



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 12-2090
Released: December 27, 2012

SOFTBANK AND SPRINT FILE AMENDMENT TO THEIR PREVIOUSLY FILED APPLICATIONS TO REFLECT SPRINT'S PROPOSED ACQUISITION OF *DE FACTO* CONTROL OF CLEARWIRE

IB Docket No. 12-343

REVISED PLEADING CYCLE¹

Petitions to Deny Due: January 28, 2013
Oppositions Due: February 12, 2013
Replies Due: February 25, 2013

I. INTRODUCTION

On December 20, 2012, Softbank Corp. ("SoftBank"),² its indirect U.S. subsidiary Starburst II, Inc. ("Starburst II"), and Sprint Nextel Corporation ("Sprint" and, together with SoftBank and Starburst II, the "Applicants") filed an amendment³ (the "Amendment") to supplement their applications (collectively, the "Applications") previously filed⁴ pursuant to sections 214, 310(b)(4), and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"),⁵ and sections 34-39 of the

¹ This Public Notice amends the pleading cycle previously established in this docket. 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 (rel. Nov. 30, 2012) ("*November 30, 2012 Public Notice*").

² 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. See Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Public Interest Statement, IB Docket No. 12-343 ("Public Interest Statement"), at 4-5. SoftBank has established a U.S. holding company, Starburst I, Inc. ("Starburst I") and two further U.S. subsidiaries, Starburst II, Inc. ("Starburst II"), which is wholly owned by Starburst I, and Starburst III, Inc. ("Merger Sub"), which is wholly owned by Starburst II. See Public Interest Statement at 7.

³ See Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, Amendment, IB Docket No. 12-343 (filed Dec. 20, 2012) ("Amendment").

⁴ See *November 30, 2012 Public Notice*.

⁵ 47 U.S.C. §§ 214, 310(d).

Submarine Cable Landing Act.⁶ The Applicants seek 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 Corporation (“Clearwire”), to SoftBank and Starburst II.⁷ The Applicants also request a declaratory ruling that it is in the public interest for the foreign shareholders of Starburst I and Starburst II to hold foreign ownership and voting rights in Sprint and its post-transaction direct and indirect licensee subsidiaries in excess of the 25 percent foreign ownership benchmarks in section 310(b)(4) of the Communications Act.⁸ Through the Amendment, the Applicants notified the Commission of a recent agreement by which Sprint has agreed to acquire the remaining shares of Clearwire that Sprint does not already own (the “Clearwire Transaction”), on the condition that the Commission approve SoftBank’s applications to acquire control of Sprint. The Applicants assert that the new Sprint-Clearwire transaction would increase the public interest benefits associated with their Applications.⁹

On December 6 and 7, 2012, the Commission approved Sprint’s *pro forma* application to increase Sprint’s ownership of Clearwire from below 50 percent to approximately 50.45 percent through the acquisition of Clearwire stock held by Eagle River Investment LLC.¹⁰ That transaction is now consummated.¹¹ While that transaction restored Sprint’s *de jure* control over Clearwire, it did not give Sprint *de facto* control because Sprint and the other major stockholders of Clearwire entered into an Equityholders’ Agreement (“EHA”), through which a super-majority vote of the board of directors (10 of 13 members) is required to replace Clearwire’s CEO and certain other members of senior management and to approve a change of control of Clearwire, thus giving the non-Sprint nominated board members and their nominating shareholders negative control of Clearwire.¹²

On December 17, 2012, Sprint and Clearwire announced that they had entered into the Merger Agreement, by which Sprint would acquire the remaining stock of Clearwire that Sprint does not already own for an aggregate purchase price of approximately \$2.2 billion.¹³ Under the Merger Agreement, Collie Acquisition Corp., a wholly-owned subsidiary of Sprint, would be merged into Clearwire, with

⁶ 47 U.S.C. §§ 34-39.

⁷ For a list of the applications, see *November 30 2012 Public Notice* at 3-8.

⁸ 47 U.S.C. § 310(b)(4); Petition for Declaratory Ruling, File No. ISP-PDR-20121115-00006 (“Petition”); see also *November 30 2012 Public Notice* at 8-9.

⁹ See generally Amendment. See Also 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”).

