chicagotribune.com/2013-05-15/business/sns-rt-us-sprint-deal-financingbre94e175-20130515_1_sprint-bid-dish-offer-charlie-ergen.

[108] *See* Section VII *infra*.

V. POTENTIAL PUBLIC INTEREST HARMS

A. Overview

34. In our review of applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms, that may result from the transaction.[109] Transactions raise potential competitive concerns when the post-transaction entity has the incentive and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.[110] The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in additional concentration of either or both, and thereby potentially lead to competitive harm. The Commission has used a two-part initial screen to help identify local markets where changes in market concentration or spectrum holdings from the transaction may be of particular concern.[111] As discussed below, the initial screen's comparison of subscriber shares and spectrum holdings before and after the proposed transactions would identify no changes in any markets. Regarding Sprint's acquisition of Clearwire, Clearwire's spectrum and customers already are attributed to Sprint under the attribution policies the Commission uses in applying the initial screen. Regarding SoftBank's acquisition of both Sprint and Clearwire, SoftBank has no customers or spectrum in the United States.

35. As set out in previous recent transactions orders, however, the Commission has not limited its analysis of potential competitive harms to solely those markets identified by the initial screen, when encountering other factors that may bear on the public interest inquiry.[112] Here, given the breadth of assertions regarding potential competitive harm resulting from holdings of 2.5 GHz spectrum, we examine, in particular, Sprint's acquisition of *de facto* control of Clearwire. We find, as detailed below, that the transactions before us are not likely to result in any competitive or other public interest harms in the provision of mobile wireless services.

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[109] *See, e.g.*, *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10716, ¶¶ 47-48, 10734, ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23, ¶ 81; *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8716-18, ¶¶ 22-25, 8720-21, ¶¶ 30-33.

[110] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931-32, 13939-42, 13948, ¶¶ 34, 54, 56-57, 59, 61, 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69, 17484-85, 17487-88, ¶¶ 40-43, 82-83, 91-92.

[111] First, when a proposed transaction would change horizontal market concentration in any local market, the screen identifies markets where competitive harm may be more likely through assessing such changes in market concentration, as measured by the Herfindahl-Hirschman Index ("HHI"). *See, e.g., AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8724-25, ¶ 42. Second, when a proposed transaction would increase the spectrum holdings in any local market post-transaction, the Commission undertakes a review of the competitive effects of the increase in spectrum holdings in those markets. *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716, ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602, ¶ 31; *AT&T-Centennial Order,* 24 FCC Rcd at 13938, ¶ 50.

[112] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16467, ¶ 21 (recognizing the proposition that the "Commission is not . . . limited in its consideration of potential competitive harms solely to markets identified by its initial screen" and, in addition to considering 10 local markets identified by the screen, analyzing the national market because the proposed acquisition would be in a substantial majority of local markets across the country); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716, ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10, ¶¶ 49-50 (recognizing that up to three markets could be triggered by the screen, but considering more broadly AT&T's post-transaction holdings under 1 GHz because, *inter alia*, of the record in that proceeding and the substantial holdings that the company would then have under 1 GHz).

B. Market Definitions

36. We begin our competitive analysis by determining the appropriate market definitions for these transactions, including a determination of the product market and geographic markets.[113]

37. *Product and Geographic Markets*. We continue to use the product market definition that the Commission has applied in recent transactions: a combined "mobile telephony/broadband services" product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[114] We note that no party in the proceeding challenged this mobile telephony/broadband services product market definition.

38. With respect to geographic markets, the Commission has found that the relevant geographic markets for wireless transactions generally are "local"[115] because most consumers use their mobile telephony/broadband services where they live, work, and shop (or close to those places) and so purchase their services from providers that offer and market services locally.[116] However, the Commission also has evaluated a transaction's competitive effects at the national level where a transaction exhibits certain national characteristics that provide potential cause for concern.[117] For purposes of evaluating the competitive effects of the proposed transactions, we use local markets as well as national markets, given the national characteristics of the proposed transactions.[118] We note that no party in the proceeding challenged the local or national geographic market definitions.

39. *Input Market for Spectrum*. When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the post-transaction spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the

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[113] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16468, ¶ 23; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718, ¶ 52; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602, ¶ 32.

[114] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468, ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717, ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03, ¶¶ 32-33; *AT&T-Centennial Order*, 24 FCC Rcd at 13932, ¶ 37.

[115] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468, ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718, ¶ 54; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17604, ¶ 34.

[116] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469, ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718, ¶ 56; *AT&T-Centennial Order*, 24 FCC Rcd at 13934, ¶ 41; *see also Sixteenth Annual Competition Report,* 28 FCC Rcd at 3735, ¶¶ 22-23.

[117] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468, ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718, ¶ 54; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17604-05, ¶¶ 34-37. The Commission has recognized that certain national characteristics, such as prices and service plan offerings, do not vary for most providers across most geographic markets, and that the four nationwide providers, as well as some other providers, set the same rates for a given plan everywhere and do not alter the plans they offer depending on location. *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17604, ¶ 35.

[118] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468, ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718, ¶ 54; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17604-05, ¶¶ 34-37. Sprint is currently the third largest nationwide service provider in the United States, with approximately 56 million customers, and a network that covers over 290 million people, or approximately 94 percent of the population of the mainland United States. *See* Public Interest Statement at 3; *Sixteenth Annual Competition Report*, 28 FCC Rcd at 3744, ¶ 43, Table 2. Clearwire provides service in many metropolitan areas and its network currently covers approximately 105 million people, or approximately 34 percent of the population of the mainland United States. *See Sixteenth Annual Competition Report*, 28 FCC Rcd at 3744-45, ¶ 43, Table 3.

provision of mobile telephony/broadband services.[119] The Commission has previously determined that cellular, broadband PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as Advanced Wireless Services ("AWS-1") and BRS spectrum[120] where available,[121] and most recently, Wireless Communications Services ("WCS") spectrum, all meet this definition, and they have therefore been included in the initial spectrum screen.[122]

40. Verizon Wireless and others assert that the Commission should include the remaining amount of BRS spectrum and all or nearly all of EBS spectrum in the spectrum screen because they are suitable and available for the provision of mobile telephony/broadband services.[123] In support of this argument, Verizon Wireless, Taran, DISH, and the two EBS Petitioners argue that this additional BRS and EBS spectrum already is in use, as Clearwire is broadly deploying BRS and EBS spectrum for commercial mobile services.[124] Verizon Wireless points out that the Applicants have claimed that Clearwire's 2.5 GHz spectrum will enhance their spectrum portfolio thereby strengthening their competitive position in the mobile services marketplace.[125] Verizon Wireless also asserts that the Commission has recognized that Clearwire is currently using its substantial BRS/EBS spectrum holdings to provide mobile broadband service.[126] Moreover, Verizon Wireless and Taran argue that because the Commission included 20 megahertz of WCS spectrum in the 2.3 GHz band as part of the spectrum screen

[119] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16469-70, ¶ 29; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10719, ¶ 59.

[120] In prior transactions, the Commission has decided to include 55.5 megahertz of BRS spectrum in those markets in which the transition to a new band plan suited for the provision of mobile broadband services has been completed. *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17606, n.120; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478, ¶ 65; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17596-99, ¶¶ 62-70.

[121] *See, e.g.*, *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92, ¶ 53.

[122] In the *AT&T-WCS Order*, we found that 20 megahertz of WCS spectrum – comprised of the paired A and B Blocks – are suitable and available for the provision of mobile telephony/broadband services. *See AT&T-WCS Order*, 27 FCC Rcd at 16470-71, ¶ 31.

[123] Verizon Wireless Comments; Verizon Wireless Reply. *See, e.g.,* Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, dated May 8, 2013 ("Verizon Wireless May 8, 2013 *Ex Parte*"); Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, dated Apr. 8, 2013 ("Verizon Wireless Apr. 8, 2013 *Ex Parte*"). *See* EBS Petitioners Reply at 2-4, 13-15; DISH Reply at 4-5, 11-13; Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated Apr. 5, 2013, at 2 ("DISH Apr. 5, 2013 *Ex Parte*"); Taran Petition at 9; Taran Reply at 4-5.

[124] Verizon Wireless Comments at 2; DISH Reply at 12-13, 16-17; EBS Petitioners Reply at 2-11; Verizon Wireless May 8, 2013 *Ex Parte* at 1; Verizon Wireless Apr. 8, 2013 *Ex Parte* at 1-2; Taran Reply at 4. *See generally* EBS Licensees Comments Supporting Verizon Request at 1-2, Exh. 1.

[125] Verizon Wireless Comments at 3-9; Verizon Wireless Reply at 2-3, 5-6; Verizon Wireless Apr. 8, 2013 *Ex Parte* at 2.

[126] Verizon Wireless Comments at 6. For instance, Verizon Wireless points to a February 26, 2013 FCC staff white paper, which identifies the full 194 megahertz of BRS/EBS spectrum as being available for mobile broadband services in the U.S. *See* Letter from Kathleen Grillo, Senior Vice President of Federal Regulatory Affairs, to Marlene H. Dortch, FCC, dated Mar. 4, 2013, at 1-2 ("Verizon Wireless Mar. 4, 2013 *Ex Parte*") (citing WTB/OET White Paper, "The Mobile Broadband Spectrum Challenge: International Comparisons" (Feb. 26, 2013) ("*International Spectrum White Paper*")); Verizon Wireless Apr. 8, 2013 *Ex Parte* at 2-3.

applied in the *AT&T-WCS Order*,[127] the Commission also should include the additional BRS/EBS spectrum, which these commenters assert is even more justified.[128]

41. In response, the Applicants contend that since 2008, the Commission has consistently reaffirmed the inclusion of the same amount of BRS spectrum and the exclusion of EBS spectrum when applying its spectrum screen.[129] According to the Applicants, there have not been any new developments since the Commission's analysis of spectrum holdings in the most recent transactions that would justify a significant departure from its existing spectrum screen.[130] The Applicants also contend that the issue is best addressed in the context of the Mobile Spectrum Holdings rulemaking where the Commission has developed a comprehensive record on the 2.5 GHz spectrum and other spectrum aggregation policies.[131] In addition, the Applicants note that the record in that proceeding supports continuing the Commission's current policy.[132] Moreover, the Applicants maintain that the Commission already has applied its spectrum screen and approved the aggregation of the Sprint/Clearwire spectrum holdings in the 2.5 GHz band in the *Sprint-Nextel-Clearwire Order* so that the Commission need not and should not reexamine that public interest determination here.[133]

42. We do not find the proposed transactions to be the appropriate proceeding to consider whether to modify the screen to include more than 55.5 megahertz of the 2.5 GHz band. As discussed below, for purposes of the screen we would attribute the same amount of spectrum to the same parties before and after these transactions; therefore, if the screen were applied, it would identify no markets whether or not we added the additional spectrum requested. As such, we decline to modify the spectrum screen here. We note that even if we were to consider as relevant the competitive effects of Sprint's entire post-transaction holdings in the 2.5 GHz band, we would not find the proposed transactions to likely result in competitive harm. We also note the ongoing rulemaking proceeding where many of the same arguments are raised regarding whether to include the 2.5 GHz band and where additional issues relevant to consideration of the 2.5 GHz band are under review.[134] Contrary to assertions by Verizon

[127] *See AT&T-WCS Order*, 27 FCC Rcd at 16470-71, ¶ 31.

[128] Taran Reply at 4-5; Verizon Wireless Comments at 6; Verizon Wireless Reply at 5-6; Letter from Tamara Preiss, Vice President of Federal Regulatory Affairs, to Marlene H. Dortch, FCC, dated Apr. 26, 2013, at 2; Letter from Tamara Preiss, Vice President of Federal Regulatory Affairs, to Marlene H. Dortch, FCC, dated Apr. 18, 2013, at 2. Taran also argues that the timing of these proposed transactions is an attempt to obtain approval before the Commission modifies its spectrum aggregation rules in the Mobile Spectrum Holdings proceeding. Taran Petition at 9. However, Taran provides no support for its assertion.

[129] Joint Opposition at iv, 28-32.

[130] *Id.* at 29; Applicants Joint Reply to Comments at 4-5, dated Feb. 25, 2013.

[131] Letter from Regina M. Keeney, Lawler, Metzger, Keeney & Logan, LLC, counsel for Sprint-Nextel, and John Feore, Dow Lohnes PLLC, counsel for SoftBank, to Marlene H. Dortch, Secretary, FCC, dated May 1, 2013 at 2 ("Applicants May 1, 2013 *Ex Parte*"); Letter from Regina M. Keeney, Lawler, Metzger, Keeney & Logan, LLC, counsel for Sprint-Nextel, and John Feore, Dow Lohnes PLLC, counsel for SoftBank, to Marlene H. Dortch, Secretary, FCC, dated Mar. 12, 2013 at 4 ("Applicants Mar. 12, 2013 *Ex Parte*").

[132] Joint Opposition at 30. *See also* Applicants Joint Reply to Comments at 3-4; CTN and NEBSA Reply at 1-2 (asserting that this proceeding is not the place to consider a modification of the screen).

[133] Joint Opposition at 31-32; Applicants Mar. 12, 2013 *Ex Parte* at 3-4. *See also* Applicants May 1, 2013 *Ex Parte* at 1-2.

[134] *See, e.g.,* AT&T Comments at 37-41, 47-48, WT Docket No. 12-269; Verizon Wireless Comments at 23-26, WT Docket No. 12-269; NTCH Comments at 5-6, WT Docket No. 12-269; Sprint Reply Comments at 19-27, WT Docket No. 12-269; Clearwire Comments at 5-7, WT Docket No. 12-269, CCA Comments at 8, 15, WT Docket No. (continued….)

Wireless and Taran, we find distinguishable our decision to add 20 megahertz of WCS spectrum to the screen in the context of the AT&T/WCS transactions because in that case our decision largely was based on recent major changes to the relevant service rules, a factor that is not applicable in the instant case.[135] For all these reasons, we decline to revise the Commission's initial spectrum screen in the context of this proceeding.

43. *Market Participants*. As in previous transactions, we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, BRS and WCS spectrum to be market participants, but we will continue to assess the effect of Mobile Virtual Network Operators ("MVNOs") and resellers in our competitive evaluation.[136]

C. Competitive Analysis of the Proposed Transactions

44. We start by noting that the initial screen, if it were applied, would identify no markets for further review. First, as to the SoftBank/Sprint transaction, SoftBank does not hold any attributable interest in any U.S. spectrum licenses or leases,[137] or provide mobile telephony/broadband service in any local market in the United States.[138] Accordingly, there would be no change in spectrum or customer concentration if we were to apply the initial screen before and after SoftBank's proposed acquisition of a 78 percent ownership stake in Sprint (without regard to whether it has 100 percent ownership in Clearwire). Second, as to the Sprint/Clearwire transaction, the Commission's attribution policies for applying the initial screen are to attribute the spectrum holdings and the customers of entities with more than a 10 percent ownership affiliation to both entities.[139] Since the Commission approved Sprint's acquisition of substantial ownership interests in Clearwire in 2008, Sprint has held, for purposes of our competitive analysis (including the initial screens), an attributable interest in Clearwire's spectrum holdings and mobile telephony/broadband retail customers.[140] Therefore, for purposes of applying the

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12-269; Free Press Comments at 19, WT Docket No. 12-269. *See generally Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, 11722-23, ¶¶ 28-29, 11725-28, ¶¶ 33-39 (2012).

[135] *See AT&T-WCS Order*, 27 FCC Rcd at 16470-71, ¶ 31, n.88 (citing *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, WT Docket No. 07-293, *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Order on Reconsideration, 27 FCC Rcd 13651, 13668, ¶ 36, 13677-78, ¶ 63, 13682-83, ¶¶ 73-75, and 13691-92, ¶ 100 (2012). We note that the record in the AT&T/WCS transactions was largely uncontested on adding WCS spectrum to the screen.

[136] *See, e.g., AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722, ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936, ¶ 45; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent and Long-Term De Facto Lease of Licenses*, WT Docket No. 04-254, *Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC, for Consent to Assignment of Licenses*, WT Docket No. 04-323, Memorandum Opinion & Order, 19 FCC Rcd 21522, 21563, ¶ 92 (2004) ("*Cingular-AT&T Wireless Order*").

[137] Public Interest Statement at 4-6. SoftBank's only telecommunications interest in the United States is JTA, which is a wholly owned subsidiary of SoftBank Telecom. *Id.* at 5.

[138] Applicants Mar. 12, 2013 *Ex Parte* at 2.

[139] *See, e.g.*, *Sprint-Nextel-Clearwire Order*, 23 FCC Rcd 17570, 17601-02, ¶ 78 (declining to attribute interests below 10 percent). *See also AT&T-Centennial Order,* 24 FCC Rcd at 13917, ¶ 7, 13946-47, ¶¶ 71-74.

[140] In 2008, Sprint held an approximate 51 percent interest in Clearwire. *See Sprint-Nextel-Clearwire Order*, 23 FCC Rcd at 17601, ¶ 77. Sprint now holds a 50.45 percent interest in Clearwire. Amendment at 3. Generally, the Commission attributes ownership interest of 10 percent or more. *See, e.g.*, *Sprint-Nextel-Clearwire Order*, 23 FCC (continued….)

initial screen, the proposed transactions do not result in any changes in the amount of spectrum and retail customers attributed to Sprint.[141] We next turn to evaluating the competitive effects of the changes in ownership resulting from the proposed transactions, with a focus on the various arguments raised by petitioners and commenters.

1. Background

45. *Clearwire as an Independent Provider*. Crest and Taran, minority shareholders in Clearwire, and DISH, an entity that has been pursuing strategic transactions with Sprint and Clearwire,[142] assert that the Commission should deny or condition the proposed transactions in order to maintain the independence of Clearwire as a service provider.[143] For example, Taran claims that if Sprint obtains *de facto* control of Clearwire, the U.S. wireless market would lose a stand-alone wholesale broadband provider, potentially foreclosing the 2.5 GHz band from innovative uses.[144] Taran and DISH further argue that, post-transaction, Sprint could have an incentive to limit roaming opportunities for domestic and international providers in the 2.5 GHz band.[145] Crest requests that, if the Commission does not deny both the proposed transactions, it should at least deny the Sprint/Clearwire transaction and mandate divestiture of Sprint's controlling interest in Clearwire by reversing the Sprint/Eagle River transaction.[146]

46. The Applicants contend that the record contains no credible evidence that demonstrates a likelihood of competitive harm and that, to the contrary, the proposed transaction will increase competition by making Sprint stronger.[147] In particular, the Applicants contend that that the record does not support assertions regarding the provision of wholesale service because Clearwire's current wholesale business relies primarily on Sprint as a customer; Clearwire would continue to honor its contractual

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Rcd at 17601-02, ¶ 78 (declining to attribute interests below 10 percent). *See also AT&T-Centennial Order,* 24 FCC Rcd at 13917, ¶ 7, 13946-47, ¶¶ 71-74.

[141] The Commission generally has not applied its spectrum screen or its earlier spectrum cap when the concentration of attributable spectrum is not changed by a proposed transaction. *See, e.g.*, *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3778, ¶ 29 (WTB/Int'l Bur. 2010) (noting that the spectrum screen is not implicated because Atlantic Tele-Network did not hold spectrum in any of the markets that are the subject of the divestiture from Verizon Wireless); *Applications of VoiceStream Wireless Corporation, Powertel, Inc. Transferors, and Deutsche Telekom, AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9824, ¶ 79 (2001) (applying the CMRS spectrum cap only in markets in which Deutsche Telekom, which did not hold spectrum assets in the United States at that time, was acquiring licenses from VoiceStream that overlapped with licenses that Deutsche Telekom was acquiring from Powertel).

[142] *See* ¶ 15 *supra.*

[143] Crest Petition at 39-41; Taran Petition at 1-6; DISH Reply at 17-18.

[144] Taran Petition at 1-6; Taran Reply at 2-3. *See also* Bloomberg BNA Daily Report for Executives, Martyn Roetter and Alan Pearce, "The Sprint Transactions: A Chance for a Better Future" at 8 (filed by Information Age Economics, May 8, 2012) ("Information Age Economics May 8, 2013 *Ex Parte*").

[145] Taran Petition at 7; Taran Reply at 2; Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated Apr. 14, 2013 at 3 ("DISH Apr. 14, 2013 *Ex Parte*").

[146] Crest Petition at 42. *See also* Taran Petition at 10.

[147] Joint Opposition at 3-5.

wholesale obligations with existing customers; Sprint has a history of providing wholesale capacity to MVNOs; and the other nationwide providers offer wholesale services.[148]

47. *Spectrum Holdings in the 2.5 GHz Band*. Crest, Taran, DISH, and the two EBS Petitioners contend that, in light of changes that have occurred since the 2008 *Sprint Nextel-Clearwire Order*, the Commission must perform a new public interest analysis evaluating Sprint's acquisition of full control of Clearwire's current spectrum holdings.[149] Further, DISH and the two EBS Petitioners assert that, in order to conduct a proper public interest analysis, the Commission should require the Applicants to submit a detailed listing of current spectrum holdings in each market.[150]

48. Crest, Taran, DISH, CWA, and the two EBS Petitioners also claim that the substantial amount of spectrum Clearwire holds would be underutilized by SoftBank and Sprint.[151] In particular, Crest, DISH, and the two EBS Petitioners assert that there is no evidence that Sprint needs the full amount of Clearwire's spectrum holdings for its business plans.[152] Crest and Taran also express concern that Sprint's prior record as an investor in Clearwire demonstrates that, with 100 percent control of Clearwire, Sprint would not efficiently deploy the 2.5 GHz spectrum.[153] DISH contends that the Applicants should provide additional information regarding their plans, post-transaction, to use their mobile broadband spectrum.[154]

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[148] *Id.* at 5-8.

[149] Crest Petition at 25; Crest Reply at 9-15; Taran Petition at 2, 7; Taran Reply at 5-6. DISH Reply at 3; DISH Apr. 14, 2013 *Ex Parte* at 3; EBS Petitioners Petition at 3-5; EBS Petitioners Reply at ii, 13-15. For example, DISH asserts that one factor that has changed since 2008 is the global harmonization of the 2.5 GHz band for mobile broadband. DISH Apr. 14, 2013 *Ex Parte* at 3; DISH Reply at 13. *See also* Information Age Economics May 8, 2013 *Ex Parte* at 6. To the extent that parties argue that the public interest will be harmed by foreign ownership by SoftBank of Sprint's increased interest in Clearwire, those arguments are addressed in Section VII.

[150] DISH Reply at 19-20; EBS Petitioners Reply at 14-15. Subsequently, the Applicants filed a letter with a detailed table showing Clearwire's current holdings in the 2.5 GHz band and its holdings in 2008 when the Commission approved the Sprint Nextel/Clearwire transaction. *See generally* Letter from Angela Y. Kung, Mintz Levin, counsel for Clearwire, to Marlene H. Dortch, Secretary, FCC, dated Mar. 26, 2013, with Attachment. In response to the Applicants' March 26, 2013 filing, the two EBS Petitioners contend that the 2008 methodology Clearwire applies is flawed and that Clearwire has made errors in its calculation of its current spectrum holdings. *See* Letter from Rudolph J. Geist, RJG Law LLC, EBS Petitioners, to Marlene H. Dortch, FCC, dated Apr. 15, 2013, at 5-6.

