Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint Nextel Corporation and Clearwire Corporation	)	WT Docket No. 08-94
	)	
Consent to Transfer Control	)	
of Licenses and Authorizations	)	
	)	

COMMENTS OF
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These comments are filed in general support of the applications of Sprint Nextel Corporation and Clearwire Corporation to transfer control of certain spectrum licenses and leases in the 2.5 GHz band to a new entity, New Clearwire. Put simply, the proposed transaction holds great promise to bring new competition to the broadband marketplace. While, as the Commission has recognized itself many times, the broadband marketplace already is subject to competition in most parts of the country, grant of the applications allowing the wireless assets of Sprint and Clearwire to be combined will offer the prospect of introducing an additional strong, well-financed marketplace competitor.

Significantly, the additional facilities-based competition from New Clearwire will come in the form of a nationwide network using WiMAX technology, a technological platform that differs from other existing fiber, cable, hybrid, satellite, and wireless platforms. By all rights, the additional marketplace competition should eliminate, or at least lessen, calls, which even now are not justified, for imposing "net neutrality" and

[*] These comments express the views of Randolph J. May, President of the Free State Foundation, a n independent, non-profit free market-oriented think tank. They do not necessarily represent the views of the Board of Directors or others associated with FSF.

other common carrier-type regulation on broadband providers. The Commission should act on the Sprint-Clearwire applications in a timely manner.

The Commission's data show that as of June 30, 2007, over 95% of the nation's zip codes were served by two or more broadband providers.[1] There are over 100 million high-speed lines in service, and over 65 million serve residential users. This represents a rapid dispersion of broadband availability, and it has been achieved with a huge private sector investment, well in excess of $100 billion.[2] Contrary to the claims of some, the broadband marketplace has developed on a steady, and increasingly competitive basis.

There is little doubt, however, that despite the progress made to date, further facilities-based competition would bring public interest benefits. New Clearwire's proposed WiMaX service apparently may not offer speeds as fast as existing telephone and cable company broadband competitors, and its proposed service may not be substitutable in all respects with the services provided by other broadband providers. Nevertheless, New Clearwire's service does offer the prospect of an alternative nationwide broadband network – in many places the long-sought "third pipe" or "fourth pipe." The additional competition brought about by New Clearwire's entry should lead to lower prices and improved service quality in both the wireless segment of the broadband market and in the overall broadband market. As commenters in the initial round noted, consumers will benefit not only from the increased price and service quality competition, but from the availability of the mobility enabled by the WiMAX network. And a further benefit is that the additional competition will further diminish the soundness of any

[1] FCC, High-Speed Services for Internet Access: Status as of June 30, 2007, Table 17, March 2008.
[2] USA Today reports that "AT&T and Verizon have spent more than $70 billion in the past two years to expand capacity and fortify their networks with optical technology and other capacity-enhancing gear." Leslie Cauley, "Avoiding Network Traffic Tie-Ups Could Cost You in the Future," April 21, 2008, B1.

claimed need to impose investment-stifling common carrier-type regulation on broadband providers.

The participation as investors of major communications and technology leaders – Comcast, Intel, Google, Time Warner, Bright House – is an indication that, if the applications are approved, New Clearwire will have the capital and other resources required to make it likely that the new venture actually will be able to carry out its plans. As stated earlier, the cable and telephone company broadband providers, to their credit, already have invested well in excess $100 billion in building out their networks. This is indicative of the huge capital investments which are necessary to build out large-scale broadband networks, and the participation of New Clearwire's major investors is a positive indicator for the venture's chance for success. Apart from the consumer benefits, even more broadly the nation's economy will benefit from the network infrastructure investment, and the associated spending on equipment and operational activities, attributable to the New Clearwire venture.

AT&T has filed a petition asking the Commission to deny the applications on the basis that the applicants have failed to demonstrate New Clearwire would be in compliance with the agency's "spectrum screen" that accounts for the amount of spectrum a firm controls.[3] In its conclusion, AT&T states that while it "does not fundamentally oppose the underlying transactions, the regulatory process must be consistent for all entrants…." AT&T also recognizes that even when the spectrum screen is triggered, Commission precedent is to the effect applications nevertheless should be granted, when, taking into account public interest benefits and harms, "on balance, the

[3] Petition to Deny of AT&T Inc., WT Docket No. 08-94, July 24, 2008.

proposed transaction will serve the public interest."[4]

In this instance, for the reasons set forth above relating to spurring additional competition in the broadband marketplace, even assuming the agency's spectrum screen were to be triggered, the public interest benefits of grant of the proposed transaction appear to outweigh any harms. Moreover, with respect to the substance of AT&T's contention, it has been my consistent view that in the context of "mergers" the FCC largely should defer to the expertise of the antitrust authorities concerning market power concentration issues, including those implicated by spectrum aggregation. Presumably, the Department of Justice is reviewing the competitive implications of the New Clearwire transaction, as it does for all similar transactions. When spectrum aggregation has been seen to raise competitive concerns, DOJ often has required divestitures of spectrum in particular markets as a condition of approving the transaction. Absent unusual circumstances, in reviewing applications to transfer or assign FCC authorizations, the Commission largely should defer to the expertise of the antitrust authorities with respect to any competitive concerns raised.[5]

In sum, the proposed transaction holds great promise to bring new competition to the broadband marketplace. Such additional competition in the form of another

[4] AT&T Petition, at 3, citing prior FCC orders.
[5] I have expressed this view many times in various forums. For an example, see Randolph J. May, "Reform the Process," National Law Journal, May 30, 2005, available at: http://www.freestatefoundation.org/images/Reform_the_Process--NLJ.pdf

broadband "pipe" would surely benefit consumers. The Commission should act on the Sprint Nextel and Clearwire applications in a timely manner.

Respectfully submitted,

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