

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CREST FINANCIAL LIMITED,)
)
 Plaintiff,)
)
 v.) C.A. No. _____
)
 SPRINT NEXTEL CORPORATION,)
 SPRINT HOLDCO, LLC, EAGLE RIVER)
 INVESTMENTS, LLC, ERIK PRUSCH,)
 JOHN STANTON, WILLIAM R.)
 BLESSING, BRUCE CHATTERLEY,)
 MUFIT CINALI, JOSE A. COLLAZO,)
 HOSSEIN ESLAMBOLCHI, DENNIS S.)
 HERSCH, BRIAN P. MCANDREWS,)
 KATHLEEN H. RAE, THEODORE H.)
 SCHELL, JENNIFER L. VOGEL, SLADE)
 GORTON, and CLEARWIRE)
 CORPORATION,)
)
 Defendants.)

VERIFIED COMPLAINT

Plaintiff Crest Financial Limited (“Plaintiff” or “Crest”), by and through its undersigned counsel, alleges upon knowledge as to it and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Plaintiff Crest Financial Limited, together with its affiliates and other related persons, is the owner of more than 45 million Class A shares, representing a 6.62% ownership interest in Clearwire Corporation (“Clearwire” or “the Company”), and one of the Company’s largest stockholders. Plaintiff, a long-term investor in Clearwire, brings this action to remedy breaches of fiduciary duty by Clearwire’s controlling stockholders and its officers and directors. As detailed below, Sprint Nextel Corporation

and Sprint HoldCo LLC (collectively, “Sprint”), and Eagle River Investments, LLC, the holding company of Clearwire’s founder (“Eagle River”) are attempting to exploit Clearwire’s public minority stockholders through wrongful conduct culminating in a series of related transactions designed to unfairly extract value from Clearwire at the expense of Plaintiff and Clearwire’s other public minority stockholders. Clearwire and its directors and officers are breaching their fiduciary duties (or, in the case of Clearwire, aiding and abetting fiduciary breaches) by permitting or facilitating the controllers’ scheme.

2. Clearwire holds unique U.S. spectrum assets of great value. Spectrum is the foundation on which wireless networks are built, and Clearwire’s spectrum assets have been described as “rich beyond the grandest dreams of any other U.S. carrier” and a “pot of gold.” While the demand for mobile broadband data is growing exponentially, there is only a finite amount of spectrum available in U.S. markets. Indeed, the top two U.S. wireless providers, AT&T and Verizon Wireless (“Verizon”), hold significantly less spectrum space than Clearwire, and are actively pursuing transactions to acquire more spectrum.

3. From 2008 until recently, Clearwire has undertaken substantial work to develop its spectrum assets. As late as April 2012, Clearwire reaffirmed its strategy to expand its 4G LTE network. This network build-out presented Clearwire with a substantial opportunity to realize value for its stockholders. In May 2012, Clearwire engaged Cantor Fitzgerald to pursue a stock offering to finance Clearwire’s development activities. As late as May 2012, Clearwire was poised to harvest the benefits of its

spectrum assets for the benefit of all Clearwire stockholders, leading Clearwire's CEO to proclaim 2013 "a year of opportunity" for Clearwire.

4. As controlling stockholders of Clearwire at all relevant times, Sprint and Eagle River owed a fiduciary duty of loyalty to Clearwire and its minority stockholders. In breach of that duty, Sprint and Eagle undertook a coordinated scheme to unfairly extract value from Clearwire and its spectrum assets for themselves, at the expense of Clearwire's minority stockholders. Clearwire's directors and officers have in turn breached their fiduciary duties by permitting and facilitating Sprint and Eagle River's wrongful conduct.

5. In mid-2012, Sprint found itself in a difficult business position. In June 2012, Sprint began discussions with Japanese telecommunications and media corporation Softbank Corp. ("Softbank") regarding a potential transaction. Softbank's interest in a deal was driven by its desire to access Clearwire's spectrum assets, which are the key to Softbank's strategic goal of entering the growing U.S. wireless market. As a Forbes article observed when a deal was later announced, "this deal is all about Clearwire's spectrum and not at all about Sprint's better known brand name."

6. Rather than permitting Clearwire to operate as an independent company or conducting a fair process to sell either Clearwire or its assets for the benefit of all Clearwire stockholders, Sprint—acting in concert with Eagle River—launched a scheme to deliver unilateral control of Clearwire and its spectrum assets to Softbank on the cheap, while extracting maximum benefit for itself. In July 2012, just one month after discussions between Softbank and Sprint began, Clearwire's board of directors (the "Clearwire Board") abruptly cancelled Clearwire's stock offering launched just two

months earlier. The Clearwire Board also sharply curtailed the Company's development plans in October. And, as described below, Sprint agreed to eliminate Eagle River's joint control over Clearwire.