[151] Crest Petition at 4-5, 14-16; DISH Reply at 3-6, 11, 20-24; DISH Apr. 14, 2013 *Ex Parte* at 3; Taran Petition at 8; EBS Petitioners Petition at 4-5; CWA Petition at 7-8. *See also* Information Age Economics May 8, 2013 *Ex Parte* at 6.

[152] Crest Petition at 15; DISH Apr. 14, 2013 *Ex Parte* at 3; DISH Reply at 23-24; EBS Petitioners Petition at 4-5, n.6, n.7. Crest also argues that if Sprint is entering into the proposed transactions without an intention to build out Clearwire's network, then Sprint may be in violation of the Commission's anti-trafficking rules. Crest Petition at 10, n.39.

[153] Crest Petition at 5, 12-15; Crest Reply at 5-9; Taran Petition at 7-9. DISH also asserts that Sprint's general record of spectrum efficiency for its licenses in other bands does not indicate that Sprint will efficiently use Clearwire's spectrum once it acquires 100 percent control of Clearwire. DISH Reply at 21.

[154] *See, e.g.,* Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated May 30, 2013 at 1-2 ("DISH May 30, 2013 *Ex Parte*"); Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated May 29, 2013 at 2 ("DISH May 29, 2013 *Ex Parte*"); Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated Apr. 26, 2013 at 2 ("DISH Apr. 26, 2013 *Ex Parte*").

49. These parties propose a range of potential remedies to address spectrum holdings issues in the 2.5 GHz band. DISH proposes that the Applicants divest spectrum to new entrants in markets that exceed the screen (as revised to include the full 2.5 GHz band)[155] as well as spectrum that the Applicants cannot demonstrate that they will use.[156] The two EBS Petitioners assert that that the Commission either should deny the applications or condition its approval on the divestiture of Clearwire's EBS leases to U.S. controlled entities.[157] Crest and Taran simply request that the Commission not permit Sprint to retain a majority interest in Clearwire or to increase that interest.[158] CWA, the New Jersey Rate Counsel, and DISH contend that the Commission should require the Applicants to meet new buildout requirements.[159]

50. The Applicants reject arguments that the Commission should reexamine Sprint's interest in Clearwire's spectrum, contending that the Commission generally does not reassess its earlier approval of attributable spectrum holdings and that no factors in the instant case warrant such reexamination.[160] The Applicants assert that these proposed transactions should only further the deployment of competitive and innovative broadband services.[161] Further, they contend that Sprint, as Clearwire's largest investor and customer, has invested substantial resources in Clearwire so that Clearwire can maximize its spectrum use for mobile broadband service.[162]

51. In addition, the Applicants maintain that the Commission should not adopt buildout requirements because Clearwire and the EBS licensees that lease spectrum to Clearwire have met the buildout obligations for the 2.5 GHz band; Sprint and SoftBank have a history of rapid deployment; and no transaction-specific harm exists that would be remedied by buildout conditions.[163] The Applicants also assert that a divestiture of Clearwire's EBS leases would cause hardship and dislocation to the existing parties to EBS leases and the EBS licensee community generally.[164]

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[155] DISH Reply at 4-5.

[156] Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated Mar. 19, 2013 at 3 ("DISH Mar. 19, 2013 *Ex Parte*").

[157] EBS Petitioners Petition at 16-17. *See also generally* Letter from Rudolph J. Geist, RJG Law LLC, EBS Petitioners, to Marlene H. Dortch, FCC, dated July 2, 2013.

[158] Crest Petition at 42; Taran Petition at 10. *See also* Information Age Economics May 8, 2013 *Ex Parte* at 10 (asserting that Sprint should relinquish majority control of Clearwire but that arrangements should be made so that Sprint has access to some 2.5 GHz spectrum to deploy a competitive mobile broadband network).

[159] CWA Petition at i-ii, 2, 5-11; NJ Rate Counsel Reply at 4; DISH Reply at 23.

[160] Joint Opposition at 25-28. They point out that the Commission approved the aggregation of Sprint/Clearwire's spectrum holdings in 2008 and the Commission has consistently attributed Clearwire's spectrum to Sprint since that decision. *See* Public Interest Statement at 29-30; Joint Opposition 24-28; Applicants Mar. 12, 2013 *Ex Parte* at 3-4.

[161] Joint Opposition at 10-12. The Applicants also argue that Crest does not explain how Sprint, as the third largest wireless provider and facing competition from value oriented providers, could engage in predatory pricing or other anticompetitive behavior. *See id.* at 28, n.91.

[162] Joint Opposition at 33, n.105 (citing Clearwire 2011 Annual Report at 2, 6).

[163] Joint Opposition at 14-18.

[164] Applicants Joint Reply to Comments at 6-7 (citing to 32 EBS Parties Opposition to EBS Petitioners Petition at 6-7 ("32 EBS Parties Opposition")). *See also* CTN and NEBSA Reply at 1-2 (opposing any condition that would require Clearwire to divest or terminate EBS leases); HITN Opposition at 4-5.

2. Discussion

52. We first consider here the harms alleged by certain petitioners and commenters that will result from Clearwire not remaining an independent company. We find, as discussed below, that the record does not support these concerns.

53. We also consider here the arguments raised concerning Sprint/Clearwire's spectrum holdings in the 2.5 GHz band.[165] As noted above, the Commission generally has considered 55.5 megahertz of BRS spectrum relevant to its competitive analyses in past transactions.[166] However, even if we were to consider relevant to our competitive analysis Sprint/Clearwire's total holdings of BRS and EBS spectrum, we still would find, in response to these arguments, that the increase in Sprint's interest in Clearwire's spectrum holdings would be unlikely to result in substantial competitive harm, as discussed below.[167]

54. *Clearwire as an Independent Provider*. As discussed above, certain parties argue that the Commission should deny or condition the proposed transactions on the basis that the proposed transactions would harm competition in the mobile wireless market by eliminating an "independent" Clearwire (*i.e.*, as it existed before the Eagle River transaction discussed below) that, among other things, served as a stand-alone wholesale provider of mobile broadband service and a potential roaming partner in the 2.5 GHz band. We do not find that the proposed transactions are likely to result in transaction-specific harms related to the independence of Clearwire.

55. First, we do not find persuasive opponents' arguments about possible competitive harms relating to the provision of wholesale services. The public record indicates that Clearwire's wholesale business relies almost entirely on Sprint.[168] Thus, any loss of Clearwire's sales of wholesale service to its other customers would have only a minimal impact on the market. Further, as noted above, the Applicants indicate that Clearwire will continue to honor its contractual wholesale obligations with its other existing wholesale customers.[169] We also note that the four nationwide facilities-based providers,

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[165] As noted above, the Commission has not limited its competitive analysis to markets identified by the initial screen. *See* ¶ 35 *supra*.

[166] *See* note 120 *supra*.

[167] *See* ¶¶ 58-61 *infra*. We note that SoftBank's proposed acquisition of a 78 percent share of Sprint does not change the results of our analysis that Sprint's increased interest in Clearwire's 2.5 GHz holdings would not likely result in competitive harms. *See also* ¶¶ 107-108, 111-112, 123 *infra* (addressing arguments by DISH and the two EBS Petitioners that foreign ownership by SoftBank of an interest in Clearwire's 2.5 GHz holdings would result in public interest harms).

[168] Clearwire, Annual Report (Form 10-K), at 2, 123, Feb. 14, 2013, *at* http://corporate.clearwire.com/secfiling.cfm?filingID=1445305-12-337&CIK=1442505 ("Clearwire 2012 10K") (noting that Sprint accounts for "substantially all" of wholesale sales to date and that it ended 2012 with 8.2 million wholesale subscribers); Clearwire, Preliminary Proxy Statement (Form PREM14A), at 13, Feb. 1, 2013 ("Since the formation of the Company, Sprint has been the Company's largest wholesale customer accounting for substantially all of the Company's wholesale revenue . . . .") ("Clearwire Proxy Statement"), *at* http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-33200&CIK=1442505. In addition, in November 2011, Sprint agreed to pay Clearwire approximately $925.9 million for unlimited mobile WiMAX services for 2012 and 2013, and will pay Clearwire additional usage-based fees for mobile WiMAX services provided in 2014 and beyond. Clearwire 2012 10K at 3.

[169] Joint Opposition at 7.

including Sprint, offer wholesale service.[170] We therefore conclude that Sprint's acquisition of Clearwire will not have a significant anticompetitive effect on the sale of wholesale services.

56. We also find nothing in the record that suggests that approval of the proposed transactions would result in potential transaction-specific harms regarding roaming. We remind the parties in this proceeding that the Commission's voice and data roaming rules apply to all facilities-based providers, including Sprint.[171]

57. Further, we observe that the reversal of the Eagle River transaction and refusal to approve the Sprint/Clearwire transaction would not likely remedy the concerns expressed about Clearwire's "independence," given the pre-existing relationship between Sprint and Clearwire pursuant to the Equityholders Agreement. For example, certain actions such as the sale of spectrum would still be subject to Sprint's consent.[172]

58. *Spectrum Holdings in the 2.5 GHz Band*. As summarized above, the focus of the spectrum holding arguments made by parties concerns Sprint's spectrum holdings in the 2.5 GHz band post-transaction. Although we already attribute Clearwire's spectrum holdings to Sprint (as a result, as noted above, of Sprint's ownership of an attributable interest in Clearwire, which interest currently stands at 50.45 percent), we here evaluate the arguments made by parties regarding the potential anticompetitive effects associated with Sprint obtaining, through this transaction, 100 percent stock ownership in and *de facto* control of Clearwire and its spectrum holdings in the 2.5 GHz band.[173] In particular, we assess the likelihood and extent to which those changes may raise competitors' costs or foreclose competitors and/or potential new entrants from expanding capacity, deploying mobile broadband technologies, or entering the market, such that consumer choice or service quality would be reduced.[174]

59. Based on our assessment, the increase in Sprint's interest in Clearwire's 2.5 GHz spectrum holdings does not raise substantial competitive concerns. We reach this conclusion based on a combination of factors. We observe that the proposed increase in Sprint's interest in Clearwire is unlikely as a matter of fact to reduce competitors' access to 2.5 GHz spectrum because, as noted above, Clearwire's current revenue stream already is almost entirely derived from Sprint, with competitors to Sprint generally not using Clearwire's spectrum to deploy advanced broadband technologies or mobile broadband service offerings. Further, we note the availability of certain other bands, such as AWS-1, to competitors other than Sprint with similar technical characteristics and without the challenges to deploying a mobile broadband network that the Commission previously found to exist in the 2.5 GHz band (*e.g.*, co-existing with high power adjacent video operations in the middle band segment, and aggregating spectrum by leasing excess capacity from site-based EBS licensees that have a separate

[170] *See Sixteenth Annual Competition Report*, 28 FCC Rcd at 3740, ¶ 33, Table 1.

[171] *See* 47 C.F.R. § 20.12.

[172] According to the Equityholders' Agreement, any sale of spectrum either as a single transaction or a series of related transactions that have an aggregate purchase price in excess of 20 percent of Clearwire's consolidated assets would have to have approval of 10 of the 13 board members. *See* Equityholders' Agreement, Nov. 28, 2008 at 23. We reject below arguments by DISH and Crest that the Eagle River transaction gave Sprint *de facto* control of Clearwire, as evidenced in part by the process and actions undertaken by the Clearwire Board to evaluate competing offers by Sprint and DISH for interests in Clearwire. *See* ¶ 149 *infra*.

[173] We also evaluated the potential anticompetitive effects of spectrum holdings in the AWS-1 and WCS bands in recent transactions. *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16472, ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-27, ¶¶ 72-74.

[174] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16472, ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-27, ¶¶ 72-74.

educational mission).[175] Overall, we find that, together, these factors make it unlikely that, as a result of Sprint's increased interest in Clearwire's 2.5 GHz spectrum, Sprint would have the ability to raise rivals' costs or foreclose expansion by holding this spectrum, even if it were to have the incentive to do so, in a local market or at the national level.[176]

60. In addition, we are not persuaded by the assertions that the proposed transactions would result in the underutilization of Clearwire's spectrum and that this warrants conditions on buildout, divestiture of spectrum, or investment commitments. We note that Sprint and Clearwire have undertaken significant efforts over the years to utilize the 2.5 GHz spectrum. Clearwire has met its substantial service requirements for its BRS licenses, and Clearwire's operations have substantially contributed to many EBS licensees' satisfaction of their service requirements.[177] In addition, Sprint and Clearwire satisfied the 2.5 GHz band buildout commitments set forth in the *Sprint-Nextel Order* more than a year ahead of the Commission's deadline.[178] We also observe that, since its initial equity investment in Clearwire in 2008, Sprint has made substantial additional investments in Clearwire, such as providing

[175] *See Sprint-Nextel-Clearwire Order*, 23 FCC Rcd at 17598-99, ¶¶ 67-71 (declining to include more than 55.5 megahertz of BRS spectrum in the screen due to specific features associated with other portions of the 2.5 GHz band). We note that we are not prejudging here our ongoing consideration in the *Mobile Spectrum Holdings* proceeding of the "suitability" and "availability" for mobile telephony/broadband service of the portion of the 2.5 GHz band not currently included in our competitive analysis. *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11722-23, ¶¶ 28-29.

[176] We note that, in our analysis of the AT&T/WCS transaction, we similarly concluded that competition was unlikely to be harmed, though for different reasons. In that case, we noted the limited amount of unencumbered WCS spectrum available for the provision of mobile broadband (20 megahertz) and the lack of a well-established ecosystem in that band in the United States. *See AT&T-WCS Order*, 27 FCC Rcd at 16473, ¶ 37. In addition, in the Wireless Telecommunications Bureau's analysis of the T-Mobile/MetroPCS transaction, the Bureau concluded that competition was unlikely to be harmed, because although the newly combined entity would hold a substantial amount of AWS-1 spectrum post-transaction, it was not unencumbered greenfield spectrum and both service providers were independently likely to be facing spectrum constraints in their LTE deployment. *See Applications of Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 13-384, Memorandum Opinion and Order and Declaratory Ruling, DA 13-384, 28 FCC Rcd 2322, 2339-40, ¶ 53 (Int'l Bur. and WTB 2013). By contrast, in the Verizon Wireless/SpectrumCo transactions, we did find cause for concern, because post-transaction, Verizon Wireless would hold a significant amount of greenfield AWS-1 spectrum, with a well-established ecosystem, raising serious concerns about how the proposed transactions could raise rivals' costs or lead to other competitive harms. *See Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-25, ¶ 70.

[177] *See, e.g.*, Buildout Notification for Station B078 (filed Mar. 17, 2011, accepted May 3, 2011); Buildout Notification for Station WNTA285, The Board of Trustees of the Leland Stanford Junior University (filed Apr. 20, 2011, accepted May 18, 2011). *See generally* 47 C.F.R. § 27.14(o) for BRS and EBS buildout requirements. Section 27.14(o) required BRS and EBS licensees to make a showing of "substantial service" in their Geographic Service Area ("GSA") by May 1, 2011. The Wireless Telecommunications Bureau subsequently provided EBS licensees with an additional six months, to November 1, 2011, to meet the substantial service obligations. *See National EBS Association and Catholic Television Network*, Memorandum Opinion and Order, WT Docket No. 11-22, 26 FCC Rcd 4021, 4021, ¶ 1 (WTB 2011).

[178] *See Sprint-Nextel Order*, 20 FCC Rcd at 14028-29, ¶¶ 164-65 (adopting service requirements for Sprint-Nextel). Clearwire agreed to meet those obligations imposed in the Sprint-Nextel/Clearwire transaction. *See Sprint-Nextel-Clearwire Order,* 23 FCC Rcd 17570. *See also* Letter from Cathleen A. Massey, Vice President, Regulatory Affairs and Public Policy, Clearwire, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 08-94 and 05-63, filed Aug. 4, 2009 at 1, nn.1, 2.

Clearwire with debt financing, an unsecured promissory note, and prepayment for wholesale LTE sales.[179] We anticipate that, as the Applicants have asserted, the SoftBank/Sprint transaction will assist in providing the resources to further transition Clearwire's network to LTE technology and that this spectrum is not likely to be underutilized as a result of the proposed transactions.[180]

61. Based on the record before us, we find that the proposed transactions are unlikely to result in competitive or public interest harms,[181] and we anticipate that SoftBank/Sprint will continue to rapidly deploy advanced mobile networks using their spectrum holdings. As a result, we are not persuaded by requests that the Commission impose buildout requirements, require divestitures of spectrum, or request investment commitments by the Applicants.[182]

D. Other Issues

62. *Sprint's 800 MHz rebanding obligations.* DISH asks the Commission to impose conditions on Sprint in this proceeding relating to Sprint's fulfillment of its 800 MHz transition obligations in the *800 MHz Report and Order*.[183] DISH argues that Sprint "has failed to live up to its end of the bargain" struck with the Commission regarding its 1.9 GHz license and the reconfiguration of the 800 MHz Band and should therefore be required to honor those commitments before consummating the proposed transactions.[184] DISH concludes that the Commission should require SoftBank/Sprint to both complete the transition and true up with the Treasury prior to the closing of SoftBank's acquisition.[185]

63. The Applicants have affirmed that "[p]ost-closing, SoftBank and Sprint will remain fully committed to satisfying Sprint's reconfiguration obligations as set forth in the FCC's rules and policies."[186] In addition, they dispute DISH's claims, asserting that Sprint has complied with all of its

[179] Clearwire Corporation, Form 10 K (Feb. 14, 2013) at 3, 11, 103. We also are not persuaded that Sprint's use of spectrum in bands other than 2.5 GHz warrants imposition of buildout conditions on Sprint's deployment of service in the 2.5 GHz and 1.9 GHz bands, as advocated by DISH. DISH Reply at 21-23. The relocation of licensees in the broadcast auxiliary service ("BAS") and 800 MHz bands was not wholly within Sprint's control because the timing and cost of relocation had to be negotiated with incumbent BAS and 800 MHz licensees and, with respect to some 800 MHz licenses, because of the need for the United States to amend spectrum use agreements with Mexico and Canada.

[180] Public Interest Statement at i-iii, 23-29; Joint Opposition at 10-12; Amendment at 4-5. In addition, given our conclusion that this spectrum is not likely to be underutilized as a result of the proposed transactions, we do not find persuasive Crest's contention that Sprint's acquisition of 100 percent control of Clearwire is inconsistent with the Commission's anti-trafficking rules. Crest Petition at 10, n.39.

[181] We are not persuaded that any issues raised regarding the accuracy of Clearwire's representation of its spectrum holdings would lead to a material change in our conclusions. EBS Petitioners Apr. 15, 2013 *Ex Parte* at 5-6.

[182] In contrast, we note that the Commission conditioned approval of the Verizon Wireless/SpectrumCo transaction on those Applicants' commitment to a more aggressive buildout schedule for its AWS licenses because the buildout deadlines for those licenses were nine years into the future and the Applicants had not yet deployed on that spectrum. *See Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10700, ¶ 4, 10739, ¶¶ 107, 108, 110.

[183] DISH Reply at 6-7, 25-32. *See also Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004) ("*800 MHz Report and Order*").

[184] DISH Reply at 7, 25-26, 31-32.

[185] *Id.* at 31-32. As part of this condition, DISH requests that the Commission require SoftBank/Sprint to waive the right to receive any further reimbursement for clearing the H and J Blocks. *Id. See also* DISH Mar. 19, 2013 *Ex Parte* at 3-4.

[186] Public Interest Statement at 30.

obligations and has taken all the steps within its control to complete 800 MHz rebanding "as expeditiously as possible."[187] They claim that Sprint has strong incentives to complete this process as soon as possible, both to minimize the risk of interference among 800 MHz commercial and public safety communications systems, and to maximize the use of its reconfigured 800 MHz spectrum for broadband service.[188] In addition, the Applicants assert that Sprint has to date spent more than $3.1 billion in support of 800 MHz reconfiguration and, in combination with public safety and other incumbents, has achieved substantial progress toward completing the Commission's band reconfiguration plan.[189]

64. The 800 MHz band reconfiguration proceeding, WT Docket No. 02-55, is a separate and ongoing proceeding.[190] As discussed above, the Applicants have indicated that they are fully committed to satisfying Sprint's 800 MHz band reconfiguration obligations.[191] These are important commitments that involve unique and potentially significant financial obligations to the U.S. Treasury, and accordingly we condition approval of these transactions on both the post-transaction Sprint Corporation and its indirect owner SoftBank assuming all obligations of Sprint with respect to the reconfiguration of the 800 MHz band, including without limitation, those set out in the *800 MHz Report and Order* and subsequent Commission orders in WT Docket No. 02-55.[192]

65. *Price offered by Sprint for Clearwire's shares*. Crest, a minority shareholder in Clearwire, raises concerns regarding the inadequacy of the price of Clearwire's shares in Sprint's offer. Crest argues that Sprint and SoftBank have embarked on a multi-stage mission to acquire control of Clearwire at the expense of Clearwire shareholders and the public interest.[193] In that context, Crest maintains that the Sprint/Clearwire transaction grossly undervalues Clearwire's spectrum,[194] and would undermine the Commission's policy goals for the upcoming incentive auction by setting an artificially low benchmark for the price of spectrum.[195]

66. The Applicants respond that these issues raised by Crest are meritless, and not relevant to the Commission's review of the proposed transactions under the Act,[196] and would require the

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[187] Joint Opposition at 17.

[188] *Id*.

[189] *Id.*

[190] *See, e.g.*, Sprint Nextel Corp. has filed a petition for declaratory ruling with respect to certain of its 800 MHz rebanding obligations. *See* Sprint Nextel Corp., Petition for Declaratory Ruling, WT Docket No. 02-55 (filed Jan. 22, 2013).

[191] Public Interest Statement at 30.

[192] *See generally 800 MHz Report and Order*, 19 FCC Rcd 14969.

[193] Crest Petition at 27-28, 31-35.

[194] Crest Petition at 16-18; Crest Reply at 16, Exhibit A ("Valuation of Clearwire's 2.5 GHz Band Spectrum Assets" by Martyn Roetter and Alan Pearce, Information Age Economics); Crest Mar. 12, 2013 *Ex Parte* at 2-3, Exhibit A ("An Assessment of the Economic and Industry Reasonableness of Sprint's Offer for Clearwire" by Harold Furchtgott-Roth, Furchtgott-Roth Economic Enterprises, David Sosa and Elizabeth Stone, Analysis Group); Crest Apr. 8, 2013 *Ex Parte* at Exhibit A ("A Review of 'Value and Utility of the U.S. 2.5 GHz Spectrum Band" by Harold Furchtgott-Roth, Furchtgott-Roth Economic Enterprises). *See also* EBS Petitioners Apr. 15, 2013 *Ex Parte* at 2-4; Information Age Economics May 8, 2013 *Ex Parte* at 6-7.

[195] Crest Petition at 16-23; Crest Reply at 6, 19.

[196] Joint Opposition at 33-38; Applicants Mar. 12, 2013 *Ex Parte* at 5, n.16. *See also* Applicants May 1, 2013 *Ex Parte* at 2-3.