¹⁰ See, e.g., Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, *De Facto* Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Report No. 8300, *Public Notice* (WTB rel. Dec. 12, 2012) at 9. See also *November 30, 2012 Public Notice* at 1 n.4.

¹¹ See, e.g., Notice of Consummation of Clearwire Corporation, ULS File No. 0005547899 (Dec. 12, 2012).

¹² See Description of the Transaction and Public Interest Statement, File No. 0003368272 (Lead Call Sign B085 amended June 24, 2008) at 6-7 and n.7. Clearwire views its management and directors as exercising *de facto* control. See Ownership Report, Clearwire Corporation, File No. 0005494511 (filed Nov. 15, 2012), Description of Ownership at 1.

¹³ Amendment at 3. See also Sprint to Acquire 100 Percent Ownership of Clearwire for \$2.97 per Share, *News Release* (Dec. 17, 2012).

Clearwire as the surviving corporation.¹⁴ At the consummation of the Clearwire Transaction, the EHA among Clearwire, Sprint and the other strategic investors in Clearwire – affiliates of Comcast Corp., Intel Corp. and Bright House Networks – that currently determines the governance of Clearwire would be terminated.¹⁵ The Merger Agreement includes provisions that condition Sprint's obligation to acquire Clearwire on the prior consummation of the SoftBank-Sprint transaction.¹⁶

After consummation of the Merger Agreement, Sprint, which would be controlled by SoftBank, would have 100% stock ownership in and *de facto* control of Clearwire, in addition to the legal control recently reacquired in the *pro forma* transaction. Accordingly, with this Amendment, the Applicants seek Commission consent for the transfer of *de facto* as well as *de jure* control of Clearwire's licenses, leases and authorizations to SoftBank, through its proposed 70 percent ownership of Sprint.¹⁷

The Applicants assert that the Clearwire Transaction would result in public benefits by helping provide the financial resources needed to transition Clearwire's network to Long Term Evolution (LTE) technology and improve wireless broadband service to Clearwire and Sprint customers and enable Sprint to use Clearwire's 2.5 GHz spectrum more effectively.¹⁸ The Applicants claim that the Clearwire Transaction would facilitate these public interest benefits by eliminating the inefficiencies created by the Clearwire's current ownership and governance current structure and allow Clearwire's customers to benefit fully from not only Sprint's resources and expertise, but also SoftBank's resources and expertise.¹⁹ The Applicants further claim that increasing Sprint's current approximately 50.45 percent interest in Clearwire to 100 percent would have no adverse competitive effects and that similarly, SoftBank's indirect acquisition of a *de jure* and *de facto* controlling interest in Clearwire raises no competitive concerns.²⁰

Because the Amendment seeks Commission approval of SoftBank's acquisition of positive control of Clearwire and a change in *de facto* control of Clearwire, we believe it is appropriate to treat the Amendment as a major amendment to the Applications.²¹ Therefore we are revising the comment cycle in this proceeding, IB Docket No. 12-343, to make petitions to deny now due **January 28, 2013**, oppositions due **February 12, 2013**, and replies due **February 25, 2013**.²²

¹⁴ Amendment at 3.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 1 n.2, 3. In 2008, the Commission previously approved Sprint's acquisition of majority control of Clearwire. See Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17574 ¶ 9 (2008) (Commission approved Sprint acquiring an approximately 51 percent ownership interest in Clearwire).

¹⁸ *Id.* at 4-6.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 6-7.

²¹ See, e.g., 47 C.F.R. § 1.929(a)(2) (substantial changes in control shall be treated as major filings).

²² On December 20, 2012, Dish Network LLC (DISH) filed a request for a three week extension of the original January 4, 2013 deadline to file petitions to deny, in light of the announcement that Sprint proposes to acquire all of the equity of Clearwire. See Request for Extension of Time to File Petitions to Deny of Dish Network LLC, IB Docket No. 12-343 (filed Dec. 20, 2012). On December 21, 2012, DISH filed a letter to clarify that it requests either an extension of time or for the Commission to issue a new public notice with a revised comment period. See letter from Pantelis Michalopoulos, counsel for Dish Network LLC, to Marlene H. Dortch, FCC, dated Dec. 21, 2012. Crest Financial Limited filed a letter on December 21, 2012, joining the Dish Network request for a three week

IX. *EX PARTE* STATUS OF THIS PROCEEDING

The Applications and Petition will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.²³ Parties making oral *ex parte* presentations are directed to the Commission's revised *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.²⁴ More than a one- or two-sentence description of the views and arguments presented is generally required.²⁵ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.²⁶

Requests for *Ex Parte* Meetings. All requests for meetings with Commission staff regarding this Docket should be made to David Krech, Associate Chief, Policy Division, International Bureau, at David.Krech@fcc.gov, or (202) 418-7443, or Kathleen Collins, Attorney-Advisor, Policy Division, International Bureau, at Kathleen.Collins@fcc.gov, or (202) 418-1474.

