

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
CONCURRING IN PART

RE: Sprint Nextel Corporation and Clearwire Corporation; Applications For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259

I am very pleased to approve this transaction, which joins together two existing licensees to create a new entrant capable of injecting new and meaningful competition into the wireless broadband marketplace. Today's action paves the way for Sprint, Clearwire and other investors to partner to deploy a nationwide wireless broadband network in the 2.5 GHz band, something that these companies have not been able to accomplish individually. New Clearwire will possess the spectrum breadth and depth, technical expertise, and financial resources necessary to construct a nationwide wireless broadband network. By rationalizing the spectrum holdings of Sprint and Clearwire, New Clearwire is well-poised to create efficiencies, spread the substantial business risk, and raise the financing necessary to deploy a competitive mobile WiMax service that will deliver advanced wireless services to millions of American consumers.

I am pleased that today's order refrains from analyzing this application as if Sprint and Clearwire are currently competitors. Although the potential for such competition is there, this approach is not yet ripe given the nascent stage of the converged wireless broadband market. Moreover, New Clearwire is a market entrant competing against established players with large, existing subscriber bases. Similarly, with respect to our treatment of the 2.5 GHz spectrum, the Commission correctly recognizes that encumbrances and lease commitments make unworkable a simple megahertz-to-megahertz comparison of this band with other spectrum bands for purposes of our spectrum aggregation screen. In other words, we're properly comparing apples to apples.

I do not oppose the open access and wholesale commitments set forth in this order given that the parties offered this approach voluntarily and from day one. As I've said for some time, the private sector long ago recognized the weaknesses of walled garden business plans well before the Commission started to issue unnecessary mandates in this area.

I am, however, concurring in part due to the universal service condition imposed here. First, this condition is not merger-specific. In addition, while I may agree with some of the universal service policies contained in this order, I see no need to potentially prejudice the Commission's ongoing rulemaking on this important matter. This is especially the case given that I, along with three of my colleagues, have made public our commitment to wrap up our work on universal service reform no later than December 18, 2008. Moreover, the text of today's order is unclear as to whether our action today would be superseded by action in the universal service proceeding.

At the end of the day, the next two years present a unique window for New Clearwire to take advantage of its time-to-market opportunity. I congratulate the company and its investors. I

look forward to the day in the not too distant future that WiMax and LTE will compete head-to-head.

Many thanks to the Wireless Telecommunications Bureau and my colleagues for their work on this matter.