Commission to intervene in private shareholder disputes in contravention of the Commission's longstanding policy of avoiding such intervention.[197] In particular, the Applicants assert that the price Sprint negotiated with Clearwire is not depressed;[198] that Clearwire took care to ensure that the Sprint/Clearwire transaction was fair to minority shareholders;[199] and that the Sprint/Clearwire transaction would not influence bidding in the incentive auction.[200]

67. To the extent that Crest and Taran assert that Sprint has violated their rights as shareholders in Clearwire, we decline to address these issues, as the Commission generally defers adjudication and resolution of such state law and contract-based assertions to the appropriate state or local fora.[201] Indeed, in this case, Crest notes that it has already initiated litigation in a state court.[202] Our approval of these transactions will not foreclose such avenues for redress. In addition, we find that the price paid by Sprint for 100 percent control of Clearwire is not likely to have any significant effect on the prices that may be paid for spectrum in future incentive auctions. We also note that since Crest filed its comments, Sprint raised its bid for Clearwire's shares by approximately 50 percent.[203]

68. *Jobs*. CWA and Greenlining request that in considering the public interest effects of the SoftBank/Sprint transaction, the Commission should consider the potential impact on jobs. In particular, CWA asserts that this transaction will not lead to significant job creation at Sprint due, in part, to Sprint outsourcing its customer service operation.[204] Moreover, CWA maintains that the proposed transaction would strengthen the position of Chinese communications equipment manufacturers in the United States.[205] Greenlining argues that the Commission should investigate the potential impact the proposed transaction may have on Sprint's employees, and Greenlining also points to one statement regarding job creation that was made in the Application.[206] Greenlining alternatively argues that even if the Applicants

[197] Joint Opposition at 32, 37-38.

[198] *Id.* at 32-33.

[199] *Id.* at 33-34. *See also* Applicants May 1, 2013 *Ex Parte* at 3; Letter from Angela Y. Kung, counsel for Clearwire, Mintz Levin, to Marlene H. Dortch, Secretary, FCC, dated Apr. 15, 2013, at 1-2 ("Clearwire Apr. 15, 2013 *Ex Parte*").

[200] Joint Opposition at 37, n.115.

[201] *See, e.g.*, *Wireless Properties of Virginia, Inc. Assignor and Nextel Spectrum Acquisition Corp., Assignee*, Memorandum Opinion and Order, 22 FCC Rcd 1287, 1292 (Broadband Div./WTB 2007) ("Whether WPV is in good standing with the state of Delaware is a matter of state law and should be dealt with by a state court.").

[202] Crest Petition at 28, n.77 (citing pending state court case).

[203] *See* Clearwire Special Committee and Board of Directors Change Recommendation In Favor Of Sprint Merger Based On Revised Offer of $5.00 Per Share, Clearwire Press Release, dated June 26, 2013, *available at* http://corporate.clearwire.com/releasedetail.cfm?Releaseid=772795 (last visited June 26, 2013). *See* ¶ 15 *supra*.

[204] CWA Petition at 14-15.

[205] *Id.* at 15.

[206] Greenlining Opening Comments at 10. In particular, Greenlining points to the Applicants' statement that: "The resulting greater competition and innovation can in turn stimulate economic growth and promote job creation." Public Interest Statement at 14. *See also* Greenlining Reply at 2.

fail to raise the issue of jobs, this does not preclude the Commission from including the impact on jobs in its public interest analysis of the proposed transaction.[207]

69. In the Joint Opposition, the Applicants respond that they did not assert that any job-related public interest benefits would result from the transaction. Specifically, the Applicants contend that they did not rely on job growth in their Application and did not make any projections as to the number of new jobs that could result from the transactions.[208] The Applicants further argue that Greenlining's request for an investigation of the effects the transaction may have on Sprint's employees would be outside the scope of the Commission's public interest review and expertise.[209] Moreover, the Applicants maintain that Greenlining did not substantiate their claims with any evidence that there would be changes in terms of employment at Sprint.[210] In addition, the Applicants claim that CWA's contention that Sprint is shipping a significant number of jobs overseas is incorrect.[211] Finally, the Applicants conclude that the Commission should reject these "groundless assertions," which are unrelated to the Commission's review of the transactions.[212]

70. We are not persuaded by the arguments raised by CWA and Greenlining concerning the potential impact on jobs. Our assessment of the record for this proceeding leads us to conclude that the alleged potential public interest harms regarding jobs are speculative and unsubstantiated.

71. *Compliance with EBS obligations.* The two EBS Petitioners contend that Clearwire has failed to be an acceptable steward of EBS spectrum, has not ensured compliance with the Commission's educational use obligations applicable to EBS licenses, and has used its market power to leverage EBS licensees into leases that minimize educational usage rights.[213] The EBS Petitioners argue that the Commission should not allow Clearwire to "pass the buck" onto SoftBank, a foreign controlled entity, for compliance with the educational use obligations.[214] The two petitioners claim that Clearwire's EBS leases violate minimum educational reservation requirements and frustrate their ability to implement educational usage.[215] They urge the Commission to require Clearwire to provide data relating to compliance with EBS educational usage and leasing requirements because the ability to validate the actual percentage of educational account usage on Clearwire's network is allegedly the only way to measure and evaluate Clearwire's compliance.[216] The EBS Petitioners also allege that the transaction may violate unspecified state non-profit corporation laws.[217] They ask the Commission to deny the

[207] Greenlining Reply at 2. Greenlining also asserts that it is unclear whether Sprint's new board of directors will maintain the same commitment to workforce and supplier diversity and urges the Commission to investigate Sprint's post-transaction plans regarding diversity. Greenlining Opening Comments at 10.

[208] Joint Opposition at 38, n.121.

[209] Joint Opposition at 38-39. In response to Greenlining's request for an investigation into plans concerning diversity, the Applicants contend that Greenlining does not point to any facts that would warrant such an investigation. *Id.* at 54, n.170.

[210] *Id.* at 39.

[211] *Id.*

[212] *Id.*

[213] EBS Petitioners Petition at ii, 2, 6-8.

[214] *Id.* at ii, 2, 6-8. *See* ¶ 107 *infra*.

[215] EBS Petitioners Petition at 8-12.

[216] *Id.* at 13.

[217] *Id.* at 15-16.

proposed applications or, at a minimum, to condition approval on the divestiture by Clearwire of all its EBS spectrum leases to U.S. controlled entities that can preserve the benefits of EBS.[218]

72. In their Joint Opposition, SoftBank and Sprint argue that the petitioners' claims concern a private dispute and are not transaction-specific, and that in any event the EBS entities, not Clearwire, are the parties obligated to ensure that EBS spectrum is appropriately used.[219] The Applicants also contend that Clearwire and the EBS entities with which it has entered into leasing arrangements have complied with the applicable Commission requirements, and that no additional data is necessary because the EBS entities have already certified compliance with the minimum education reservation requirements.[220] Finally, the Applicants assert that alleged potential violation of state corporate laws is irrelevant to the transaction and without merit.[221]

73. In addition to the Applicants, a wide variety of EBS licensees that lease spectrum to Clearwire, including the National EBS Association (NEBSA) and the Catholic Television Network (CTN), oppose the petition. They strongly disagree with the petitioners' assertions that Clearwire has failed to comply with the educational use obligations, stating instead that Clearwire facilitates and supports their compliance with EBS requirements.[222]

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[218] *Id.* at 16-17.

[219] Joint Opposition at 44-45.

[220] *Id.* at 45-50.

[221] *Id.* at 50-52.

[222] Opposition to Petition to Deny, Catholic Television Network and the National EBS Association (dated Feb. 12, 2013) ("CTN/NEBSA Opposition"); Opposition of Clarendon Foundation, Inc. (filed Feb. 12, 2013) ("Clarendon Opposition"); Comments on Petition to Deny, Chicago Instructional Technology Foundation, Denver Area Educational Telecommunications Consortium, Instructional Telecommunications Foundation, Portland Regional Educational Telecommunications Corporation, and Twin Cities Schools' Telecommunications Group (dated Feb. 12, 2013) ("CITF Parties Opposition"); Opposition of EBS Parties to Petition to Deny (Association for Continuing Education, Belmont University, California State University, Sacramento, Dallas County Community College District, Dallas-Fort Worth Hospital Council, Emerson College, Emory University, Georgia Institute of Technology, Georgia State University, Greater Dayton Public Television, Inc., President and Fellows of Harvard College, Johnston Community College/Meredith College ITFS Consortium, Junior College District of Metropolitan Kansas City, Missouri, KCTS Television, Los Rios Community College District, New Jersey Public Broadcasting Authority, Northeastern University, Oregon Public Broadcasting, Portland Community College, Public Television 19, Inc., The Regents of the University of California, Region IV Education Service Center, Richardson Independent School District, Santa Clara County Board of Education, St. Christopher's School of the Church Schools of the Diocese of Virginia, St. Petersburg College, The University of Central Florida, University of Maryland, University of North Carolina, University of South Florida, The University of Texas Health Science Center at Houston, and Valencia College (dated Feb. 12, 2013) ("EBS Parties Opposition"); HITN Opposition; Comments on Petition to Deny, North American Catholic Educational Programming Foundation, Inc. (dated Mar. 1, 2013) ("NACEPF Opposition"); Opposition of School Board of Pinellas Country Florida (dated Feb. 12, 2013); Opposition to Petition to Deny, The Source for Learning, Inc. (dated Feb. 12, 2013) ("SFL Opposition"). While several of these EBS licensees – HITN, NACEPF, and the CITF Parties – do not support the contention by the EBS Petitioners that Clearwire has failed to comply with the educational use obligations, they assert in recent *ex parte* filings that the Commission should consider how the increase in Sprint's interest in Clearwire would affect the educational mission of EBS licensees. Filing from Jose Luis Rodriguez, President, HITN, John Primeau, President, NACEPF, to FCC, dated June 27, 2013; Filing from John B. Schwartz, President, CITF Parties, to FCC, dated June 28, 2013. We find that HITN, NACEPF, and the CITF Parties have not demonstrated a likelihood of potential transaction-specific harm that warrants imposing conditions on the proposed transactions.

74. We find that the issues that the two EBS Petitioners raise are not transaction-specific, and therefore deny their challenge. The Commission generally will not impose conditions to remedy pre-existing harms unrelated to the transaction at issue.[223] The EBS Petitioners argue that any of Sprint's or Clearwire's compliance (or lack of compliance) with any Commission rules speaks to the question of whether the Commission may approve the transaction and thus the issues are transaction-specific.[224] We disagree. As SoftBank and Sprint have pointed out, EBS licensees such as EBS Petitioners, not Clearwire, are responsible for compliance with the educational programming and use requirements.[225] Regarding the two EBS Petitioners' claim that Clearwire's leases have frustrated their abilities to provide educational use over the reserved capacity,[226] this claim is undermined by the fact that both of the EBS Petitioners certified that they were in compliance with the educational use requirements.[227] And, as noted above, a wide variety of EBS licensees opposing the petition also argue that the leases have supported, rather than frustrated, educational use.[228]

75. *Availability of low-cost service plans*. Greenlining asserts that Sprint traditionally has offered wireless phone services that are somewhat more affordable to low-income customers and that, post-transaction, Sprint could find it more profitable to begin eliminating its low-cost plans.[229] Greenlining asks the Commission to consider the effect of the proposed transaction on low-income and minority consumers.[230]

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[223] *See, e.g., AT&T-Qualcomm Order,* 26 FCC Rcd at 17622 ¶ 79; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

[224] EBS Petitioners Reply at 25, n.70.

[225] 47 C.F.R. § 27.1214 sets forth programming and use requirements that the EBS licensee must comply with before it leases spectrum for non-educational purposes. *See*, *e.g.*, 47 C.F.R. § 27.1214(a)(1) ("Before entering into a spectrum leasing arrangement involving material other than educational programming on any one channel, the licensee must provide at least twenty hours per week of educational programming . . . .").

[226] EBS Petitioners Petition at 11.

[227] *See* File No. 0004867672 (filed Sep. 8, 2011), WNC484 Demonstration of Substantial Service at 3 ("Licensee certifies that it is in compliance with the programming and minimum usage requirements set forth in Sections 27.1203 and 27.1214 of the Commission's rules."); File No. 0004778878 (filed June 23, 2011) (Roman Catholic Diocese of Erie, PA meets substantial service requirement for Station WND524 by demonstrating compliance with educational use safe harbor contained in 47 C.F.R. § 27.14(o)(2)); File No. 0004909358 (filed Oct. 12, 2011), WND589 Demonstration of Substantial Service at 4 (Roman Catholic Diocese of Erie, PA certifies compliance with educational use requirements for Station WND589).

[228] *See, e.g.*, CTN Opposition at 5 ("EBS leases facilitate rather than frustrate EBS licensees in the use of their spectrum, and Petitioners provide no evidence of any violations of the Commission's rules . . . effective use of EBS has been greatly enhanced by the strategic partnerships that have been forged between educators and commercial operators, including Clearwire."); HITN Opposition at 2 ("Far from the industry pariah described by Petitioners, in HITN's experience Clearwire has been a good partner to educators . . . ."); NACEPF Opposition at 2 ("Our future ability to continue to provide…services will…depend on Clearwire's continued use of EBS spectrum as well as the quality and extent of its LTE network."); Pinellas Opposition at 5 (Pinellas "rejects the suggestion that the lease frustrates its ability to provide educational services over its spectrum, now or in the future, or that the lease raises any other compliance concerns under Commission rules.").

[229] Greenlining Opening Comments at 5, 6.

[230] Greenlining Reply at 2.

76. The Applicants respond that there is nothing in SoftBank's history that warrants such concern and that SoftBank has a history of reducing consumer prices while expanding opportunities for all consumers to access wireless technology.[231] Further, they assert that the transactions would strengthen the wireless service already provided over the Sprint/Clearwire spectrum holdings, "including offerings attractive to low-income subscribers."[232] In addition, they assert that all major providers have tailored products and efforts for serving low-income consumers, and a number of providers specifically target this customer segment.[233]

77. We find that the record does not demonstrate that the transactions would have an adverse effect on low-income consumers or minority consumers. We are not persuaded that consumers of Sprint's more affordable services would suffer reduced options for service plans as a result of approval of these transactions. As a result, we decline to adopt the requested relief.

78. *Resale of Sprint service to MVNOs*. The MVNO Association asserts that the Commission should condition approval of the SoftBank/Sprint transaction on the offering mobile wireless service for resale to MVNOs on commercially reasonable terms and conditions, either by continuing existing resale agreements that the MVNOs have with Sprint or by negotiating resale agreements with MVNOs on commercially reasonable terms and conditions that are reasonably similar to existing agreements with Sprint.[234] The MVNO Association states that, absent such a condition, its members will be unable to provide mobile service to subscribers that rely on prepaid and low-cost mobile wireless service.[235]

79. We find that the record does not demonstrate that it is necessary or appropriate to impose resale conditions in the context of the proposed SoftBank/Sprint transaction. The Commission sunset resale obligations in 2002 for CMRS providers,[236] and we see no reason to revisit that decision in the

[231] Joint Opposition at 9-10.

[232] *Id.* at ii.

[233] *Id.* at 10.

[234] Letter from Karen Brinkman, Counsel, MVNO Association, to Marlene H. Dortch, Secretary, FCC, dated June 12, 2013 at 2 ("MVNO Association June 12, 2013 *Ex Parte*"). *See also* Letter from Karen Brinkman, Counsel, MVNO Association, to Marlene H. Dortch, Secretary, FCC, dated June 21, 2013 at 1-2.

[235] MVNO Association June 12, 2013 *Ex Parte* at 2.

[236] *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, 11 FCC Rcd 18455, 18468-69 ¶ 24 (1996), *aff'd sub nom*. *Cellnet Communications v. FCC*, 149 F.3d 429 (6th Cir. 1998) (establishing a sunset period five years after the date of the award of the last group of initial licenses for broadband PCS); *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100; *Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers*, GN Docket No. 94-33, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16340 (1999); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Order on Reconsideration of Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16221 (2000). On July 2, 1998, a public notice was issued announcing that the five-year period had commenced as of November 25, 1997, the date on which the Commission completed its award of the last group of initial licenses for currently allocated broadband PCS spectrum. The public notice states that the resale rule will terminate at the close of November 24, 2002. *See Commencement of Five-Year Period Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers*, CC Docket No. 94-54, Public Notice, 13 FCC Rcd 17427 (1998).

context of these transactions, particularly given that we do not find that the proposed transactions would lead to competitive harms, as discussed above.[237]

80. *Open Internet*. Greenlining asserts that post-transaction, Sprint will have incentives to prioritize certain traffic on its network.[238] Specifically, Greenlining asserts that SoftBank has ownership interests in, or longstanding relationships with, a number of providers of broadband content. Greenlining argues that the new company may prioritize network traffic of those companies to the detriment of other content providers,[239] and it asks the Commission to "preserve net neutrality."[240] New Jersey Rate Counsel asks the Commission to revisit the applicability of its net neutrality rules to wireless providers.[241] The Applicants respond that these requests have no nexus to the transactions and that to the extent the issue warrants consideration, the Commission should do so in an industry-wide proceeding.[242] They also note that net neutrality is the subject of an ongoing proceeding at the Commission.[243]

81. We find that the record does not demonstrate that it is necessary or appropriate to revisit open Internet issues or impose open Internet conditions in the context of the proposed transactions. As the Applicants note, we have addressed issues concerning net neutrality in the context of a recent (and still open) industry-wide proceeding,[244] and we see no reason to use this party-specific transaction to modify the decisions that we have made there. Moreover, to the extent the parties are suggesting that we impose conditions that require compliance with the requirements that we established in that proceeding, we note that nothing in our decision today relieves the parties here from complying with those requirements, and, consistent with Commission precedent, we conclude that such conditions are unnecessary, as they only serve to require entities to comply with legal obligations that are already in effect and fully enforceable.[245]

82. *Access charges*. Some parties contend that Sprint has acted in bad faith in connection with pre-existing billing disputes and debt obligations, and that therefore, the Commission should deny

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[237] *See* ¶¶ 52-53, 59-61 *supra*.

[238] Greenlining Comments at 9; Greenlining Reply at 3-4.

[239] Greenlining Comments at 9; Greenlining Reply at 3.

[240] Greenlining Comments at 11.

[241] NJ Rate Counsel Comments at 19-22.

[242] Joint Opposition at 54.

[243] *Id.*

[244] *See Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 (2010).

[245] *See, e.g.*, *Verizon Communications, Inc. and America Móvil, S.A. de C.V., Application for Authority to Transfer Control of Telecommunicaciones de Puerto Rico*, WT Docket No. 07-43, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6208, ¶ 29 (2007) ("*America Móvil Order*") (refusing to impose conditions on a grant of application because "many requested conditions would simply require America Móvil to comply with TELPRI's existing legal obligations. . . . América Móvil will be subject to those existing legal obligations as well as other generally applicable regulatory requirements imposed on incumbent LECs."); *International Authorizations Granted*, Public Notice, 19 FCC Rcd 4079, 4080, ¶ 2 (2004) (stating that "Iridium Satellite, LLC's request to impose a condition that the Applicants comply with the outcome of the BIG LEO Bands Rulemaking is unnecessary because all Commission licensees must adhere to all applicable Commission rules and policies"); *Application of Puerto Rico Telephone Authority and GTE Holdings, LLC*, Memorandum Opinion and Order, 14 FCC Rcd 3122, 3134, ¶ 28 (1999) (stating that the requested conditions are not necessary because they "would simply require PRTC to comply with its existing legal obligations").

the applications, or in the alternative, apply conditions to a grant of the applications. The Crow Creek Sioux Tribe Utility Authority (Crow Creek Tribe Authority) contends that Sprint has not paid Crow Creek's Tribally-owned telecommunications carrier for switched access charges.[246] In 2010, Native American Telecom, LLC (NAT), which is majority owned by the Crow Creek Sioux Tribe, filed a complaint with the Crow Creek Tribe Authority arguing that shortly after NAT launched its Tribally-owned telephone system, Sprint improperly refused to pay NAT's switched access charges.[247] The Crow Creek Tribe Authority asserts that, as a condition of the proposed transactions, the Commission should enforce the order that requires Sprint to pay NAT for services rendered.[248] Moreover, Crow Creek contends that the Commission should require Sprint to pay its debt for services provided by NAT because of the Commission's "red light" rule, which is a rule regarding applicants who are delinquent on debts owed to the Commission.[249] Crow Creek argues that this rule is applicable because the federal government has a federal trust relationship with Indian Tribes.[250] The Crow Creek Tribe Authority requests that the Commission deny the transaction or, in the alternative, impose conditions to address Crow Creek's specific concerns.[251]

83. nWire, LLC, Pac-West Telecomm, Inc., and Tex-Link Communications, Inc. (CLEC Petitioners) jointly argue that Sprint has "engaged in self-help measures by unilaterally ceasing intercarrier compensation payments owed to the CLEC Petitioners pursuant to federal law and federal and state intercarrier compensation rules."[252] They request that the Commission deny the applications or impose conditions on the transaction to address their concerns.[253]

84. Sprint argues that these on-going intercarrier compensation disputes lack merit and are not transaction-specific, and therefore should not be relevant in this proceeding.[254] Sprint asserts that CLEC Petitioners "do not even attempt to connect their conclusory allegations to the Transactions."[255] Regarding the Crow Creek Tribe Authority's use of the "red light" rule, Sprint contends that this rule applies only if an applicant owes a debt to the Commission, and that the federal government's trust relationship with Indian Tribes does not allow an Indian Tribe to stand in the Commission's shoes for purposes of the "red light" rule.[256]

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[246] Crow Creek Petition at 7-8.

[247] *Id.* at 3, 7. Also in 2010, in the United States District Court for the Southern Division of South Dakota, Sprint filed suit against NAT and NAT asserted counterclaims against Sprint. In 2012, the Court referred the case to the Commission under the theory of primary jurisdiction. *See Sprint v. Native American Telecom*, No. CIV. 10-4110-KES, 2012 WL 591674 (D.S.D. Feb. 22, 2012). This case is still pending.

[248] Crow Creek Petition at 7-8.

[249] *Id.* at 6-7. The "red light" rule precludes the Commission from acting on applications and other requests for benefits when the applicant is delinquent on debts owed to the Commission. 47 C.F.R. § 1.1910.

[250] Crow Creek Petition at 6-7.

[251] *Id.* at 9.

[252] CLEC Petitioners Petition at 1.

[253] *Id.* at 2.

[254] Joint Opposition at 41.

[255] *Id.* at 44.

[256] *Id.* at 43.

85. We agree with Sprint that these intercarrier compensation disputes are not merger specific,[257] are based on arguments about prior conduct by Sprint, and are more appropriately resolved through the contractual provisions between the parties or through the Commission's complaint process under section 208 of the Act.[258] As the Commission has repeatedly held, we will generally not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.[259] Further, we agree that the "red light" rule applies only where an applicant owes a debt to the Commission,[260] and does not allow the Commission to deny the applications based upon claimed debts of Sprint to Crow Creek pursuant to intercarrier arrangements.