X. GENERAL INFORMATION

The Applications, as amended by the Amendment, have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies.

By this Public Notice we revise the filing dates established in the November 30, 2012 Public Notice. Interested parties shall file petitions to deny no later than **January 28, 2013**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings shall be filed no later than **February 12, 2013**. Replies to such pleadings shall be filed no later than **February 25, 2013**. All filings concerning matters referenced in this Public Notice should refer to **IB Docket No. 12-343** and reference the specific file numbers of the individual applications to which the filings pertain.

To allow the Commission to consider fully all substantive issues regarding the Applications and Petition in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²⁷ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

extension. See letter from Viet D. Dinh, counsel for Crest Financial Limited, to Marlene H. Dortch, FCC, dated Dec. 21, 2012. As we have revised the comment cycle through this public notice, this request is moot.

²³ 47 C.F.R. § 1.1206.

²⁴ See 47 C.F.R. § 1.1206(b)(1).

²⁵ See *id.*

²⁶ *Id.* § 1.1206(b).

²⁷ See 47 C.F.R. § 1.45(c).

Under the Commission's current procedures for the submission of filings and other documents,²⁸ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission.

- **If filed by ECFS,**²⁹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to:

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile);
- (2) Kathleen Collins, International Bureau, at Kathleen.Collins@fcc.gov or (202) 418-2824 (facsimile);
- (3) David Krech, International Bureau, David.Krech@fcc.gov or (202) 418-2824 (facsimile);
- (4) Paul Murray, Wireless Telecommunications Bureau, at Paul.Murray@fcc.gov or (202) 418-0787 (facsimile);
- (5) Aaron Goldschmidt, Wireless Telecommunications Bureau, at Aaron.Goldschmidt@fcc.gov or (202) 418-1412 (facsimile);
- (6) Christopher Sova, Wireline Competition Bureau, at Christopher.Sova@fcc.gov, or (202) 418-1413 (facsimile);
- (7) Wayne McKee, Media Bureau, at Wayne.McKee@fcc.gov, or (202) 418-1187 (facsimile); and
- (8) Neil Dellar, Office of General Counsel, at TransactionTeam@fcc.gov or (202) 418-1234 (facsimile).

Any submission that is e-mailed to Best Copy and Printing, Kathleen Collins, David Krech, Paul Murray,

²⁸ See FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

²⁹ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

Aaron Goldschmidt, Christopher Sova, Wayne McKee, and Neil Dellar should include in the subject line of the e-mail: (1) IB Docket No. 12-343; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., IB Docket No. 12-343, [name of submitting party], Notice of *Ex Parte* Communication).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. In addition, the wireless applications are available electronically through ULS, which may be accessed on the Commission's Internet website, and the international applications and petition for declaratory ruling are available electronically through IBFS, which also may be accessed on the Commission's Internet website. Information regarding the proposed transaction is also available on the Internet website the FCC has established, <http://www.fcc.gov/mergers>, which contains an unofficial listing and electronic copies of materials in this matter.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: fcc504@fcc.gov; phone: (202) 418-0530; or TTY: (202) 418-0432.

For further information on the proceeding, the international applications, or the petition for declaratory ruling, contact Kathleen Collins at Kathleen.Collins@fcc.gov, or (202) 418-1474, or David Krech at David.Krech@fcc.gov, or (202) 418-7443. For information on the wireless applications, contact Aaron Goldschmidt at Aaron.Goldschmidt@fcc.gov, or (202) 418-7146. For information on the wireline application, contact Christopher Sova at Christopher.Sova@fcc.gov, or (202) 418-1868. For information on the CARS applications, contact Wayne McKee at Wayne.McKee@fcc.gov, or (202) 418-2355.

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