86. *Request by the Crow Creek Sioux Tribe to access spectrum*. The Crow Creek Tribe Authority also asserts that Sprint has not responded to an inquiry by the Crow Creek Sioux Tribe regarding the availability of unused spectrum held by Sprint on the Crow Creek reservation.[261] According to Crow Creek, Sprint holds a significant amount of spectrum on the Crow Creek reservation but does not provide wireless coverage. The Crow Creek Tribe Authority asks the Commission to "require Sprint to work cooperatively with the Crow Creek Sioux Tribe on its request for possible use of unused spectrum" as a condition of approval of the SoftBank/Sprint transaction.[262] In response to the Crow Creek Tribe Authority's petition, the Applicants assert that the Commission has not required Sprint or other wireless providers to make spectrum available to Indian Tribes.[263]

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[257] *See America Móvil Order,* 22 FCC Rcd at 6206-07, ¶ 25 (rejecting assertions that a transfer of control should be denied or conditioned based on non-merger-specific issues and finding that applicants were subject to existing requirements). *See AT&T-Centennial Order*, 24 FCC Rcd at 13929, 13929, ¶ 30, 13974-75 ¶ 150 (citing *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463, ¶ 29); *Sprint-Nextel-Clearwire Order,* 23 FCC Rcd at 17582, ¶ 22; *Cingular-AT&T Wireless Order,* 19 FCC Rcd at 21546, ¶ 43.

[258] 47 U.S.C. § 208.

[259] *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463, ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582, ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 43.

[260] In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). *See Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540 (2004). The "red light" rule requires the Commission to withhold action on applications and other requests for benefits when the entity applying for or seeking benefits is delinquent in non-tax debts owed to the Commission, and to dismiss such applications or other request if the delinquency is not resolved; 47 C.F.R. § 1.1910 ("Action will be withheld on applications…by any entity found to be delinquent *in its debt to the Commission*. . . .") (emphasis added).

[261] Crow Creek Petition at 8.

[262] *Id.*; *see also* Oglala Sioux Tribe Reply at 1 (supporting the Crow Creek Petition). In a recent *ex parte*, the Crow Creek Sioux Tribe and the Oglala Sioux Tribe request further conditions, which include requirements such as Sprint agreeing in writing that they recognize Tribal sovereignty over the Tribal lands where Sprint operates, provides service, or holds spectrum and Sprint filing annual reports with the Commission and the relevant Tribal authorities. Letter from Barry W. Brandon, HvMKEN Consulting LLC, to Marlene H. Dortch, Secretary, FCC, dated June 18, 2013, at 3. *See also generally* Letter from Barry W. Brandon, HvMKEN Consulting LLC, to Marlene H. Dortch, Secretary, FCC, dated June 27, 2013; Letter from Barry W. Brandon, HvMKEN Consulting LLC, to Marlene H. Dortch, Secretary, FCC, dated June 25, 2013.

[263] Joint Opposition at 43-44. The Applicants further maintain that the rulemaking proceeding regarding spectrum on Tribal lands, that Crow Creek notes, merely seeks comment but does not impose any obligations on wireless providers. *See* Joint Opposition at 44, n.139, referencing *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) ("*Tribal Lands NPRM*").

87. We recognize the importance of the issues raised by the Crow Creek Tribe Authority regarding spectrum access. Indeed, as the Crow Creek Tribe Authority notes in its petition, the Commission has an open rulemaking proceeding that seeks comment on potential methods to facilitate greater Tribal access to spectrum over Tribal lands.[264] These issues are not specific to the transactions before us, though, and are better addressed in the context of this rulemaking proceeding.

88. *Miscellaneous issues*. Other commenters request that the Commission take a variety of additional measures with respect to the transactions. In particular, Taran asserts that the loss of Clearwire to Sprint would be a detriment to preserving Clearwire's unique microwave backhaul network.[265] The New Jersey Rate Counsel asks the Commission to open a proceeding to establish "regular, uniform, and comprehensive data reporting collections" by the wireless industry regarding rates, terms, and conditions,[266] and to require Sprint to comply with the guidelines for addressing "bill shock" in CTIA's Consumer Code for Wireless Services.[267]

89. The Applicants respond that these requests are meritless or not specifically related to the transactions.[268] They also note that bill shock is the subject of an ongoing proceeding at the Commission.[269] With respect to backhaul, they assert that Clearwire does not currently offer wholesale backhaul and that Taran offers no explanation why Sprint would have any less incentive to provide such services after it acquires *de facto* control of Clearwire.[270]

90. We find that these claims are not transaction-specific, and we decline to grant the requested relief. Further, as the Applicants note, the claim regarding bill shock pertains to an industry-wide issue that has been raised in a broader context.[271] In addition, we note that the Applicants indicate that both Sprint and Clearwire voluntarily support CTIA's Consumer Code for Wireless Services.[272]

VI. POTENTIAL PUBLIC INTEREST BENEFITS

91. After assessing the potential competitive harms of the proposed transactions, we next consider whether the proposed assignment of the licenses is likely to generate verifiable, transaction-

[264] *See generally Tribal Lands NPRM*.

[265] Taran Petition at 5. Taran asserts that Clearwire's microwave backhaul network is "the only wireless, independent, urban backhaul network with redundant, and potentially gigabit capacity links in major urban centers." *Id*.

[266] NJ Rate Counsel Comments at 22-23.

[267] *Id.* at 25-26.

[268] Joint Opposition at 53.

[269] *Id.* at 54.

[270] *Id.* at 52.

[271] *See FCC Chairman Julius Genachowski Announces Major Progress in Usage-based Alert Program to Protect Mobile Customers from 'Bill Shock'; Wireless Carriers Meet and Beat Deadline to Provide Free Data, Voice, Text, & International Alerts,* News Release, Federal Communications Commission, October 17, 2012; *see also Sixteenth Annual Competition Report*, 28 FCC Rcd at 3903-04, ¶¶ 313-14 (describing steps taken by Commission and wireless providers to address bill shock).

[272] Joint Opposition at 54, n.169.

specific public interest benefits that outweigh any identified competitive harms.[273] As discussed below, we anticipate that the proposed transactions likely will facilitate certain transaction-specific public interest benefits, the acceleration of advanced mobile broadband services and enhanced competition in the mobile wireless market. As we have concluded above, the potential public interest harms presented by these transactions are not likely, and thus, using our sliding scale approach, we can accept a lower showing to recognize the potential public interest benefits of these transactions. We reach our conclusion regarding public interest benefits recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.[274]

A. Analytical Framework

92. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products."[275] This same analysis applies to an acquisition of assets like that contemplated by the proposed transactions before us. Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.[276]

93. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.[277] First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."[278] Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[279] Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we

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[273] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734, ¶ 95; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17622-23, ¶ 81; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599, ¶ 201.

[274] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 40; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623, ¶ 82; *AT&T-Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8736, ¶ 73.

[275] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734, ¶ 96; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17623, ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599, ¶ 204.

[276] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734, ¶ 96; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17623, ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599, ¶ 204.

[277] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734, ¶ 97; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17623, ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600, ¶ 205.

[278] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16475, ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735, ¶ 97; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17624, ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600, ¶¶ 205-06.

[279] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735, ¶ 98; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17624, ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600, ¶ 206.

would otherwise demand."[280] Conversely, where potential harms appear unlikely, as is the case here, or less likely and less substantial, we will accept a lesser showing.[281]

B. Asserted Benefits

94. *Broadband Deployment*. The Applicants claim, in their Public Interest Statement, that the transaction would result in an $8 billion investment in Sprint resulting in a stronger competitor benefiting consumers.[282] Specifically, the Applicants assert that this investment by SoftBank would make Sprint a more effective competitor to Verizon Wireless and AT&T.[283] According to the Applicants, Sprint would be able to use the capital infusion to invest in its network and improve mobile broadband service to its customers to an extent it otherwise may not be able to because it has incurred substantial indebtedness.[284] They also contend that Sprint would be able to accelerate its deployment of LTE by expanding its network to include various spectrum bands in additional markets.[285] Further, the Applicants note SoftBank's record in Japan of network upgrades to improve coverage and capacity, including small cell deployment, Wi-Fi hotspots, femtocells and in-building repeater systems.[286]

95. Moreover, the Applicants assert that the proposed transactions would provide financial resources to transition Clearwire's network to LTE and improve wireless broadband service to consumers.[287] According to the Applicants, Clearwire has faced several financial challenges including record net losses and indebtedness, and these challenges have hampered Clearwire's transition of its network from WiMAX to LTE.[288] The Applicants claim that in the short-term, Sprint has agreed to provide Clearwire with additional financing and that part of SoftBank's capital infusion to Sprint would be used to increase investment in the Clearwire network.[289] In addition, the Applicants assert that the utility of Clearwire's 2.5 GHz spectrum is enhanced by combining it with Sprint's complimentary core

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[280] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735, ¶ 98*; AT&T-Qualcomm Order,* 26 FCC Rcd at 17624, ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600, ¶ 206; *cf. 2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[281] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16459, ¶ 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624, ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737, ¶ 76; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497, ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616, ¶ 117.

[282] Public Interest Statement at 23-24. *See* ¶ 102 *infra* (amendment to merger agreement reducing the investment).

[283] Public Interest Statement at 13-14, 21-22.

[284] *Id.* at 23-24; Joint Opposition at 2.

[285] Public Interest Statement at 25.

[286] *Id.* at 18-19.

[287] Amendment at 4-6. Letter from Vonya B. McCann, Senior Vice President, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, dated Mar. 18, 2013 ("Applicants Mar. 18, 2013 *Ex Parte*"). In addition, the Applicants assert that the proposed transaction would eliminate any uncertainty or inefficiencies created by Clearwire's current ownership structure and would result in a more efficient, integrated company than if Clearwire operated as a separate company. Amendment at 6.

[288] Amendment at 4-5.

[289] *Id.* at 5.

coverage using 1.9 GHz spectrum and enhanced geographic coverage using 800 MHz spectrum.[290] The Applicants also maintain that Clearwire would benefit from SoftBank's resources and expertise.[291]

96. The New Jersey Rate Counsel requests that the Applicants commit to specific milestones and/or a timetable for the proposed investment in Sprint's network and, more specifically, commit to the deployment of its LTE network, with specific time frames associated with this commitment.[292] The Applicants state that, in fact, $3.1 billion of this amount already has been provided in the form of a convertible bond, and SoftBank is contractually committed to providing the remaining amount when the SoftBank/Sprint transaction closes. The Applicants argue that it is unnecessary for the Commission to seek any additional commitments or to establish a timetable for the investment, as Softbank already has provided $3.1 billion to Sprint in the form of a convertible bond and will be contractually obligated to provide any remaining amount when the SoftBank/Sprint transaction closes.[293]

97. The New Jersey Rate Counsel and the MMTC set forth requests regarding low income and minority consumers. The New Jersey Rate Counsel argues that the Applicants would enhance the public interest by committing to a program similar to Comcast's Essentials program, which provides discounted broadband service and computers to low income consumers.[294] MMTC requests that the Commission ask for additional information on how the transaction would, among other things, increase broadband access to underserved and unserved areas and expand opportunities for women and minorities in the field of communications.[295] DISH also contends that the Applicants should submit plans to provide service to unserved and underserved rural areas.[296]

98. On June 10, 2013, the Applicants amended their merger agreement. As part of the amended merger agreement, SoftBank reallocated $3 billion of SoftBank's previously planned direct investment in Sprint, reducing that investment from $8 billion to $5 billion.[297] As modified, the aggregate cash consideration payable to Sprint's stockholders would increase by $4.5 billion.[298] The Applicants

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[290] *Id.* at 6.

[291] *Id. See supra* ¶ 17 (discussing the benefits of SoftBank's expertise).

[292] NJ Rate Counsel Reply at 4-5, 7; NJ Rate Counsel Comments at ii-iii, 16-17.

[293] Joint Opposition at 11; Amendment at 5.

[294] NJ Rate Counsel Comments at 26-28; NJ Rate Counsel Reply at 5-6.

[295] MMTC May 28, 2013 *Ex Parte* at 4-5. *See also* Letter from David Honig, President, MMTC, to Marlene H. Dortch, Secretary, FCC, dated June 6, 2013, at 3; Letter from David Honig, President, MMTC, to Marlene H. Dortch, Secretary, FCC, dated June 4, 2013, at 2-3; Letter from David Honig, President, MMTC, to Chairwoman Mignon Clyburn, FCC, dated June 19, 2013, at 1-2; MVNO Association June 12, 2013 *Ex Parte* at 1 (supporting MMTC's concerns about the effect of the proposed transactions on access of underserved communities to wireless services). Concerning the *ex parte* letter filed by the MMTC, Sprint argues that this filing is untimely and therefore a violation of the Commission's rules because the MMTC raises issues that should have been raised at the time of the initial pleadings. Sprint May 30, 2013 *Ex Parte* at 2-3.

[296] DISH May 30, 2013 *Ex Parte* at 2; DISH May 23, 2013 *Ex Parte* at 2; DISH May 13, 2013 *Ex Parte* at 2; DISH May 7, 2013 *Ex Parte* at 2. In addition, in response to MMTC's requests for more information regarding diversity concerns, DISH filed a letter answering MMTC's questions. *See generally* Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, dated June 11, 2013 ("DISH June 11, 2013 *Ex Parte*").

[297] Applicants June 11, 2013 *Ex Parte* at 1, Attachment at 1. *See* ¶ 12 *supra*. *See also* Public Interest Statement at 1-2, 13-14, 21-22; Applicants Mar. 12, 2013 *Ex Parte* at 2.

[298] Applicants June 11, 2013 *Ex Parte* at 1, Attachment at 1.

assert that "the reallocation of primary capital to Sprint stockholders is warranted given the companies' refined operating and capital expenditure synergy expectations resulting from extensive due diligence over the past nine months, as well as Sprint's improving profitability and execution of its Network Vision plan."[299]

99. DISH filed an *ex parte* letter in response to the Applicants' announcement of the amended merger agreement.[300] DISH contends that the reduction of the capital infusion means that there will be less capital available to Sprint for network investment and broadband deployment.[301] DISH asserts that in the Public Interest Statement, the Applicants relied on the large capital infusion to support their statements regarding the public interest benefits of the transaction and the Applicants should therefore provide the Commission with a new public interest analysis with an explanation of the benefits of the transaction.[302]

100. In response to DISH's arguments regarding the amendment, the Applicants assert that they have already provided the Commission with a full description of the changes to the proposed transaction and an analysis of the "minimal impact" of those changes on the public interest benefits of the transaction.[303] The Applicants maintain that the transaction offers many benefits in addition to SoftBank's financial investment, including giving Sprint access to SoftBank's technical expertise, particularly in deployment of TDD-LTE; allowing Sprint to benefit from SoftBank's experience in tailoring service plans and devices to meet consumer needs; and increased scale economies and improved access to new technology.[304] The Applicants argue that SoftBank's $5 billion investment gives Sprint a substantially stronger balance sheet and greater resources for deploying network assets than it had previously.[305] According to the Applicants, all of the other public interest benefits identified by Sprint and SoftBank are largely unaffected by the changes to the merger agreement.[306]

101. *Innovation in Services, Plans, Devices, and Applications*. According to the Applicants, a combined SoftBank and Sprint would provide economies of scale in device and mobile application development and therefore would increase innovation and competition in these areas.[307] Further, the Applicants assert that SoftBank implemented innovative approaches in Japan's mobile telecommunications marketplace, including lowering prices, deploying extensive network and infrastructure upgrades, and providing new and innovative devices.[308] The Applicants claim that Sprint

[299] *Id.* at Attachment at 1-2.

[300] *See generally* DISH June 12, 2013 *Ex Parte*. *See also generally* Letter from Pantelis Michalopoulos, Counsel for DISH, to Marlene H. Dortch, Secretary, FCC, dated June 14, 2013 ("DISH June 14, 2013 *Ex Parte*").

[301] DISH June 12, 2013 *Ex Parte* at 2.

[302] *Id.* at 1-3. *See also* DISH June 14, 2013 *Ex Parte* at 2-5.

[303] Applicants June 13, 2013 *Ex Parte* at 1.

[304] *Id.* at 1-2.

[305] *Id.* at 2.

[306] *Id.*

[307] Public Interest Statement at 27-29; Joint Opposition at 3.

[308] Public Interest Statement at 2, 14-21; Joint Opposition at 3. The Applicants claim that SoftBank implemented various pricing innovations, including allowing customers to purchase handsets on installment plans and initiating free mobile-to-mobile daytime calling between SoftBank customers and a discounted student plan. Public Interest Statement at 16-18. The Applicants also contend that SoftBank introduced new Internet content and made this new content easily available to users. *Id.* at 19-20.

would be able to take advantage of SoftBank's expertise in these areas to potentially offer new and innovative products and services and to use various techniques to boost its network performance benefiting consumers.[309] DISH argues that it is not clear whether SoftBank will be able to achieve the same success in the United States that it achieved in Japan, where SoftBank served a concentrated urban population and had had a first-mover advantage with the iPhone.[310]

C. Discussion

102. We anticipate that the proposed transactions likely will result in key public interest benefits. In particular, Softbank's provision of greater resources for transitioning the existing networks of Sprint and Clearwire to LTE technology could accelerate Sprint's rollout of advanced mobile broadband services, thereby supporting our goal of expanding mobile broadband deployment throughout the country. In addition, we anticipate that the proposed transactions likely will strengthen Sprint's ability to compete in the wireless marketplace, potentially resulting in greater innovation and reduced prices for all consumers, including rural, low-income, and minority consumers. While we acknowledge that under the revised Merger Agreement SoftBank would be making an initial investment in Sprint of $3 billion less than it originally asserted, we anticipate that the $5 billion initial investment that SoftBank is making, along with other asserted benefits such as economies of scale in acquiring devices, will likely result in public interest benefits. We also note that, under the Commission's sliding scale approach, where potential public interest harms appear unlikely, as is the case here, we will accept a lesser showing of public interest benefits. Accordingly, based on the record before us and the Applicants' descriptions discussed above, we find that the proposed transactions likely will result in certain public interest benefits that support the approval of the proposed transactions.

VII. FOREIGN OWNERSHIP AND PETITION FOR DECLARATORY RULING

103. The Applicants and Starburst I (together, for purposes of our foreign ownership analysis, the "310(b)(4) Petitioners") ask the Commission for a declaratory ruling that it would serve the public interest to allow SoftBank, upon closing, to indirectly hold, through Starburst I, foreign ownership and voting rights in Sprint and its direct and indirect licensee subsidiaries (Licensee Subsidiaries) in excess of the 25 percent foreign ownership benchmark under section 310(b)(4) of the Act.[311] Specifically, the 310(b)(4) Petitioners request a declaratory ruling allowing up to 100 percent aggregate foreign ownership in Sprint and its Licensee Subsidiaries upon consummation of the proposed transactions, consisting of: (1) indirect foreign ownership interests derived from the approximately 78 percent indirect interest that SoftBank will acquire in Sprint, (2) the foreign interests derived from the approximately 22 percent interest in Sprint to be held by various former Sprint shareholders,[312] and (3) an additional 25 percent aggregate equity and/or voting interest from foreign investors that could be accepted without seeking

[309] Public Interest Statement at 26-27. *See also* Applicants Mar. 18, 2013 *Ex Parte* at 1.

[310] DISH Reply at 24-25.

[311] Petition at 1-2 and Attachment A (listing the relevant Licensee Subsidiaries covered by the Petition). *See* IBFS File No. ISP-PDR-20121115-00007. The 310(b)(4) Petitioners state that although the proposed transactions include the transfer to SoftBank of Sprint's interest in Clearwire, Clearwire is not implicated in the Petition because Clearwire does not hold common carrier, broadcast, aeronautical en route, or aeronautical fixed radio station licenses and thus is not subject to the foreign ownership restrictions of section 310(b) of the Act. Petition at 3; *see* Applicants March 12, 2013 Letter; Clearwire Apr. 4, 2013 *Ex Parte* at 1.

[312] Applicants June 11, 2013 *Ex Parte*. The Applicants state that after all the elements of the transactions are completed, it is anticipated that SoftBank will hold approximately 77.667 percent of Sprint. The Applicants further state that this percentage may change in light of potential adjustments under the terms of the Merger Agreement, so the final percentage may be as high as 78 percent. *Id*. at 2, n.5.

prior Commission approval under section 310(b)(4), subject to the standard conditions that no more than 25 percent of Sprint's total ownership is attributable to individuals or entities from countries that are not Members of the World Trade Organization ("WTO"), and/or that no more than 25 percent is attributable to a single previously unidentified individual or entity from a WTO Member country.[313]

104. We analyze below the ownership information provided by the 310(b)(4) Petitioners under section 310(b)(4) of the Act and pursuant to our foreign ownership policies set forth in the *Foreign Participation Order*.[314] We also discuss the filings submitted by various parties regarding the proposed foreign ownership of Sprint and its Licensee Subsidiaries. Based on the record before us, we conclude that it would serve the public interest to allow the foreign ownership of post-transaction Sprint and its Licensee Subsidiaries.

A. Review of Foreign Ownership of Common Carrier Wireless Licenses

105. *Background.* Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control U.S. common carrier wireless licensees.[315] This section of the Act also grants the Commission discretion to allow higher levels of foreign ownership in a licensee's controlling U.S.-organized parent unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.[316] The presence of aggregated alien equity or voting interests in a common carrier licensee's controlling U.S-organized parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.[317] Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."[318]

106. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.[319] Therefore, with respect to indirect foreign investment from WTO Member countries, the Commission adopted a

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[313] *See* Petition at i, 17. The 310(b)(4) Petitioners request this margin to accommodate fluctuations in ownership in publicly traded shares of Starburst II's stock. Petition at n.36. As noted above, Starburst II would be renamed Sprint Corporation after consummation of the merger. Public Interest Statement at 7.

[314] 47 U.S.C. § 310(b)(4). *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-112 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration,* 15 FCC Rcd 18158 (2000). The Petitioners submitted supplemental information regarding shareholders of Sprint and SoftBank. Letter from J.G. Harrington, counsel for SoftBank and Regina M. Keeney, counsel for Sprint Nextel, to James L. Ball, Chief, Policy Division, International Bureau, FCC, dated Feb. 27, 2013 ("Applicants Feb. 27, 2013 *Ex Parte*"); Letter from Regina M. Keeney, Lawler, Metzger, Keeney & Logan, LLC, counsel for Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, dated Apr. 4, 2013 ("Sprint Apr. 4, 2013 *Ex Parte*") (attaching Apr. 4, 2013 U.S. Shareholder Analysis conducted by K&L Gates for Sprint Nextel Corporation, the "K&L Gates Analysis"); Letter from J.G. Harrington, counsel for SoftBank Corp., to James L. Ball, Chief, Policy Division, International Bureau, FCC, dated Apr. 8 2013 ("SoftBank Apr. 8, 2013 *Ex Parte*"); Applicants June 11, 2013 *Ex Parte*.

[315] 47 U.S.C. § 310(b)(4).

[316] *Id*.

[317] *See Applications of BBC License Subsidiary L.P. (Assignor) and SF Honolulu Subsidiary, Inc. (Assignee), et al.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973-74, ¶ 25 (1995).

[318] 47 U.S.C. § 310(b)(4).

[319] *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-112.

rebuttable presumption that such investment generally raises no competitive concerns.[320] With respect to foreign investment from countries that are not WTO Members, the Commission stated in the *Foreign Participation Order* that it would deny an application if it found that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.[321] The Commission's public interest analysis under section 310(b)(4) also considers any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed foreign investment.[322]

107. *Comments.* The EBS Petitioners ask us to deny the proposed transaction because, *inter alia*, it would permit the single largest transfer of U.S. spectrum assets – including spectrum exclusively allocated to educational institutions – to foreign control.[323] The EBS Petitioners argue that the potential transfer of U.S. educational spectrum to foreign control is an "exceptional circumstance" that requires us to perform a detailed public interest analysis and does not allow for a presumption in favor of SoftBank's entry in the U.S. telecommunications market.[324] The EBS Petitioners request that we deny the Applications or condition any approval on Clearwire divesting all its EBS spectrum leases and holdings to U.S. controlled entities in order to ensure that EBS continues to benefit U.S. educational, non-profit and religious institutions, and their constituents, communities and governing bodies.[325]

108. DISH questions whether the presumption in favor of foreign entities from WTO Member countries investing in the U.S. telecommunications industry applies in this case to the extent that Applicants have used, or plan to use, licenses that are subject to the statutory alien ownership restriction for broadcast-type services.[326] DISH states that the spectrum held by the Applicants is suitable for the provision of such services and that under the Commission's flexible use policy, the wireless frequencies

[320] *Id*. at 23913, ¶ 50, 23940, ¶¶ 111-112. The Commission stated that the presumption in favor of entry by an applicant from a WTO country could be rebutted only in "exceptional circumstances" where it can be shown that the entry raises a "very high risk" to competition in the U.S. market. *Id*. at 23913-14, ¶¶ 50-51.

[321] *Id.* at 23946, ¶ 131. The Commission recently determined to eliminate the distinction between foreign investment from WTO Member countries and non-WTO Member countries, and instead apply an "open entry" standard in its public interest assessment of all foreign investment under the section 310(b)(3) forbearance approach adopted in the *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended,* IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832, 9844, ¶ 33 (2012), and under the Commission's section 310(b)(4) review. *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended,* IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741, 5745, ¶ 5, 5754-58, ¶¶ 20-27 (2013) ("*Foreign Ownership Policies Second Report and Order*"). Those rules have not taken effect yet, however.

[322] *Id.* at 23913-15, ¶¶ 59-66. In assessing the public interest, the Commission takes into account the record developed in each particular case and accords deference to Executive Branch agencies on issues related to national security, law enforcement, foreign policy and trade policy. *Id*. at 23918, ¶ 59, 23919, ¶¶ 61-66.

[323] EBS Petitioners Petition at 3-5.

[324] EBS Petitioners Reply at iv-v, 26.

[325] EBS Petitioners Petition at 1, 16-17.

[326] DISH Reply at 2-3, 8-9.

at issue here can be used for various services including point-to-multipoint services.[327] DISH also contends that the Applicants have not shown that Japan affords effective competitive opportunities for broadcast-type services.[328] To the extent the presumption applies, DISH argues that it would be rebutted by the exceptional circumstances present in this case, *e.g.*, the amount of spectrum being aggregated, SoftBank's plan to use the spectrum, the "unproven" public interest benefits from the transaction, and "the windfall that SoftBank would enjoy if Sprint still owes the U.S. Treasury an anti-windfall payment."[329] DISH also raises foreign ownership concerns regarding SoftBank's alleged interactions with banks to impede DISH's ability to secure credit and the applicability of certain legal restrictions to foreign companies (as opposed to U.S. companies).[330]

109. In response, the 310(b)(4) Petitioners state that section 310(b) of the Act imposes no foreign ownership limitation on Clearwire's spectrum licenses, which are operated on a non-common carrier basis, and that the combined foreign ownership of the 310(b)(4) Petitioners otherwise complies with the Commission's policies and precedent.[331] The 310(b)(4) Petitioners also dispute the contention that the SoftBank/Sprint transaction should be subject to additional scrutiny because "broadcast-type services" might be offered via the spectrum acquired in the proposed transaction. The 310(b)(4) Petitioners state the broadcast-specific foreign ownership limitations of section 310(b) apply only to actual broadcast services, and the 310(b)(4) Petitioners do not provide broadcast services.[332] They also contend that arguments raised by DISH and other parties are not relevant to this proceeding and do not warrant further Commission consideration.[333]

110. Other parties generally support the proposed foreign ownership in this case. For example, the Computer & Communications Industry Association states that SoftBank's proposed foreign investment will accelerate and expand wireless broadband deployment in the United States.[334] NACEPF believes the EBS Petitioners' assertion of harm to EBS licensees if foreign ownership is approved is premature and unsupported.[335] The HITN states that fears of foreign control are misplaced and that the change in control will "facilitate construction of stations and further secure the educational objectives underlying the EBS spectrum."[336] The EBS Licensees argue that SoftBank's entry in the U.S. market may be a "key ingredient" in furthering the potential of EBS spectrum.[337] The Association for Continuing Education notes that each EBS licensee is in the best position to consider and address any issues that

[327] DISH Reply at 9. DISH contends that LTE enables broadcast-type services, through the use of Evolved Multimedia Broadcast Services and that Sprint's current offerings include Sprint TV, which appears to be a broadcast-type or subscription television service. *Id*.

[328] DISH Reply at 9.

[329] *Id.* at 3-6, 10-32.

[330] DISH May 16, 2013 *Ex Parte* at 3.

[331] Joint Opposition at 19-22.

[332] Applicants Mar. 12, 2013 *Ex Parte* at 3 ("The Applicants do not disseminate radio communications on a non-subscription basis to the general public.").

[333] *See, e.g.,* SoftBank May 23, 2013 *Ex Parte*.

[334] Letter from Computer & Communications Industry Association (CCIA) to Marlene H. Dortch, Secretary, FCC, dated Feb. 12, 2013, at 2.

[335] NACEPF Opposition at 6-7.

[336] HITN Opposition at 6-7.

[337] EBS Licensees, Comments on Petition to Deny at 7-9, dated Feb. 12, 2013.

might arise out of the transfer of indirect control to a foreign corporation of the contractual right to use leased EBS capacity.[338]

111. *Discussion.* We are not persuaded by the EBS Petitioners' assertion that the proposed indirect foreign ownership of Clearwire's licenses and lease rights constitutes an "exceptional circumstance" that would rebut the presumption that SoftBank's entry in the U.S. telecommunications market raises no competitive concerns. As an initial matter, the presumption the Commission adopted in the *Foreign Participation Order* is only relevant to the Commission's analysis of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) of the Act, and not other types of licenses. The statutory limitations on foreign ownership in section 310(b) of the Act do not apply to non-common carrier radio licenses like those held by Clearwire,[339] and we find no merit to the contention that public interest harms would arise from the proposed transactions.[340] Moreover, we agree with the 310(b)(4) Petitioners that – given SoftBank's investment in Sprint – SoftBank has the incentive and capability to improve existing services and deploy new services that would benefit the public.[341] As we stated above, we anticipate that the proposed transactions likely would facilitate certain transaction-specific public interest benefits, including the acceleration of advanced mobile broadband services and enhanced competition in the mobile wireless market, and the potential public interest harms presented by these transactions are not likely.[342] For these and the other reasons discussed herein, we deny the EBS Petitioners' challenge.[343]

112. We are similarly not persuaded by DISH's assertion that the presumption the Commission affords foreign investors from WTO Member countries entering the U.S. telecommunications market is inapplicable here because the radio licenses being transferred may be used to provide "broadcast-type services."[344] As we noted above, the presumption the Commission adopted in the *Foreign Participation Order* is only relevant to the Commission's analysis of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) of the Act, and not other types of licenses. In this case, the 310(b)(4) Petitioners are seeking a declaratory ruling under section 310(b)(4) for approval of the indirect foreign ownership of the Licensee Subsidiaries that hold common carrier licenses. Additionally, the 310(b)(4) Petitioners state that the services they provide are non-broadcast.[345]

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[338] 32 EBS Parties Opposition at 6.

[339] 47 U.S.C. § 310(b); s*ee Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended*, IB Docket No. 11-133, Notice of Proposed Rulemaking, FCC 11-121, 26 FCC Rcd 11703, 11708-10, ¶¶ 7-11 (2011) (presenting a general overview of foreign ownership restrictions under section 310 of the Act).

[340] *See* Section V *supra.*

[341] *See* Joint Opposition at 22.

[342] *See* Sections V-VI *supra*.

[343] *See* Section V *supra*. With regard to the general concerns raised by the EBS Petitioners regarding the foreign ownership of Sprint and its Licensee Subsidiaries in this case, *see* ¶ 107 *supra*, as we explain below, we find such foreign ownership to be in the public interest.

[344] DISH Reply at 9 (citing *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094 at 24137, ¶ 99, on reconsideration, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999); *Reform of Rules and Policies on Foreign Carrier Entry into the U.S. Telecommunications Market*, IB Docket No. 12-299, Notice of Proposed Rulemaking, 27 FCC Rcd 12765 (2012).

[345] Applicants Mar. 12, 2013 *Ex Parte* at 3.

Because the licenses at issue here are common carrier licenses, the presumption afforded foreign investors from WTO Member countries entering the U.S. telecommunications market pursuant to the policies set forth in our *Foreign Participation Order* would apply. With regard to DISH's requests that we evaluate whether Japan offers effective competitive opportunities to U.S. companies for broadcast-type services (an evaluation akin to the Effective Competitive Opportunities test used in other contexts), we do not find it necessary to conduct such an evaluation because section 310(b) applies specifically to common carrier, broadcast, aeronautical en route and aeronautical fixed radio station licenses, and not to "broadcast-type services."[346] We are also not persuaded by DISH's contention that SoftBank's alleged actions to threaten banks – as discussed above in Section IV – constitute anticompetitive conduct in "[t]he global financial markets" that is relevant to our foreign ownership analysis. As we stated above, we find these allegations to be speculative as they are based on press reports of actions that SoftBank "may have taken."[347] We also find DISH's argument that SoftBank is subject to fewer restrictions – such as banking-related restrictions set forth in 12 U.S.C. §§ 1842(c)(5), 1843 – than a U.S. company[348] not relevant to this proceeding.[349]

113. Having addressed the foreign ownership concerns raised by the various parties and determined the presumption afforded foreign investors from WTO Member countries entering the U.S. telecommunications market applies to the common carrier licenses that would be transferred in this case, we now analyze the attributable indirect foreign ownership interests in the Licensee Subsidiaries pursuant to the policies adopted in the *Foreign Participation Order*. The purpose of this analysis is to determine whether at least 75 percent of the equity and voting interests that would be held indirectly in the Licensee Subsidiaries upon closing are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*.

B. Attributable Foreign Ownership Interests

114. *SoftBank Foreign Ownership*. SoftBank is a publicly traded company organized under the laws of Japan, a WTO Member country.[350] It is traded on the Tokyo Stock Exchange (First Section)[351] with a single class of common stock that is widely dispersed. It has 1,098,514,819 shares

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[346] 47 U.S.C. § 310(b). *See Comprehensive Review of Licensing and Operating Rules for Satellite Services,* IB Docket No. 12-267, Notice of Proposed Rulemaking, 27 FCC Rcd 11619 (2012) (citing section 3 of the Communications Act of 1934, 47 U.S.C. § 153 ("broadcasting" means "dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations"); *Subscription Video Services*, 2 FCC Rcd 1001 (1987) (holding that subscription services are not broadcast services), *aff'd sub nom.*; *Nat'l Ass'n for Better Broad. v. FCC*, 849 F.2d 665 (D.C. Cir. 1988)).

[347] *See* ¶ 33 *supra*.

[348] *See* DISH May 23, 2013 *Ex Parte* at 2-3.

[349] We also find speculative DISH's claim that the adoption of a stockholder's rights plan as part of the amended SoftBank/Sprint merger agreement would restrict U.S. ownership of Sprint. *See, e.g.,* DISH June 12, 2013 *Ex Parte* at 3. The Applicants note that nothing in the stockholder's rights plan "says anything about whether U.S. citizens or corporations can own Sprint stock . . . [and that] nothing in those provisions precludes anyone from making a bona fide offer to acquire all of Sprint." Applicants June 13, 2013 *Ex Parte* at 2.

[350] SoftBank is a stock company or kabushiki kaisha, which is analogous to a general business corporation in the United States. Petition at 10.

[351] *See* Tokyo Stock Exchange, *FAQs: What are the TSE markets?/What does 1st/2nd section refer to?*, *available at* http://www.tse.or.jp/english/faq/list/general/g_b.html ("The first section is for the largest, most successful companies – often referred to as 'blue chips.'") (last visited Apr. 11, 2013).

outstanding (excluding treasury shares) and all SoftBank shares have equal voting rights.[352] SoftBank's world headquarters are located in Tokyo, Japan; the majority of its tangible property is located in Japan; and the vast majority of its sales and revenues is derived from Japan.[353] Mr. Son, a citizen of Japan, SoftBank's founder, Chairman, Chief Executive Officer, and its largest shareholder, holds 22.49 percent of SoftBank's issued and outstanding shares.[354] Four of SoftBank's eight member board of directors are Japanese citizens, and the remaining members are comprised of individuals from WTO Member countries – two from the United States, one from India, and one from China.[355]

115. SoftBank commissioned Japan Shareholder Services, Ltd. (JSS) to analyze its shareholder composition and identify the beneficial owners of the shares and their associated voting rights (JSS Study) based on SoftBank's shareholder registry list as of March 31, 2012.[356] JSS reviewed SoftBank's shareholder records to determine the citizenship of SoftBank's shares. It first reviewed the citizenship and address information in its records for both individual and institutional shareholders, *e.g.,* mutual funds and pension funds, that hold shares for their own accounts.[357] It then used information obtained from Georgeson, Inc., a provider of proxy services that maintains shareholder information for use in soliciting proxies, to determine the citizenship and addresses of the underlying owners of shares held by nominees. JSS's analysis included a review of individual non-Japanese shareholders to determine whether they were citizens of WTO Member countries based on the best available information. JSS did not rely on the citizenship of the nominees in making its citizenship determinations.[358]

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[352] Petition, Attachment D (Declaration of Masato Suzaki) at 1.

[353] Petition at 10 (citing SoftBank, Annual Report, 54-55 (2012)) and Attachment C.

[354] Petition at 10. Mr. Masayoshi Son's 22.49 percent ownership interest in SoftBank includes the 21.09 percent of SoftBank shares that he owns directly and the 1.40 percent he owns indirectly. Petition at 10, n.17. The Petition notes that only Mr. Son holds more than 10 percent of SoftBank. However, the 310(b)(4) Petitioners also state that a recent public securities report in Japan analogous to the SEC Form 13D indicates that each of four entities affiliated with The Capital Group Companies, Inc. (Capital Group) beneficially owns interests in SoftBank below 10 percent but that reportedly aggregate to 10.04 percent of SoftBank's stock. Petition at 10, 11, n.20. These Capital Group affiliates hold SoftBank stock as follows: (1) Capital Research and Management Company (8.34%), (2) Capital Guardian Trust Company (1.39%), (3) Capital International Limited (0.16%), and (4) Capital International Inc. (0.14%). The 310(b)(4) Petitioners state that the address of each of these entities is in the United States, except for Capital International Limited, whose address is in the United Kingdom, also a WTO Member country. *Id*.

[355] Petition at 10 (citing SoftBank, Annual Report, 54-55 (2012)).

[356] Petition at 11, n.21 and Attachment D (noting that SoftBank relied on its regular business records concerning shareholders and their addresses); Applicants Feb. 27 *Ex Parte*, Exhibit 1 (Imade Declaration) at 1 (stating, among other things, that (1) the shareholder registry classifies each shareholder into categories such as individual/corporation and Japanese Resident/Non-Japanese Resident, (2) all shareholders are listed with their nationality on the shareholder registry list, and (3) the classification between Japanese and Non-Japanese Residents is determined based on data of the actual domicile of the beneficial owner provided by the Japanese Resident shareholder or based on the standing proxy's data on the domicile of the beneficial owner in cases where the shareholder is not domiciled in Japan. In the case of Non-Japanese Resident shareholders, the identities of the shareholders were obtained from JSS's shareholder survey partner, and JSS used available information on the individual institutional investors obtained from public and other sources, *e.g.*, tax documents (including tax exemption register applications) submitted by Japanese investment trust companies and other sources as a way to confirm the domicile of those companies.).

[357] Petition, Attachment D at 1.

[358] Petition, Attachment D at 1-2; Applicants Feb. 27, 2013 *Ex Parte*, Exhibit 1. When citizenship information was not otherwise available for individual shareholders, JSS used the underlying shareholder address provided by the beneficial owners. Petition at 12, n.23 (citing *Mobile Satellite Ventures Subsidiary, LLC, Petition for Declaratory* (continued….)

116. The JSS Study, completed on November 9, 2012, concluded that (1) 47.25 percent of SoftBank shares were held by residents of Japan (excluding foreign corporations that have a Japanese residence), (2) 15.83 percent were held by Japanese trust banks, and (3) 36.92 percent were held by non-Japanese corporations and individuals (including foreign corporations that have a Japanese residence), of which 35.35 percent were held by non-Japanese corporations that did not hold such shares through American Depository Receipts ("ADRs").[359] The 310(b)(4) Petitioners state that of the 47.25 percent of SoftBank shares held by Japanese residents, 82.35 percent were held by individuals (representing 38.91 percent of all issued and outstanding shares), and 17.65 percent were held by corporations (representing 8.35 percent of all issued and outstanding shares).[360] The 310(b)(4) Petitioners further state that the trust banks are primarily ultimately owned and controlled by Japanese citizens,[361] and that of the 15.83 percent held by Japanese trust banks, 95.5 percent (or 15.12 percent of total SoftBank shares) were held by citizens of WTO Member countries.[362] Of the 35.35 percent of the shares held by non-Japanese corporations that did not hold shares through ADRs, at least 85.12 percent (or 30.09 percent of total SoftBank shares) were held by citizens from WTO Member countries.[363]

(Continued from previous page)
Ruling Under Section 310 of the Communications Act, as Amended, File No. ISP-PDR-20070314-0004, at 14, n.44 (filed Mar. 14, 2007); *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as amended,* Order and Declaratory Ruling, 23 FCC Rcd 4436 (2008) ("*2008 MSV Order"*)).

[359] Petition, Attachment D at Attachment A (Breakdown of SoftBank Shareholders). For a definition of ADRs, *see American Depositary Receipts*, U.S. Securities and Exchange Commission, *at* http://www.sec.gov/answers/adrs.htm ("The stocks of most foreign companies that trade in the U.S. markets are traded as ADRs. U.S. depositary banks issue these stocks. Each ADR represents one or more shares of foreign stock or a fraction of a share. If you own an ADR, you have the right to obtain the foreign stock it represents, but U.S. investors usually find it more convenient to own the ADR. The price of an ADR corresponds to the price of the foreign stock in its home market, adjusted to the ratio of the ADRs to foreign company shares.").

[360] Applicants Feb. 27, 2013 *Ex Parte*, Exhibit 1 at 2.

[361] The two exceptions are State Street Trust and Banking Co., Ltd. and Société Générale Private Banking Japan, which are subsidiaries of financial firms in which a U.S. and a French financial group, respectively, have interests. The total number of shares held by these two nominal shareholders is less than 200,000 shares, which, as of the end of March 2012, accounted for less than 0.02 percent of all issued and outstanding shares of SoftBank. Applicants Feb. 27, 2013 *Ex Parte*, Exhibit 1 at 3.

[362] In classifying the trust bank holdings in SoftBank as WTO or non-WTO Member investment, JSS considered both the citizenship of the persons holding the authority to vote the shares and the citizenship of persons holding the authority to make investment decisions over the shares representing the equity interests. Applicants Feb. 27, 2013 *Ex Parte*, Exhibit 1 at 4.

[363] Petition, Attachment D at 2. SoftBank Apr. 8 Letter at Attachment A (Supplemental SoftBank Ownership Information) (providing the following breakdown by country of the 30.09 percent of SoftBank shares held by WTO-based foreign corporations outside of Japan other than ADR holders, rounded to the nearest 1/100th percent: (1) United States (19.79%); (2) United Kingdom (4.98%); (3) Norway (0.98%); (4) Switzerland (0.96%); (5) France (0.74%); (6) Singapore (0.58%); (7) British Virgin Islands (0.46%); (8) Canada (0.29%); (9) Netherlands (0.26%); (10) United Arab Emirates (0.23%); (11) Saudi Arabia (0.19%); (12) Sweden (0.16%); (13) Germany (0.13%); (14) Ireland (0.09%); (15) Italy (0.07%); (16) Denmark (0.06%); (17) Japan (0.04%); (18) Belgium (0.03%); (19) Brunei (0.02%); (20) Luxembourg (0.01%); (21) Hong Kong (China) (0.01%); (22) Spain (0.01%); and (23) Australia, Austria, Finland, Lichtenstein, Oman, South Africa, and Taiwan (collectively 0.016%)). . SoftBank notes that because the British Virgin Islands is an overseas territory of the United Kingdom, the Commission treats it as a WTO Member country for purposes of its public interest analysis under section 310(b)(4) of the Act. *Id*. (citing *Stratos Global Corp. and Robert M. Franklin, Consolidated Applications for Consent to Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21328, 21366, ¶ 93, n.255 (2007)).

117. The 310(b)(4) Petitioners state that in sum, SoftBank investors from WTO Member countries hold 92.46 percent (at least 1.015 billion shares) of SoftBank's equity and voting interests, and that investors from non-WTO Member countries hold no more than 7.54 percent (no more than 83 million shares) of its equity and voting rights.[364] The 310(b)(4) Petitioners state that this 7.54 percent includes (1) approximately 5.26 percent of SoftBank shares held by foreign companies that were not held through ADRs or were otherwise held through nominees for which citizenship information for the ultimate beneficial owners was not available, (2) 1.56 percent of SoftBank shares held by ADR holders, foreigners with Japanese residence, and foreign individuals that were not otherwise identifiable, and (3) 0.71 percent shares of indeterminate nationality.[365]

118. In accordance with Commission precedent,[366] we calculate the following indirect equity and voting interests that SoftBank's shareholders would hold in Sprint (through Starburst I)[367] upon closing as a result of SoftBank's 78 percent equity and voting interest in post-transaction Sprint: (1) SoftBank investors from WTO Member countries, including the United States, (collectively, 72.12 percent equity and 92.46 percent voting interests)[368] and (2) SoftBank investors from non-WTO Member countries, including investors of indeterminate nationality (5.88 percent equity and 7.54 percent voting interests).[369] Consistent with Commission precedent, we treat unidentified interests as investment from

[364] Petition at 11, Attachment D at 2 and Attachment A (Breakdown of SoftBank Shareholders) (noting that there is a 0.01% difference due to rounding).

[365] Petition at 11-12, n.22.

[366] In calculating attributable alien equity interests in a parent company, the Commission uses a "multiplier" to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. *Id.* at 10973, ¶ 23; *see also Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 103 F.C.C. 2d 511, 522, ¶ 19 (1985), *recon. in part*, 1 FCC Rcd 12 (1986). In circumstances where the voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, a general partner is considered to hold the same voting interest as the partnership holds in the company positioned below it. Similarly, in the absence of a demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company positioned below it. *See Applications of XO Communications, Inc.*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212, 19221-23, ¶¶ 22, 25 (Int'l Bur., WCB, and WTB 2002).

[367] We find that Starburst I has its principal places of business in either the United States or Japan, both of which are WTO Member countries. Starburst I, a newly formed corporation, is organized in the United States, and its investment principals, officers, and directors are citizens of Japan. Petition at Attachment C (Principal Place of Business Showing for Starburst I, Starburst II, and SoftBank).

[368] *See* note 366 *supra*. We derive the 72.12 percent equity interest by multiplying the sum of the equity interests held by SoftBank investors from the United States and from other WTO Member countries (92.46%) by SoftBank's proposed equity interest in Sprint through Starburst I (78%) (92.46% x 78%= 72.12%). *See* note 366 *supra* (describing use of the "multiplier" to calculate foreign equity interests when they are held through intervening companies). By contrast, we treat voting interests held by SoftBank investors from WTO Member countries as a 92.46 percent voting interest in Sprint because SoftBank's proposed 78 percent interest in Sprint (through Starburst I) would constitute a controlling interest. *Id*.

[369] We again employ a "multiplier" to calculate the equity interests (but not the voting interests) that would be held indirectly in Sprint by SoftBank's investors from non-WTO Member countries, including unknown shareholders – (continued….)

non-WTO Member countries.[370] Based on the record before us and pursuant to section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*,[371] we find that the vast majority of foreign ownership interests that would be held by SoftBank's shareholders in Sprint and its Licensee Subsidiaries are properly treated as investment from WTO Member countries except for the 5.88 percent equity and 7.54 percent voting interests from investors from non-WTO Member countries and investors of indeterminate nationality.[372]

119. *Sprint Foreign Ownership*. Sprint is a publicly traded Kansas corporation with its principal executive and administrative offices in Overland Park, Kansas.[373] Sprint states that, in accordance with Commission requirements, it studies the geographic origins of the beneficial ownership of its shares to ensure ongoing compliance with foreign ownership restrictions.[374] For example, the 310(b)(4) Petitioners noted that a study conducted by Thomson Reuters indicates that as of February 25, 2011, (1) approximately 19.04 percent of Sprint's issued and outstanding stock is held by non-U.S. individuals and entities, (2) the majority of that 19.04 percent is held by individuals and entities from WTO Member countries, and (3) an aggregate 2.7 percent of Sprint's stock is held by individuals and entities with home markets in non-WTO Member countries.[375]

120. In response to a request from the International Bureau for more recent ownership information, Sprint retained K&L Gates LLP ("K&L Gates") to review its shareholder list as of December 31, 2012, to verify that at least 75 percent of its common stock is held by U.S. shareholders.[376] During its review, K&L Gates used the following criteria to determine whether a shareholder is a U.S. shareholder: (1) any individual if he or she is a U.S. citizen, (2) any bank, insurance company, pension plan, and foundation/endowment if it is organized in the United States and controlled by U.S. citizens, and (3) any private equity fund and management investment company that has its principal place of business in the United States, taking into consideration: (i) the country of its world headquarters, (ii) tax jurisdiction, (iii) the country of its incorporation, organization or charter, (iv) the citizenship or principal

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that is, we multiply the percentage of their equity interests by the 78 percent equity interest SoftBank would hold in Sprint Corporation (through Starburst I) upon closing. *See* note 366 *supra*. Accordingly, we calculate SoftBank's investors from non-WTO Member countries, including unknown shareholders, as holding a 5.88 percent indirect equity interests in Sprint (7.54% x 78%= 5.88% equity). We did not require SoftBank to identify all of its non-WTO shareholders holding more than 0.1 percent as DISH requested because the 310(b)(4) Petitioners have properly categorized these ownership interests as non-WTO Member country investment in accordance with our policies and precedent and, in any event, such interests do not exceed 25 percent. *See* DISH Reply at 33.

[370] *See*, *e.g.*, *2008 MSV Order,* 23 FCC Rcd at 4442, ¶ 14 ("[W]e treat the 0.02 percent equity and voting interest held indirectly in MSV by the non-U.S., non-Canadian shareholders of BCE, Inc. as non-WTO investment because we do not have adequate information as to their citizenship or principal places of business.").

[371] *Foreign Participation Order*, 12 FCC Rcd 23891; *see*, *e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17541-46, ¶¶ 221-32, *pet. for recon. denied*, FCC 11-122, 26 FCC Rcd 11763 (2011); *Verizon Wireless-RCC Order*, 23 FCC Rcd at 2525-26, ¶ 149, *pet. for recon. dismissed*, FCC 11-122, 26 FCC Rcd 11763 (2011); *Iridium Holdings LLC and Iridium Carrier Holdings LLC, Transferors, and GHL Acquisition Corp., Transferee*, IB Docket No. 08-232, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 10725, 10743-45, ¶¶ 41-43 (Int'l Bur. 2009) ("*2009 Iridium Order*").

[372] *See*, *e.g.*, *2008 MSV Order*, 23 FCC Rcd at 4442, ¶ 14.

[373] Petition at 5.

[374] *Id.* at 6.

[375] *Id.* at 6; Applicants Feb. 27, 2013 *Ex Parte*, Exhibit 2 at 1.

[376] Sprint Apr. 4, 2013 *Ex Parte*.

place of business of its controlling principals, directors and/or investment managers, and (v) the countries from which the funds being managed were contributed.[377] K&L Gates concluded that as of December 31, 2012, at least 75 percent (77.56 percent) of the issued and outstanding shares of Sprint's common stock are held by U.S. shareholders. K&L Gates did not provide definitive ownership information for the remaining shareholders of Sprint.[378]

121. Based on the record before us and pursuant to section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*,[379] we find that, upon closing, Sprint's U.S. shareholders would hold an indirect 17.06 percent equity and voting interest (77.56 percent x 22 percent) in the Licensee Subsidiaries. We also find that unidentified Sprint shareholders would hold, upon closing, an indirect 4.94 percent equity and voting interest (22.44 percent x 22 percent) in the Licensee Subsidiaries. Consistent with Commission precedent, we treat such unidentified interests as investment from non-WTO Member countries.[380]

122. In sum, we ascribe to non-WTO shareholders of SoftBank (including unknown shareholders) an aggregate 5.88 percent equity interest and 7.54 percent voting interest in Sprint. Adding the 4.94 percent equity and voting interests that we calculate for unidentified Sprint shareholders, we calculate total non-WTO investment in Sprint, upon closing, as 10.82 percent of its equity interests and 12.48 percent of its voting interests.

C. Declaratory Ruling

123. Based on our analysis of the information contained in the record of this proceeding, we find that at least 75 percent of the equity and voting interests that would be held indirectly in the Licensee Subsidiaries upon closing are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*. The 310(b)(4) Petitioners are therefore entitled to a rebuttable presumption that indirect foreign ownership of the Licensee Subsidiaries through Sprint upon closing does not pose a risk to competition in the U.S. market.[381] We find no evidence in the record that rebuts this presumption. Moreover, as we explained

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[377] K&L Gates Analysis at 1. According to K&L Gates, it used information made available by Sprint, as well as information from Secretary of State websites, Westlaw, Lexis, the SEC's EDGAR database, Securities Mosaic, Form ADVs (retrieved from the SEC's Investment Advisor Public Disclosure database), the Federal Reserve National Information Center, Bloomberg Financial, Capital IQ, Hoovers, Accurint, PitchBook, and institutional shareholder websites and media. *Id.* at 2-4. For details on the methodology used by K&L Gates, *see* K&L Gates Analysis.

[378] K&L Gates reached the 75 percent U.S. shareholder threshold during the course of investigating the largest 350 institutional shareholders of Sprint. K&L Gates notes that of those 350 shareholders, it identified and verified 259 institutional shareholders of Sprint whose aggregate holdings represent approximately 85.54 percent of Sprint's outstanding shares (with U.S. shareholders holding 77.56% of the total outstanding shares). K&L Gates Analysis at 5, n.8. In the course of its research, K&L Gates made note of investors from non-U.S. jurisdictions, *i.e.*, Canada (1.96%); Norway (1.81%), the United Kingdom (1.24%), Japan (0.8%), Switzerland (0.57%), Germany (0.51%), France (0.51%), the Netherlands (0.48%), and Hong Kong (0.10%). However, K&L Gates did not reach definitive conclusions regarding the citizenship or principal places of business for these non-U.S. shareholders. *Id*. at 5, n.7.

[379] *See*, *e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17541-46, ¶¶ 221-32, *pet. for recon. denied*, FCC 11-122, 26 FCC Rcd 11763 (2011); *Verizon Wireless-RCC Order*, 23 FCC Rcd at 2525-26, ¶ 149, *pet. for recon. dismissed*, FCC 11-122, 26 FCC Rcd 11763 (2011); *2009 Iridium Order*, 24 FCC Rcd at 10743-45, ¶¶ 41-43.

[380] *See*, *e.g.*, *2008 MSV Order*, 23 FCC Rcd at 4442, ¶ 14.

[381] *See Foreign Participation Order,* 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-112. In adopting this presumption in the *Foreign Participation Order*, the Commission explained that it applies "only to competition (continued….)

above, several parties support the proposed indirect foreign ownership from the instant transactions,[382] we have determined that the proposed transactions would result in public interest benefits, and we find no basis to conclude that the proposed transactions is likely to harm competition.[383] As we discuss in Section VIII below, based on the record in the proceeding we find that any national security, law enforcement and other related concerns have been adequately addressed.

124. Accordingly, pursuant to the policies established by the Commission's *Foreign Participation Order*, we find that it would not serve the public interest to prohibit the indirect foreign ownership of the Licensee Subsidiaries in excess of the 25 percent benchmark in section 310(b)(4) of the Act. Specifically, this ruling permits the Licensee Subsidiaries to be 100 percent owned indirectly, as a result of the foreign ownership interests held in Sprint, the controlling U.S. parent of the Licensee Subsidiaries, upon closing, by SoftBank (individually) and by SoftBank's shareholders (collectively, including Mr. Son). The Licensee Subsidiaries may accept up to and including an additional, aggregate 25 percent equity and/or voting interests from these foreign investors and other foreign investors without seeking prior Commission approval, subject to the following conditions. First, the Licensee Subsidiaries shall obtain prior Commission approval before any foreign individual or entity acquires a direct or indirect equity and/or voting interest in post-transaction Sprint in excess of 25 percent. Second, the Licensee Subsidiaries shall obtain prior Commission approval before Sprint's direct or indirect equity and/or voting interests from non-WTO Member countries (including interests from unidentified investors) post-transaction exceed 25 percent.[384] The Licensee Subsidiaries have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, and otherwise ensure continuing compliance with the provisions of section 310(b)(4) of the Act.[385]

VIII. NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY, AND TRADE CONCERNS

125. *Background.* When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[386] The Commission has recognized its public

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concerns that may arise because of a foreign carrier's market power in a foreign market." *Foreign Participation Order,* 12 FCC Rcd at 23916-17, ¶ 57. The Commission stated that, because common carrier wireless markets are, "for the most part, wholly domestic, there is no possibility of leveraging foreign bottlenecks in order to create advantages for some competitors in U.S. markets." *Id*. at 23940, ¶ 112. *See also Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5756, ¶ 24 (confirming the Commission's prior finding of no risk of leveraging foreign bottlenecks into U.S. domestic wireless markets).

[382] *See supra* ¶ 110 and accompanying notes.

[383] *See* Sections V-VI *supra*; *see also Foreign Participation Order*, 12 FCC Rcd at 23905-09, ¶¶ 33-41. In this regard, we are not persuaded by DISH's arguments that the presumption would be rebutted by the amount of spectrum being aggregated; SoftBank's plans to use the spectrum; the "unproven" public interest benefits from the transaction; and "the windfall that SoftBank would enjoy if Sprint still owes the U.S. Treasury an anti-windfall payment." DISH Reply at 3-6, 10-32. As noted above, we have found the proposed transaction to be in the public interest. *See* Sections V-VI *supra*.

[384] *See* ¶ 122 *supra* and accompanying notes (discussion of unidentified shareholders).

[385] *See Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc.*, WT Docket No. 09-121, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 10985, 11024, ¶ 99 (Int'l Bur. and WTB 2010); *2008 MSV Order* at 4443, ¶ 16; *America Móvil Order*, 22 FCC Rcd at 6225, ¶ 68.

[386] *See Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66. *See also Foreign Ownership Policies Second Report and Order,* 28 FCC Rcd at 5792 n. 255 (2013) ("The Commission has previously held that, (continued….)

interest analysis would benefit from input by the Executive Branch agencies which have expertise in these issues. In particular, the Commission accords an appropriate level of deference to Executive Branch agencies' unique expertise on national security and law enforcement issues.[387] Accordingly, the Commission considers any concerns raised by Executive Branch agencies, but the Commission makes an independent decision on the applications based on the record in the proceeding.[388]

126. *Comments*. Several parties contend that the proposed transactions raise national security concerns that merit close scrutiny. CWA raises concerns regarding SoftBank's and Clearwire's "close association" with Chinese equipment vendors, Huawei Technologies and ZTE Corporation, noting the recommendations of the U.S. House of Representatives' Permanent Select Committee on Intelligence regarding these companies in order to protect U.S. security interests.[389] In this regard, CWA urges the Commission and national security agencies to take seriously the concerns and recommendations of the House Intelligence Committee during the review of the proposed transactions, and, at a minimum, place restrictions on the use of Huawei equipment in Sprint/Clearwire networks.[390] DISH urges us to include national security concerns as part of our foreign ownership analysis and requests that we grant the transactions on the condition that all of Sprint's Network Operations Centers (NOCs) be located in the United States.[391]

127. In response, the Applicants state that the well-established regulatory process of review by the relevant Executive Branch agencies and the Committee on Foreign Investment in the United States (CFIUS) would address national security concerns[392] and that there is no need for the Commission to engage in its own inquiry regarding national security issues and impose its own conditions.[393] On May 29, 2013, the Applicants announced that CFIUS found that there are no unresolved national security issues associated with SoftBank's proposed acquisition of a controlling interest in Sprint and SoftBank's

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regardless of the applicability of sections 310(a) and 310(b), the Commission considers, pursuant to sections 308 and 310(d) of the Act, national security, law enforcement, foreign policy and trade policy concerns when analyzing an application in which foreign ownership is involved.").

[387] *Foreign Participation Order,* 12 FCC Rcd at 23919, ¶ 62.

[388] *Id.* at 23921, ¶ 66. *See also Foreign Ownership Policies Second Report and Order*, 28 FCC at 5762, ¶ 34 ("While the Commission has exercised its discretion to rely substantially on the views of Executive Branch agencies for their expertise on matters of national security, law enforcement, foreign policy and trade policy in cases involving foreign investment in U.S. common carrier and aeronautical licensees, we do not believe it would be appropriate for us essentially to delegate this statutory responsibility to such agencies.").

[389] CWA Petition at 11-14, n.41.

[390] CWA Petition at 14 (citing Chairman Mike Rogers and Ranking Member C.A. Dutch Ruppersberger of the Permanent Select Committee on Intelligence, U.S. House of Representatives, *Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE* (Oct. 8. 2012), *available at* http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/Huawei-ZTE%20Investigative%20Report%20%28FINAL%29.pdf (last visited Apr. 11, 2013)).

[391] DISH Reply at 34.

[392] Joint Opposition at 22-24. Applicants state that with regard to concerns about the use Huawei equipment, SoftBank's telecommunications companies – SoftBank Mobile, SoftBank BB, and SoftBank Telecom – do not use Huawei equipment in their core network infrastructure, but only in a network of an affiliate, Wireless City Planning, Inc., in which case, Huawei equipment is used only at the edge of the network. *Id.*

[393] Applicants March 12, 2013 *Ex Parte*. Applicants note that the argument raised by DISH in its reply regarding this issue is procedurally improper because it cannot be raised for the first time on reply. *Id.* at 4, n.4.

resulting indirect ownership of Clearwire Corporation.[394] As a precondition to CFIUS clearance of the transaction, Applicants state that CFIUS required them to enter into a National Security Agreement with DOD, DHS and DOJ (the "USG Parties"). According to the Applicants the National Security Agreement ("NSA") provides, among other things, that:

> • SoftBank and Sprint must appoint an independent member to the post-transaction Sprint board of directors to serve as the Security Director. The Security Director will be approved by the USG Parties, oversee Sprint's compliance with the National Security Agreement and serve as a contact for the USG Parties on all security-related matters. In addition, the Security Director is required to have expertise and experience with national security matters, be a U.S. resident citizen, and hold appropriate security clearances.
>
> • Once Sprint either obtains operational control of Clearwire or consummates its proposed acquisition of Clearwire, USG Parties will have a one-time right to require Sprint to remove and decommission by December 31, 2016 certain equipment deployed in the Clearwire network.
>
> • The USG Parties will have the right to review and approve certain network equipment vendors and managed services providers of Sprint, as well as of Clearwire once Sprint completes its proposed acquisition of Clearwire.[395]

128. On June 7, 2013, DOJ, including the FBI, with the concurrence of DHS, filed a letter (collectively, the "Agencies") stating that they have reviewed the information provided to them by the Applicants and analyzed the measures undertaken by the Applicants to address potential national security, law enforcement, and public safety issues, including supply chain issues.[396] Based on their review, the Agencies have no objection to grant of the applications.[397]

129. On June 9, 2013, the Applicants filed additional information regarding the NSA, including declarations from the officers of Starburst II and Sprint that signed the NSA as well as the clearance letters from the Department of the Treasury.[398] The Applicants state that the terms of the NSA address the national security issues raised in this proceeding as well as the concerns of the Agencies. As to the issue of the equipment used in Sprint and Clearwire networks raised by CWA, the Applicants note that under the NSA the U.S. Government will have a one-time right to require Sprint to remove and decommission certain equipment deployed in the Clearwire network and the U.S. Government will have the right to review and approve certain network equipment vendors and managed services providers of Sprint, as well as of Clearwire once Sprint completes its proposed acquisition of Clearwire.[399] Regarding the location of Sprint's NOCs, an issue raised by DISH, the Applicants state that concerns regarding SoftBank's control over Sprint's NOCs have been specifically addressed in the NSA to the satisfaction of

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[394] *See* Sprint Nextel Corporation, SEC 8-K Filing (May 29, 2013), *available at* http://www.sec.gov/Archives/edgar/data/101830/000119312513238554/d545797d8k.htm.

[395] *Id.*

[396] Letter from Richard Sofield, Director, Foreign Investment Review Staff, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, dated June 7, 2013 ("DOJ June 7, 2013 *Ex Parte*").

[397] *Id.*

[398] Letter from Regina M. Keeney, counsel for Sprint Nextel Corporation, and John R. Feore, counsel for SoftBank Corp., to Marlene H. Dortch, Secretary, FCC, dated June 9, 2013 ("Applicants June 9, 2013 *Ex Parte*").

[399] *Id.* at 2.

the Agencies.[400] The Applicants also note that retired Admiral Mike Mullen, former Chairman of the Chiefs of Staff, will serve Security Director on the Sprint Board and be the point of contact for the U.S. Government on security matters on the post-transaction Sprint board.[401]

130. *Discussion.* We find that there are no public interest harms to the proposed transactions due to national security concerns. As we discussed above, in assessing the public interest, we take into account the record developed in each particular case and accord appropriate deference to the expertise of the Executive Branch agencies in analyzing national security, law enforcement and other concerns related to foreign ownership of Commission licensees. In this case the Agencies have analyzed the measures taken by the Applicants to address potential national security, law enforcement, and public safety issues, including supply chain issues and have advised us they do not object to grant of the applications.[402]

131. Based on the record, we find that the national security issues raised in this proceeding – *i.e.*, concerns regarding equipment vendors and the location on the Sprint NOCs – have been adequately addressed. As to the allegations made by DISH regarding whether Sprint already has *de facto* control of Clearwire and thus key provisions of the NSA are inoperable,[403] we find in Section IX that Sprint does not currently have *de facto* control of Clearwire.[404] Thus, we find that DISH's allegations have no merit. We therefore conclude that we do not need to take further action in this proceeding to address national security issues.

IX. ORDER ON RECONSIDERATION

132. In this section, we address two petitions that seek reconsideration of the Bureau-level decision that granted, pursuant to our *pro forma* procedures, applications to transfer the Clearwire shares held by Eagle River Holdings, LLC ("Eagle River") to Sprint.[405] We address these petitions pursuant to a section 1.106 referral from the Wireless Bureau.[406]

133. *Background*. Eagle River was one of the original equity holders in Clearwire in 2008.[407] In accordance with the provisions of the Clearwire Equityholders' Agreement, on October 17, 2012,

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[400] *Id.*

[401] *Id.* at 2-3; Attachment (Sprint news release dated June 7, 2013).

[402] DOJ June 7, 2013 *Ex Parte.*

[403] Letter from Pantelis Michalopoulos, counsel for DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, dated June 4, 2013 ("DISH June 4, 2013 *Ex Parte*"); DISH June 11, 2013 *Ex Parte*; *see contra* Applicants June 9, 2013 *Ex Parte* at 3.

[404] *See* Section IX *infra.*

[405] *See* Crest Financial Limited Petition for Reconsideration, ULS File No. 0005480932 (filed Jan. 10, 2013) ("Crest Petition for Reconsideration"); *see also* Petition of DISH Network L.L.C. for Reconsideration, ULS File No. 0005480932 (filed Jan. 11, 2013) ("DISH Petition for Reconsideration").

[406] *See* 47 C.F.R. § 1.106(a)(1) (providing that "[p]etitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission").

[407] *See* Equityholders' Agreement By and Among Clearwire Corporation, Sprint Holdco, LLC, Eagle River Holdings, LLC, Intel Capital Wireless Investment Corporation 2008A, Intel Capital Wireless Investment Corporation 2008B, Intel Capital Wireless Investment Corporation 2008C, Intel Capital Corporation, Intel Capital (Cayman) Corporation, Middlefield Ventures, Inc., Comcast Wireless Investment I, Inc., Comcast Wireless Investment II, Inc., Comcast Wireless Investment III, Inc., Comcast Wireless Investment IV, Inc., Comcast Wireless Investment V, Inc., Google Inc., TWC Wireless Holdings I LLC, TWC Wireless Holdings II LLC, TWC Wireless (continued….)

Eagle River sent a notice to Sprint and certain other parties offering to sell its entire shareholdings in Clearwire.[408] On October 18, 2012, Sprint disclosed in an SEC filing its intent under the Agreement to acquire 100 percent of the Clearwire shares being offered by Eagle River for $100 million and thereby increase Sprint's stake in the company from 48.1 percent to 50.45 percent.[409] We note that the Commission, in a 2008 decision,[410] previously approved an application that permitted Sprint to hold a 51 percent ownership interest in Clearwire, though Sprint's equity interest in Clearwire was lowered to less than 50 percent in 2011.[411]

134. Consistent with Sprint's stated intent to acquire the Eagle River shares, Clearwire filed the applications associated with the proposed transfer of Eagle River's holdings to Sprint on November 15, 2012.[412] The applications indicated that they involved a *pro forma* transfer of control, and sought Commission approval prior to the closing of the proposed transfer of Eagle River's holdings. The Bureau granted consent to the applications on December 6, 2012,[413] and the transaction was consummated later that month.[414] The *Dec. 27, 2012 Public Notice*, which extended the pleading cycle in the broader SoftBank/Sprint proceeding, discussed the *pro forma* Eagle River transfer, stating that the Commission approved that transaction pursuant to *pro forma* procedures and explaining that the transaction "did not give Sprint *de facto* control" under the terms of an Equityholders' Agreement entered into by Sprint and other major Clearwire stockholders.[415]

135. In January 2013, Crest[416] and DISH[417] each filed a petition for reconsideration of the Bureau's *pro forma* processing of this transaction, requesting that the Commission instead treat the Eagle

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Holdings III LLC, and BHN Spectrum Investments, LLC (dated as of Nov. 28, 2008) at 1 ("Clearwire Equityholders' Agreement").

[408] ULS File No. 0005480932, Application for *Pro Forma* Transfer of Control of Clearwire Spectrum Holdings LLC From Clearwire Corporation to Clearwire Corporation, Exhibit A at 1 (filed Nov. 15, 2012) ("Eagle River Lead *Pro Forma* Application"); Clearwire Corporation Schedule 13D/A, Amendment No. 14 to Schedule 13D filed on December 5, 2008, at 5 (dated Oct. 17, 2012) ("Clearwire Schedule 13D/A"). The referenced ULS application is the lead application submitted to the Commission for the 79 wireless applications filed in connection with the transfer of the Eagle River holdings to Sprint.

[409] *See* Clearwire Schedule 13D/A Ex. 99.30; *see also* Eagle River Lead *Pro Forma* Application, Exhibit A at 1.

[410] *See Sprint Nextel-Clearwire Order*, 23 FCC Rcd 17570.

[411] *See* Sprint Nextel Corporation, Quarterly Report (Form 10-Q), at 11 (June 30, 2011).

[412] Three manually-filed applications, attached to ULS File No. 0005480932, were received by the Commission's office in Gettysburg on November 16, 2012.

[413] *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Rpt. Nos. 8300, 8300A, 8300B, 8300C (rel. Dec. 12, 2012).

[414] The proposed transaction was consummated on December 11, 2012, and consummation notices were filed with the Commission on December 12, 2012.

[415] *Dec. 27, 2012 Public Notice*, 27 FCC Rcd at 16057.

[416] Crest Petition for Reconsideration. Crest also filed a reply with respect to its petition for reconsideration. Reply of Crest Financial Limited in Support of Petition for Reconsideration, ULS File No. 0005480932 (filed Jan. 22, 2013) ("Crest Reconsideration Reply"). Crest represents that it is a long-term investor in Clearwire that, with its affiliates and related persons, owns approximately 8.34 percent of Clearwire's outstanding Class A common stock. Crest Petition for Reconsideration at 2.

River applications as involving a substantive transfer of control requiring a public notice and an opportunity for comment by interested parties in advance of Commission action. Crest also requests that the Commission consider the applications in association with Sprint's proposed acquisition of all Clearwire shares and SoftBank's proposed acquisition of control of Sprint.[418] Crest asserts that the Eagle River transaction is not subject to *pro forma* processing because the transaction gave Sprint both *de jure* and *de facto* control over Clearwire, in part because Sprint gained the power to appoint a majority of the Clearwire board, without having to fill any of its seats with independent directors.[419] Crest also alleges that the Eagle River transaction was the first step in Sprint's effort to acquire 100 percent ownership of Clearwire.[420] Crest claims that Sprint now has the ability to forcibly cash out minority shareholders and to block any proposed or potential alternative transactions.[421] Crest requests that the Commission or the Bureau reconsider the decision to grant the Eagle River applications on delegated authority on a *pro forma* basis, and instead place the applications on prior public notice and consider the applications in association with Sprint's proposed acquisition of all Clearwire shares and SoftBank's proposed acquisition of control of Sprint.[422]

136. DISH claims that the Eagle River applications were improperly processed as *pro forma* transactions and were not eligible for processing under the Commission's immediate approval procedures.[423] In particular, DISH asserts that the Eagle River transaction does not qualify as *pro forma* because Sprint did not have any form of control over Clearwire prior to its acquisition of the Eagle River holdings[424] and the transaction does not otherwise qualify as *pro forma* under the *FCBA Forbearance Order*.[425] According to DISH, the Eagle River transaction must be viewed as substantial even if the Commission previously approved Sprint holding *de jure* control of Clearwire, since Sprint had relinquished such control.[426] DISH also claims that the applications do not qualify for the Commission's immediate approval procedures, which "are limited to those transactions that do not involve a wireless service that may be used to provide interconnected mobile voice and/or data services," and that Clearwire does not qualify under such policies because it provides such services.[427] DISH also takes the position

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[417] DISH Petition for Reconsideration. DISH also filed a reply regarding its petition for reconsideration. Reply of DISH Network L.L.C. to Opposition of Clearwire Corporation to Petition for Reconsideration, ULS File No. 0005480932 (filed Jan. 29, 2013) ("DISH Reconsideration Reply"). DISH has submitted its own offer to acquire Clearwire. DISH Petition for Reconsideration at 3-4.

[418] Crest Petition for Reconsideration at 2.

[419] *Id.* at 1-2, 7-8; Crest Reconsideration Reply at 5-7.

[420] Crest Petition for Reconsideration at 2; Crest Reconsideration Reply at 2, 3.

[421] Crest Petition for Reconsideration at 10; Crest Reconsideration Reply at 2.

[422] Crest Petition for Reconsideration at 2.

[423] DISH Petition for Reconsideration at 1-3.

[424] DISH takes the position that Sprint did not have *de facto* control of Clearwire prior to the Eagle River transaction, and does not now have such *de facto* control over Clearwire. DISH Petition for Reconsideration at 6. *But see* DISH Reconsideration Reply at 7, n.22 ("Crest Financial alleges that Sprint does have [*de facto*] control [over Clearwire], and Sprint refutes it. DISH takes no position on this question.").

[425] DISH Petition for Reconsideration at 2, citing *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act*, Memorandum Opinion and Order, 13 FCC Rcd 6293 (1998) ("*FCBA Forbearance Order*"), 4-10.

[426] DISH Petition for Reconsideration at 7-8.

[427] *Id.* at 2-3, 10-11.

that Sprint rushed to acquire *de jure* control over Clearwire, thus circumventing and prejudging the Commission's review of a substantial aggregation of spectrum.[428]

137. Clearwire filed separate oppositions to each of the Crest and DISH petitions for reconsideration.[429] In those oppositions, Clearwire reiterates its position that, because the Eagle River transaction permitted Sprint to reacquire previously Commission-approved *de jure* control of Clearwire but did not confer *de facto* control of Clearwire, the associated applications were appropriately treated on a *pro forma* basis.[430] Clearwire alleges that, contrary to the claims made by Crest, the Clearwire Equityholders' Agreement requires that a majority of disinterested Clearwire directors must approve a transaction between Clearwire and a related party, such as Sprint.[431] Clearwire further asserts that grant of the Eagle River applications did not change the fact that *de facto* control of Clearwire is vested in Clearwire's management and the Clearwire board of directors as a whole.[432] Clearwire also takes the position that, under Commission precedent, the fact that Sprint has certain veto powers that constitute permissible investor protection rights does not provide Sprint with *de facto* control of Clearwire.[433]

138. Clearwire disputes the claim that if the Commission knew that the Eagle River transaction was in fact the first step in Sprint's effort to acquire ownership of all of Clearwire, the Commission would not have treated the Eagle River transaction as *pro forma*.[434] According to Clearwire, the Commission considers only the transaction before it, so even if the Commission knew that Sprint and Clearwire were imminently going to announce the proposed acquisition of all of Clearwire's stock by Sprint, it would not have affected the Commission's application of *pro forma* procedures to the Eagle River applications.[435]

139. Clearwire asserts that DISH's claims that the Eagle River applications should not have been considered under the Commission's immediate approval procedures[436] is irrelevant, since Clearwire did not seek use of those procedures and the Commission did not employ them.[437] Also, according to Clearwire, it is irrelevant that the Eagle River transaction does not fall within any of the six categories

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[428] *Id.* at 11-14.

[429] Opposition of Clearwire Corporation (filed Jan. 14, 2013) ("Clearwire Crest Opposition"); Opposition of Clearwire Corporation (filed Jan. 22, 2013) ("Clearwire DISH Opposition"). Since Crest had originally filed its petition for reconsideration in IB Docket No. 12-343, the docket initially established in connection with the proposed SoftBank/Sprint transaction, Clearwire also filed an opposition in that docket arguing that the Crest petition for reconsideration was improperly filed in that proceeding and should be dismissed. Opposition of Clearwire Corporation, IB Docket No. 12-343 (filed Jan. 14, 2013). Because Crest also filed its petition for reconsideration in ULS with respect to the applications associated with the Eagle River transaction, we do not find it necessary to address Clearwire's request that we dismiss Crest's originally filed petition for reconsideration.

[430] Clearwire Crest Opposition at 1-2, 6-7; Clearwire DISH Opposition at 1, 3, 4-7.

[431] Clearwire Crest Opposition at 3, 5, citing Clearwire Equityholders' Agreement § 2.6(a).

[432] Clearwire Crest Opposition at 5; Clearwire DISH Opposition at 3, 9-10.

[433] Clearwire Crest Opposition at 6.

[434] *Id.* at 7-8.

[435] *Id.* at 8; Clearwire DISH Opposition at 11.

[436] *See* 47 C.F.R. § 1.948(j)(2).

[437] Clearwire DISH Opposition at 3, 10.

enumerated in the *FCBA Forbearance Order*, since Clearwire is not eligible for and did not seek review under that order's post-transaction notification process.[438]

140. *Discussion*. We have reviewed the record in this proceeding, including the petitions for reconsideration filed by Crest and DISH, their replies, the oppositions filed by Clearwire, the actions taken by the Bureau in processing the applications, and the ULS records, and we find, for the reasons stated below, that the Eagle River transaction was appropriately considered to be *pro forma* and was processed in full accordance with the Commission's rules. Nothing contained in the Crest or DISH Petitions for Reconsideration supports any action reversing or modifying the Bureau's handling of these applications. Accordingly, we deny the petitions for reconsideration filed by Crest and DISH regarding the applications associated with the transfer of Eagle River's holdings in Clearwire to Sprint in December 2012.

141. Section 310(d) of the Act requires that the Commission give its prior consent before any license or construction permit or any rights thereunder can be transferred, assigned, or disposed of.[439] Section 309(c)(2)(B) provides that the prior public notice requirements of section 309 do not apply to applications for assignment or transfer of control under section 310(d) that do not involve a substantial change in ownership or control.[440] Section 1.948(c)(1) of the Commission's rules implements these statutory provisions."[441] A *pro forma* transfer of control or assignment thus may be processed by the Commission without requiring any prior public notice.[442] Approvals of *pro forma* transfers, however, are placed on public notice, and are subject to review and scrutiny pursuant, *inter alia*, to our petition for reconsideration procedures. The Commission's distinction between substantial and *pro forma* transfers of control and assignments has developed in large part in Commission and Bureau orders.

142. As the Commission explained in the *FCBA Forbearance Order*, "there is no express rule or 'bright-line' test that distinguishes those transfers and assignments of telecommunications licenses that involve substantial changes in ownership or control and those that do not."[443] While "[i]n general, a substantial change in ownership or control occurs when there is a transfer of fifty percent or more of a licensee's stock or a transfer that results in a stockholder whose qualifications have not been passed on by the Commission acquiring at least a fifty percent voting interest in a licensee … there are other factors that also may be found in a particular case to substantially affect *de facto* control."[444] The Commission has further explained that "[a] change in *de jure* control is generally considered substantial, but if there is an indication that *de facto* control has not changed, the transfer may be considered *pro forma* . . . . The

[438] *Id.* at 3, 7-8.

[439] 47 U.S.C. § 310(d).

[440] 47 U.S.C. § 309(c)(2)(B).

[441] 47 C.F.R. § 1.948(b)(1).

[442] We note that *pro forma* application processing is different than processing under the immediate approval rules set forth in section 1.948(j)(2). Whether *pro forma* transfer of control or assignment applications may be processed under the immediate approval rules depends upon whether the applications meet the standards set forth in that subsection. Contrary to DISH's argument, *see* DISH Petition for Reconsideration at 4, the Eagle River applications were not processed under the immediate approval rules. The immediate approval procedures apply only when an application is first filed; an amended application will not trigger the immediate approval procedures.

[443] *FCBA Forbearance Order*, 13 FCC Rcd at 6298 ¶ 8 (citations omitted).

[444] *Id.* (citations omitted).

inquiry is fact specific and done on a case-by-case basis."[445] The Commission has also noted that it looks to the agency's broadcast rules for guidance in determining which transactions by common carriers may be deemed to be *pro forma*.[446]

143. In *Metromedia, Inc.*, the Commission restated the general test[447] but found that the transfer of over 50 percent of the stock of Metromedia to Mr. Kluge was not substantial given Mr. Kluge's prior *de facto* control of Metromedia.[448] The Commission noted that Metromedia's qualifications under the *de facto* control of Mr. Kluge had been repeatedly reviewed and found acceptable in numerous applications.[449] The Commission concluded that "since there is not a substantial change in the identity of the owners (in that, inter alia, there are no new owners with substantial interests to be passed upon by the Commission) and there is not a substantial change in control, in light of Mr. Kluge's present *de facto* control, we find that there is not an ownership change which is material to the policies underlying the substantial change in ownership clause in Section 309(c)(2)(B)."[450]

144. As explained below, we find that the Bureau properly treated the Eagle River transaction as *pro forma* for two independent reasons. First, the Commission had previously passed on Sprint's qualifications to hold a 51 percent voting interest in Clearwire and thus, under the facts of this case and our relevant precedents, it was proper for the Bureau to treat this application as *pro forma*. Second, the Bureau properly treated this application as *pro forma* under the facts of this case for the independent reason that it did not give Sprint *de facto* control over Clearwire.

145. Prior to the Eagle River transaction, Sprint did not have control of Clearwire.[451] Pursuant to the Eagle River transaction, Sprint acquired less than 5 percent of the equity of Clearwire,[452] with the result that Sprint now owns over 50 percent of the equity of Clearwire. Under the standard enunciated by *Metromedia, Barnes*,[453] and *Clay Broadcasters*,[454] this is the type of transaction that the Commission has

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[445] *See In re 2000 Biennial Regulatory Review*, Notice of Proposed Rulemaking, 15 FCC Rcd 24264, 24270 ¶ 13 (2000).

[446] *Id*.

[447] *Metromedia, Inc.*, Memorandum Opinion and Order, 98 F.C.C.2d 300, 305 ¶ 8 (1984) ("*Metromedia Order*"). The Commission cited both *Barnes Enterprises, Inc.*, Memorandum Opinion and Order, 55 F.C.C.2d 721 (1975) ("*Barnes Order*") and *Clay Broadcasters, Inc.*, Memorandum Opinion and Order, 21 Rad. Reg. 2d 442 (1971) ("*Clay Broadcasters Order*") in support of this statement.

[448] *Metromedia Order*, 98 F.C.C.2d at 306 ¶ 9.

[449] *Id*.

[450] *Id*. at 306-07 ¶ 9.

[451] *See, e.g.*, Eagle River Lead Pro Forma Application, Exhibit A at 1; Clearwire Crest Opposition at 5; Clearwire DISH Opposition at 9.

[452] Eagle River Lead Pro Forma Application, Exhibit A at 1.

[453] In *Barnes*, the Commission found that a transfer of control of a television station licensee from two equal 50 percent shareholders to those pre-existing shareholders each reducing their respective ownership interests to 45 percent and adding a third party holding 10 percent of the equity was properly filed on a short form application as a *pro forma* transfer of control. *See Barnes Order*, 55 F.C.C.2d at 721, 725 (enunciating the same standard as *Metromedia* and explaining that "while a percentage change of 10%, 5%, or 1% could constitute a substantial change, . . . it would not be deemed substantial for the purposes under discussion here unless it resulted in as much as 50% of the licensee's stock being in the hands of a party, or parties, whose qualifications have never been passed upon by the Commission").

routinely found to be *pro forma*: Less than 50 percent of the equity of Clearwire changed hands as a result of the transaction, and the qualifications of Sprint as an equityholder in Clearwire, which as a result of the Eagle River transaction held just over 50 percent of the equity of Clearwire, have been specifically passed on by the Commission in 2008.[455] Neither DISH nor Crest have provided a persuasive basis for concluding that our earlier finding regarding Sprint's qualifications, under the facts of this case, is not adequate to satisfy the standards enunciated in *Metromedia*, *Clay Broadcasters*, and *Barnes*.

146. Although *Metromedia* applied *pro forma* treatment where the entity with *de facto* control of a licensee seeks to acquire *de jure* control, the Commission's standard set out in that order did not, contrary to DISH's arguments, limit *pro forma* treatment to situations where an entity already has *de facto* or *de jure* control. Rather, the standard set out by the Commission makes clear that the transfer of Eagle River's equity interests in Clearwire to Sprint is appropriately treated on a *pro forma* basis.

147. Crest alleges that Sprint obtained *de facto* control as a result of the transfer of the Eagle River holdings and that the transaction was ineligible for *pro forma* treatment on that basis.[456] To support its contention that Sprint obtained *de facto* control, Crest points to the fact that as a result of the transaction, Sprint still appoints seven of the 13 members of the Clearwire Board of Directors, but now does not need to include any independent board members as part of its slate of nominees.[457] Crest claims that the Clearwire Equityholders' Agreement does not require a super-majority vote for "any Related Party Transaction [which would include the proposed transaction by which Sprint seeks to acquire full ownership of Clearwire] but that only a simple majority vote is required." Crest characterizes the Eagle River transaction as giving Sprint, "for the first time, the power to nominate seven, non-independent board members – a majority of the board."[458] Crest further alleges that Sprint quickly exercised that power after closing with Eagle River to begin to squeeze out the minority shareholders and obtain full ownership of Clearwire.[459]

148. We read the requirements of the Clearwire Equityholders' Agreement differently than Crest, as does Clearwire.[460] Section 2.6(a) of the Clearwire Equityholders' Agreement provides as follows:

> In addition to any other actions or approvals required under this Agreement, Law, the Operating Agreement, the Charter or the Bylaws, the following actions (including the entry into any agreement, contract or commitment to take any such action) will require the prior approval of a Simple Majority of the disinterested Directors: (i) any Related Party Transaction.[461]

Sprint's proposal to acquire the remainder of the ownership of Clearwire falls within the definition of

(Continued from previous page)

[454] In *Clay Broadcasters*, the Commission found that a transfer of 35.9 percent of the equity of a licensee to two pre-existing shareholders holding 16.7 percent of the equity of the licensee was properly processed as *pro forma.*

[455] *See Sprint Nextel-Clearwire Order*, 23 FCC Rcd 17570. Like Eagle River, Sprint has been an equity holder in Clearwire since its formation in 2008. *See generally* Clearwire Equityholders' Agreement.

[456] Crest Petition for Reconsideration at 2, 8.

[457] *Id.* at 7-8.

[458] *Id.* at 8.

[459] Crest Petition at 8.

[460] *See, e.g.,* Clearwire Crest Opposition at 5.

[461] Clearwire Equityholders' Agreement, § 2.6(a)(i) (emphasis added).

Related Party Transaction in the Clearwire Equityholders' Agreement.[462] Thus, Sprint's nominees to the Board, being interested directors, did not vote on Sprint's offer to acquire the remaining interests in Clearwire. Clearwire described the process by which its Board of Directors determined that the initial proposed merger with Sprint was in the best interests of Clearwire and the non-Sprint stockholders.[463] Specifically, the Board of Directors formed a Special Committee of three directors, none of whom is nominated by Sprint and each of whom is an independent and disinterested director of Clearwire.[464] The Special Committee and the Audit Committee recommended to the Clearwire Board of Directors the adoption of the merger agreement with Sprint; the six Board of Director members not designated by Sprint and disinterested then unanimously approved the merger agreement; and, subsequently, the full Board of Directors approved the proposed merger with Sprint.[465]

149. The subsequent history of the Clearwire Board's responses to the DISH tender offer and the most recent Sprint offer to acquire Clearwire confirm that Sprint, through the Eagle River transaction, did not gain *de facto* control of Clearwire enabling it to squeeze out minority shareholders. On May 30, 2013, DISH commenced an unsolicited cash tender offer to acquire all outstanding shares of Clearwire's Class A common stock at a price of $4.40 per share.[466] The Clearwire Board of Directors, after receiving the unanimous recommendation of the Special Committee of the Board, resolved to recommend that the holders of the Clearwire's Class A common stock tender their shares of common stock pursuant to the DISH tender offer and vote against the Sprint offer.[467]

150. Following the increase in Sprint's offer for the remaining shares of Clearwire to $5.00 on June 20, 2013, the Special Committee then recommended that the Clearwire Board of Directors approve the amended agreement with Sprint and recommend that shareholders not tender their shares to DISH.[468] The Clearwire Board of Directors voted to recommend that shareholders vote in favor of this revised offer and not tender their shares to DISH.[469]

151. Accordingly, the basic premise on which Crest relies to support its claim that Sprint gained *de facto* control of Clearwire through the Eagle River transaction is flawed. Crest and DISH have presented no other evidence or claim that undercuts the representation of Clearwire that there has been no change in the *de facto* control of Clearwire, which was and continued to be held after the Eagle River transaction by Clearwire management and the Clearwire Board of Directors.[470]

152. While we thus find that the Bureau properly treated Sprint's application to acquire the Eagle River shares as *pro forma*, we note that many of the concerns raised by Crest and DISH are

[462] Clearwire Equityholders' Agreement, Exhibit A, Definitions.

[463] Clearwire Apr. 15 *Ex Parte*.

[464] *Id*. at 1.

[465] *Id*. at 2.

[466] Clearwire Corporation Schedule 14A at 2 (dated June 13, 2013).

[467] *Id*. at 2, S-7.

[468] Clearwire Corporation Schedule 14D-9 (Amendment No. 2) at 3 (dated June 24, 2013).

[469] *Id*. On June 26, 2013, DISH withdrew its tender offer for Clearwire shares. DISH Network Announces Withdrawal of Clearwire Tender Offer, DISH News Release dated June 26, 2103, *available at* http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=774018.

[470] *See, e.g.,* Clearwire Crest Opposition at 5. In light of the discussion in the text, we see no need to take further steps in response to recent DISH requests that the Commission investigate and make a factual determination whether Sprint Nextel has *de facto* control over Clearwire. DISH June 4, 2013 *Ex Parte*; DISH June 11, 2013 *Ex Parte*.

procedural in nature. Crest and DISH expressed concern that the use of *pro forma* procedures in this case would undermine the purpose of the Commission's rules by allowing Sprint to avoid full public scrutiny of the transaction.[471] For this reason, DISH and Crest urged the full Commission to review the Eagle River transaction in the context of the broader SoftBank/Sprint transaction and to allow parties to express their views in that setting.

153. We find that our treatment of the Eagle River transaction amply addresses these procedural considerations. Pursuant to a section 1.106 referral from the Bureau,[472] the full Commission has considered the petitions for reconsideration of the Eagle River transaction, and we are doing so in connection with our decision on the broader SoftBank/Sprint transaction, including our finding above that the broader transaction, which does give Sprint *de facto* control over Clearwire, is in the public interest and otherwise satisfies the requirements of the Communications Act. DISH and Crest, along with any other interested party, have had ample opportunity to submit comments or other pleadings regarding Sprint's acquisition of Clearwire shares both in response to the broader transaction and the narrower Eagle River transaction.[473] We have fully considered all of those views in reaching our determinations today. We thus find no merit in Crest and DISH's suggestion that the use of *pro forma* procedures somehow deprived them or any other party of a full and fair opportunity to challenge the application regarding Sprint's acquisition of Eagle River's Clearwire shares. We do not find that Crest or DISH have shown any prejudice from the procedures used in this case.

154. For the reasons stated above, we deny the petitions for reconsideration filed by Crest and DISH and affirm that the Eagle River applications were properly processed on a *pro forma* basis.

X. CONCLUSION

155. Upon review of the Applications and the record in this proceeding, we conclude that approval of the proposed transactions, subject to the conditions set forth herein, is in the public interest. We find that the proposed transactions are not likely to result generally in competitive or other public interest harms in the provision of mobile wireless services. We also anticipate that there are public interest benefits that likely would result from the proposed transaction, and thus we conclude that the transaction is in the public interest. In addition, based upon our analysis of the proposed foreign ownership in this case, we conclude that it would not serve the public interest to prohibit the indirect foreign ownership of the Licensee Subsidiaries, subject to the conditions set forth in this Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration.

XI. ORDERING CLAUSES

156. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 303(b), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(b), 303(r), 309, 310(b), 310(d), and the Cable Landing License Act, 47 U.S.C. §§ 34-39, the applications for the transfer of control of various wireless licenses and leases, domestic section 214 authority, international section 214 authorizations, earth station authorizations, interests in submarine cable licenses, and cable television relay service station licenses from Sprint and Clearwire to SoftBank are GRANTED, to the extent specified in this Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration and

[471] DISH Petition for Reconsideration at 7; Crest Petition for Reconsideration at 8-9 (emphasizing its concern that the Eagle River transaction was addressed at the staff, rather than Commission level).

[472] 47 C.F.R. § 1.106.

[473] Indeed, as noted above, the public notice that extended the pleading cycle in the SoftBank/Sprint matter expressly referenced the *pro forma* treatment of the Eagle River application.

subject to the conditions specified herein.

157. IT IS FURTHER ORDERED that the above grant shall include authority for Softbank to acquire control of: (a) any license or authorization issued to Sprint and/or Clearwire or their subsidiaries during the Commission's consideration of the transfer of control applications or during the period required for consummation of the transaction following approval; (b) any applications or lease notifications that are pending at the time of consummation; and (c) any leases of spectrum that Sprint and/or Clearwire or their subsidiaries enter into while this transaction is pending before the Commission or the period required for consummation.

158. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(b), and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(b), 310(b)(4), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the Petition for Declaratory Ruling filed by the 310(b)(4) Petitioners is GRANTED to the extent specified in this Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration.

159. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 303(b), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 303(b), 303(r), 309, 310(b), and 310(d), that grant of the Applications IS CONDITIONED UPON SoftBank and the post-transaction Sprint Corporation assuming, as specified herein, all obligations of Sprint with respect to the reconfiguration of the 800 MHz band, including without limitation, those set out in *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (2004), and subsequent Commission orders in WT Docket 02-55.

160. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(b), 303(r), 309, 310(b), 310(d), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(b), 303(r), 309, 310(b), 310(d), and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petitions for Reconsideration of DISH and Crest are DENIED.

161. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(b), 303(r), 309, 310(b), 310(d), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(b), 303(r), 309, 310(b), 310(d), and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Request to Hold the Proceeding in Abeyance filed by DISH is DISMISSED as moot.

162. IT IS FURTHER ORDERED that this Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of public notice of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Applications

I. Transfer of Control of Wireless Licenses and Leases

File No.	Licensee/Lessee	Transferee	Call Sign/Lease
0005481298	Nextel of California, Inc.	Starburst II, Inc.	L000007829
0005483180	SprintCom, Inc.	Starburst II, Inc.	KNLF294
0005483246	WirelessCo, L.P.	Starburst II, Inc.	KNLF204
0005486287	Southwest PCS LP	Starburst II, Inc.	WPOM237
0005486296	Unrestricted Subsidiary Funding Company	Starburst II, Inc.	KNLB205
0005486299	Sprint Communications Company L.P.	Starburst II, Inc.	KA86929
0005486304	Nextel WIP Expansion Corp.	Starburst II, Inc.	KNBF694
0005486305	Nextel WIP Expansion Two Corp.	Starburst II, Inc.	KNBF688
0005486310	Sprint United Management Company	Starburst II, Inc.	WQJW879
0005486314	NEXTEL WEST CORP.	Starburst II, Inc.	WNEH926
0005486322	Sprint Administrative Services	Starburst II, Inc.	WPPD279
0005486345	People's Choice TV Corp.	Starburst II, Inc.	WOJ40
0005486348	Washington Oregon Wireless	Starburst II, Inc.	WPQP251
0005486413	ACI 900, INC.	Starburst II, Inc.	KNNT454
0005486454	Texas Telecommunications, LP	Starburst II, Inc.	WPQW641
0005486466	FCI 900, Inc.	Starburst II, Inc.	KNNK884
0005486485	Nextel License Holdings 5, Inc.	Starburst II, Inc.	KNNQ491
0005486493	Nextel of California, Inc.	Starburst II, Inc.	KA80961
0005486505	APC PCS, LLC	Starburst II, Inc.	KNLF200
0005486518	Nextel of New York, Inc.	Starburst II, Inc.	KNBP728
0005486532	PHILLIECO, L.P.	Starburst II, Inc.	KNLF219
0005486546	Nextel of Texas, Inc.	Starburst II, Inc.	KNAN853
0005486561	Nextel Communications of the Mid-Atlantic, Inc.	Starburst II, Inc.	KGH265
0005486804	Sprint PCS License, L.L.C.	Starburst II, Inc.	KNLF201
0005486807	Nextel WIP License Corp	Starburst II, Inc.	KNBU442
0005486821	Nextel License Holdings 1, Inc.	Starburst II, Inc.	KED872
0005486830	Louisiana Unwired, LLC	Starburst II, Inc.	KNLG891
0005486858	Northern PCS Services, LLC	Starburst II, Inc.	WLN993
0005486868	Machine License Holding, LLC	Starburst II, Inc.	KNNX611
0005486882	Nextel License Holdings 2, Inc.	Starburst II, Inc.	KNAH939
0005486883	Horizon Personal Communications, Inc.	Starburst II, Inc.	KNLF580
0005486891	NEXTEL LICENSE HOLDINGS 3, INC.	Starburst II, Inc.	KNAN862

0005486899	APC Realty and Equipment Co. LLC	Starburst II, Inc.	WPSH342
0005486904	Nextel License Holdings 4, Inc.	Starburst II, Inc.	KAQ916
0005486932	Sprint Telephony PCS, L.P.	Starburst II, Inc.	WPON274
0005487019	UbiquiTel Leasing Company	Starburst II, Inc.	WPRR391
0005487031	Sprint Spectrum, L.P.	Starburst II, Inc.	WPNH350
0005487724	FCI 900, Inc.	Starburst II, Inc.	L000000028
0005487725	Nextel of Texas, Inc.	Starburst II, Inc.	L000001843
0005487726	Nextel License Holdings 1, Inc.	Starburst II, Inc.	L000000022
0005491530	Clearwire Spectrum Holdings LLC	Starburst II, Inc.	B266
0005491538	CLEARWIRE SPECTRUM HOLDINGS LLC	Starburst II, Inc.	L000000253
0005491570	Clearwire Spectrum Holdings III,LLC	Starburst II, Inc.	L000005241
0005491578	Fixed Wireless Holdings, LLC	Starburst II, Inc.	B012
0005491579	Fixed Wireless Holdings, LLC	Starburst II, Inc.	L000000159
0005491582	Clearwire Hawaii Partners Spectrum LLC	Starburst II, Inc.	B192
0005491585	Clearwire Hawaii Partners Spectrum LLC	Starburst II, Inc.	L000001566
0005491587	Alda Wireless Holdings, LLC	Starburst II, Inc.	WLW697
0005491589	Alda Wireless Holdings, LLC	Starburst II, Inc.	L000000268
0005491591	American Telecasting Development, LLC	Starburst II, Inc.	B002
0005491596	American Telecasting Development, LLC	Starburst II, Inc.	L000000259
0005491600	AMERICAN TELECASTING OF ANCHORAGE, LLC	Starburst II, Inc.	WMX713
0005491601	American Telecasting of Anchorage, LLC	Starburst II, Inc.	L000002488
0005491603	American Telecasting of Bend, LLC	Starburst II, Inc.	WMX668
0005491608	AMERICAN TELECASTING OF COLUMBUS, LLC	Starburst II, Inc.	B095
0005491612	American Telecasting of Columbus, LLC	Starburst II, Inc.	L000001638
0005491616	American Telecasting of Denver, LLC	Starburst II, Inc.	L000002648
0005491621	American Telecasting of Fort Myers, LLC	Starburst II, Inc.	L000002337
0005491624	American Telecasting of Fort Collins, LLC	Starburst II, Inc.	B149
0005491628	American Telecasting of Ft. Collins, LLC	Starburst II, Inc.	L000002395
0005491631	American Telecasting of Green Bay, LLC	Starburst II, Inc.	B018
0005491633	American Telecasting of Green Bay, LLC	Starburst II, Inc.	L000002048

0005491636	American Telecasting of Lansing, LLC	Starburst II, Inc.	B241
0005491644	American Telecasting of Lansing, LLC	Starburst II, Inc.	L000002690
0005491657	American Telecasting of Lincoln, LLC	Starburst II, Inc.	B256
0005491658	American Telecasting of Lincoln, LLC	Starburst II, Inc.	L000002703
0005491660	American Telecasting of Little Rock, LLC	Starburst II, Inc.	L000000186
0005491662	American Telecasting of Louisville, LLC	Starburst II, Inc.	L000000262
0005491666	AMERICAN TELECASTING OF MEDFORD, LLC	Starburst II, Inc.	B288
0005491670	American Telecasting of Medford, LLC	Starburst II, Inc.	L000002516
0005491673	American Telecasting of Michiana, LLC	Starburst II, Inc.	B126
0005491676	American Telecasting of Michiana, LLC	Starburst II, Inc.	L000001625
0005491681	American Telecasting of Monterey, LLC	Starburst II, Inc.	B397
0005491687	American Telecasting of Monterey, LLC	Starburst II, Inc.	L000000225
0005491690	American Telecasting of Redding, LLC	Starburst II, Inc.	B371
0005491697	American Telecasting of Redding, LLC	Starburst II, Inc.	L000002487
0005491699	American Telecasting of Santa Barbara, LLC	Starburst II, Inc.	L000003594
0005491701	American Telecasting of Seattle, LLC	Starburst II, Inc.	WLX546
0005491707	American Telecasting of Seattle, LLC	Starburst II, Inc.	L000002685
0005491711	American Telecasting of Sheridan, LLC	Starburst II, Inc.	L000002493
0005491713	American Telecasting of Yuba City, LLC	Starburst II, Inc.	B485
0005491714	American Telecasting of Yuba City, LLC	Starburst II, Inc.	L000002700
0005491718	ATI Sub, LLC.	Starburst II, Inc.	WNTJ727
0005491719	ATI Sub, LLC	Starburst II, Inc.	L000003928
0005491722	ATL MDS, LLC.	Starburst II, Inc.	B043
0005491725	Bay Area Cablevision, LLC	Starburst II, Inc.	L000002688
0005491726	Broadcast Cable, LLC	Starburst II, Inc.	WLW814
0005491727	Broadcast Cable, LLC	Starburst II, Inc.	L000002011
0005491729	Fresno MMDS Associates, LLC	Starburst II, Inc.	L000000485

0005491730	KENNEWICK LICENSING, LLC	Starburst II, Inc.	L000005239
0005491732	NSAC, LLC	Starburst II, Inc.	B003
0005491734	NSAC, LLC	Starburst II, Inc.	L000000168
0005491736	PCTV Gold II, LLC	Starburst II, Inc.	B011
0005491739	PCTV Gold II, LLC	Starburst II, Inc.	L000000193
0005491742	PCTV Sub, LLC	Starburst II, Inc.	L000003929
0005491748	People's Choice TV of Albuquerque, LLC	Starburst II, Inc.	KFK32
0005491751	People's Choice TV of Albuquerque, LLC	Starburst II, Inc.	L000001777
0005491752	People's Choice TV of Houston, LLC	Starburst II, Inc.	L000001677
0005491754	People's Choice TV of St. Louis, LLC	Starburst II, Inc.	L000002312
0005491763	SCC X, LLC	Starburst II, Inc.	B157
0005491786	SpeedChoice of Detroit LLC	Starburst II, Inc.	L000001759
0005491810	SpeedChoice of Phoenix, LLC	Starburst II, Inc.	L000001990
0005491834	Sprint (Bay Area), LLC	Starburst II, Inc.	WHT700
0005491854	SPRINT (BAY AREA) LLC	Starburst II, Inc.	L000000341
0005491865	TDI Acquisition Sub, LLC	Starburst II, Inc.	WMI303
0005491881	TDI Acquisition Sub, LLC	Starburst II, Inc.	L000003926
0005491887	Transworld Telecom II, LLC	Starburst II, Inc.	L000003931
0005491893	WBSFP Licensing LLC	Starburst II, Inc.	B152
0005491910	WBSY Licensing, LLC	Starburst II, Inc.	B228
0005491914	WBSY Licensing LLC	Starburst II, Inc.	L000003476
0005491916	WCOF, LLC	Starburst II, Inc.	L000004050
0005491919	WBS of America, LLC	Starburst II, Inc.	L000004063
0005491920	WIRELESS BROADBAND SERVICES OF AMERICA, L.L.C.	Starburst II, Inc.	WPOP325
0005491923	Wireless Broadband Services of America, LLC	Starburst II, Inc.	L000001595
0005491927	WBS of Sacramento, LLC	Starburst II, Inc.	L000000468
0005493069	Clearwire Spectrum Holdings III, LLC	Starburst II, Inc.	B020
0005495637	Clearwire Spectrum Holdings II LLC	Starburst II, Inc.	B024
0005495949	Clearwire Spectrum Holdings II, LLC	Starburst II, Inc.	L000000886
6010EDSL13[1]	Clearwire Spectrum Holdings III, LLC	Starburst II, Inc.	L000009772
6011EDSL13[2]	Clearwire Spectrum Holdings III, LLC	Starburst II, Inc.	L000003688

[1] This manual application is attached to ULS File No. 0005483246.

[2] This manual application is attached to ULS File No. 0005483246.

6012EDSL13[3]	Clearwire Spectrum Holdings III, LLC	Starburst II, Inc.	L000008887

II. Transfer of Control of Domestic Section 214 Authority

File No.	Authorization Holder	Transferee	Authorization Number
IB Docket No. 12-343	Sprint Communications Co., L.P.	SoftBank and Starburst II	N/A

III. Transfer of Control of International Section 214 Authorizations

File No.	Authorization Holder	Transferee	Authorization Number
ITC-T/C-20121116-00297	Helio, LLC	Starburst II	ITC-214-20050812-00320
ITC-T/C-20121116-00298	ASC Telecom, Inc.	Starburst II	ITC-214-19941209-00368
ITC-T/C-20121116-00299	Nextel Communications. Inc.	Starburst II	ITC-214-19970723-00428
ITC-T/C-20121116-00300	Nextel Partners, Inc.	Starburst II	ITC-214-20010501-00277
ITC-T/C-20121116-00301	Phillieco, L.P.	Starburst II	ITC-214-19991203-00766
ITC-T/C-20121116-00302	Sprint Spectrum Holding Company, L.P.	Starburst II	ITC-214-19960308-00105
ITC-T/C-20121116-00303	SprintCom, Inc.	Starburst II	ITC-214-19991110-00692
ITC-T/C-20121116-00304	US Telecom, Inc.	Starburst II	ITC-214-19851107-00004
ITC-T/C-20121116-00305	Virgin Mobile U.S.A., L.P.	Starburst II	ITC-214-20020422-00194
ITC-T/C-20121116-00306	Sprint Communications Co., LP	Starburst II	ITC-214-20100623-00263 (lead authorization)

IV. Transfer of Control of Earth Station Authorizations

File No.	Authorization Holder	Transferee	Call Signs
SES-T/C-20121116-01029	Nextel Communications of the Mid-Atlantic, Inc.	Starburst II	E060148, E060147, E040169
SES-T/C-20121116-01031	Sprint Communications Co., LP	Starburst II	E6241, E6777, KA231, KA232

V. Transfer of Control of Interests Held in Submarine Cable Landing Licenses

File No.	Interest Holder	Transferee	Authorization Number

[3] This manual application is attached to ULS File No. 0005483246.

SCL-T/C-20121116-00014	Sprint Communications Co., LP	Starburst II	SCL-LIC-19920201-00010 SCL-LIC-19921101-00011 SCL-LIC-19950818-00003 SCL-LIC-19970413-00017 SCL-LIC-19980301-00037 SCL-LIC-19980501-00038 SCL-MOD-20071130-00020 SCL-MOD-20040301-00011 SCL-MOD-20110928-00028

VI. Transfer of Control of Cable Television Relay Service (CARS) Licenses

File No.	Authorization Holder	Transferee	Call Signs
CAR-20121123AA-09	Fixed Wireless Holdings, LLC	Starburst II	WLY-681
CAR-20121121AB-09	Fixed Wireless Holdings, LLC	Starburst II	WLY-803

VII. Petition for Declaratory Ruling under Section 310(b)(4)

File No.	Petitioners
ISP-PDR-20121115-00007	Sprint, SoftBank, Starburst I, Starburst II

APPENDIX B

List of Filings[1]

Filings Related to the Transfer of Control Applications

- Petitions to Deny or Impose Conditions
  - Communications Workers of America
  - Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania ("EBS Petitioners")
  - Crest Financial Limited
  - Crow Creek Sioux Tribe Authority
  - Line Systems, Inc. (subsequently withdrawn)
  - nWire, LLC; Pac-West Telecomm, Inc.; and Tex-Link Communications, Inc. (collectively, the "CLEC Petitioners")
  - Taran Asset Management
- Comments
  - Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania
  - EBS Licensees
  - The Greenlining Institute
  - The New Jersey Division of Rate Counsel
  - North American Catholic Educations Programming Foundation, Inc.
  - Verizon Wireless
- Oppositions to Petitions to Deny
  - Catholic Television Network and the National EBS Association
  - Clarendon Foundation, Inc.
  - EBS Parties
  - Hispanic Information and Telecommunications Network, Inc.
  - School Board of Pinellas County, Florida
  - Sprint Nextel Corporation, SOFTBANK CORP., Starburst I, Inc., and Starburst II, Inc.
  - Tarrant County College
  - The Source for Learning, Inc.
- Replies
  - Catholic Television Network and National EBS Association
  - Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania
  - Crest Financial Limited
  - DISH Network, L.L.C.
  - Sprint Nextel Corporation, SOFTBANK CORP., Starburst I, Inc. and Starburst II, Inc.
  - Taran Asset Management
  - The Greenlining Institute
  - The New Jersey Division of Rate Counsel
  - The Office of Development of the Oglala Sioux Tribe
  - Verizon Wireless

Filings Related to the Request to Hold the Proceeding in Abeyance

- Request to Hold the Proceeding in Abeyance
  - DISH Network, L.L.C.

[1] All filings in this proceeding may be found in the Commission's Electronic Comment Filing System, ECFS, by entering IB Docket No. 12-343 under "Proceeding" at http://apps.fcc.gov/ecfs/comment_search/input?z=3r1nh.

- Oppositions
  - Crest Financial Limited
  - Sprint Nextel Corporation, Starburst II, Inc., and SOFTBANK CORP.
  - Steven A. Zecola
- Supplement to Request to Hold Proceeding in Abeyance
  - DISH Network, L.L.C.
- Opposition to Supplement to Request to Hold Proceeding in Abeyance
  - Sprint Nextel Corporation, SOFTBANK CORP. and Starburst II, Inc.
  - Clearwire Corporation

Filings Related to Eagle River Transaction

- Petition for Reconsideration
  - Crest Financial Limited
  - DISH Network, L.L.C.
- Opposition
  - Clearwire Corporation
- Reply
  - Crest Financial Limited
  - DISH Network, L.L.C.

STATEMENT OF
ACTING CHAIRWOMAN MIGNON CLYBURN

Re: *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation For Consent to Transfer Control of Licenses and Authorizations,* IB Docket No. 12-343*, Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control,* ULS File Nos. 0005480932, *et al.*

Today is a good day for all Americans who use mobile broadband services. After thorough review, the Commission has found that the proposed Softbank-Sprint-Clearwire transactions would serve the public interest. The increased investment in Sprint's and Clearwire's networks is likely to accelerate deployment of mobile broadband services and enhance competition in the mobile marketplace, promoting customer choice, innovation and lower prices. In addition, the order finds that the indirect foreign ownership of Sprint complies with Section 310 of the Communications Act. I am pleased that the Commission was able to act in a timely manner, voting to adopt an order within two weeks of the parties providing the Commission notice of the revised terms of their transactions.

STATEMENT OF
COMMISSIONER AJIT PAI

Re: *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations*, IB Docket No. 12-343; *Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, ULS File Nos. 0005480932, *et al*.

With our action today, SoftBank can consummate its $21.6 billion acquisition of Sprint, and Sprint's $3.7 billion acquisition of the outstanding shares in Clearwire can move forward. That's good for America's wireless consumers, who stand to benefit from an invigorated company better able to deliver advanced wireless products and services. That's good for American companies, as we've now shown that regulation need not impede access to the international financial markets and foreign capital. And that's strong evidence that the American wireless market is competitive—were it otherwise, an investment of this magnitude in a non-dominant competitor would give new meaning to the term "risk capital."

I'm pleased that today's order rejects conditions that aren't transaction-specific. That result is especially meaningful here, where the total amount of mobile broadband spectrum attributed to Sprint did not change as a result of the transaction. This will be an important precedent as we consider other spectrum-related transactions.

A point on process. In under a week, the proposed order was circulated, my colleagues graciously accommodated my suggested changes, and we adopted the final order. Our prompt disposition of this matter underscores the importance of codifying the 180-day shot clock in our rules. Even though we quickly reviewed this order and rendered judgment, we still exceeded our self-imposed deadline by 35 days. Codifying the deadline would help us meet it, which in turn would give the parties and the public more confidence that the agency is acting with dispatch.