7. On October 15, 2012, Sprint announced a definitive agreement with Softbank—a \$20 billion deal that would give Softbank a 70% stake in Sprint—and with it, Sprint's control of Clearwire (the "Sprint-Softbank Transaction"). Sprint would receive a \$10 billion premium in the deal, which is expected to close in the second quarter of 2013. In connection with the Sprint-Softbank transaction, Sprint also entered into a side-transaction with Eagle River that will enable Sprint to deliver unfettered control of Clearwire to Softbank, in the form of a majority position free from Eagle River's contractual veto power over certain Clearwire actions (the "Eagle River Transaction"). Notably, Clearwire's unaffiliated directors had a contractual right to withhold consent for the Eagle River Transaction, potentially blocking the controllers' breaches. But they did nothing.

8. Meanwhile, Clearwire's business has stagnated. Sitting on a spectrum goldmine, Defendants have caused Clearwire's development efforts to be needlessly curtailed. Clearwire is not pursuing the multiple avenues available for raising capital to finance further development, including stock offerings or sale of part of its excess spectrum, even though the market for spectrum is robust. Letting Clearwire stagnate is facilitating Sprint's scheme to acquire Clearwire's minority stockholders on the cheap.

9. When asked about plans for Clearwire at the time the Sprint-Softbank Transaction was announced in October 2012, Softbank's and Sprint's CEOs

both avoided the question. Sprint's CEO merely stated that "there are no elements in this agreement between Softbank and Sprint that *require* either party, Softbank or Sprint, to enter into any new agreements with Clearwire or with anyone else." (Emphasis added.) Notwithstanding these cryptic protestations, the Wall Street Journal reported that Softbank's lenders sought assurances that Sprint (and through it Softbank) would acquire unilateral control over Clearwire. Indeed, Sprint and Clearwire reportedly have already commenced negotiations for a go-private deal by which Sprint would acquire Clearwire's remaining minority shares.

10. For these reasons and those detailed below, the Defendants have violated their fiduciary duties (or aided and abetted breaches of fiduciary duties by other Defendants) by entering into the Sprint-Softbank and Eagle River Transactions, and by intentionally causing Clearwire's business to stagnate, all as part of a scheme to unfairly extract value from Clearwire at the expense of Clearwire's minority stockholders. In order to obtain relief before it is too late to divert Clearwire from an unfair minority freeze-out, Plaintiff seeks, among other things, to permanently enjoin the Sprint-Softbank Transaction, and recover damages as a result of the fiduciary breaches alleged herein. The injunctive relief sought will not only prevent Sprint from unfairly extracting value from Clearwire at the expense of Clearwire's minority shareholders, but will also permit Clearwire to pursue and implement its plans to raise capital through the issuance of additional shares and to build-out Clearwire's network, including the plans previously announced by Clearwire, or through other means and to operate its business and sell its spectrum without interference from Sprint.

THE PARTIES

11. Plaintiff Crest is an investment company organized and existing under the laws of the state of Texas and is a citizen of the state of Texas. Crest, which first obtained an interest in Clearwire in 2004, currently owns (together with its affiliates and related parties) 6.62% of the outstanding Class A common stock of Clearwire and has held Clearwire stock at all times relevant to the allegations of the complaint.

12. Defendant Clearwire is a corporation organized and existing under the laws of the State of Delaware and headquartered at 1475 120th Avenue, NE, Bellevue, Washington 98005.

13. Defendant Sprint Nextel Corporation is a corporation organized and existing under the laws of the State of Kansas, with its principal place of business located at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint Nextel Corporation, the third largest wireless provider in the United States, is the product of the 2005 merger between Sprint Corporation and Nextel Communications, Inc. It provides wireless and wireline data services to customers throughout the United States, Puerto Rico and the U.S. Virgin Islands. Sprint Nextel Corporation offers wireless services under the Sprint, Boost Mobile, Virgin Mobile, payLo, and Assurance Wireless brands and also provides wholesale wireless access of its networks to a number of Mobile Virtual Network Operators in the United States. Among other things, Sprint Nextel Corporation sells its services through scores of retail facilities in, and has numerous customers in, the State of Delaware. As of October 18, 2012, Sprint Nextel Corporation, through its wholly-owned subsidiary Sprint HoldCo, LLC, owned the largest interest in

Clearwire with an effective voting interest of approximately 48.1% and economic interest in Clearwire Communications of approximately 90.2%.

14. Defendant Sprint HoldCo, LLC, is a limited liability company organized and existing under the laws of the State of Delaware and headquartered at 6200 Sprint Parkway, Overland Park, Kansas 66251.

15. Defendant Eagle River is a limited liability company organized and existing under the laws of the State of Washington and is located at 3410 Carillon Point, Kirkland, WA, 98033. Eagle River is an investment firm owned by Craig McCaw, the founder of Clearwire, which invests in telecommunication and technology communications. As of October 18, 2012, Eagle River owned five percent of the outstanding shares of Clearwire common stock.

16. Defendant Erik Prusch (“Prusch”) is President and Chief Executive Officer of Clearwire and is a member of the Clearwire Board. He has served as President and Chief Executive Officer since July 2011 and as a director since February 2012. Prusch was nominated to the Clearwire Board by Eagle River. Prusch holds his position as Clearwire’s CEO at the pleasure of Clearwire’s controllers.

17. Defendant John Stanton (“Stanton”) is Executive Chairman of the Clearwire Board. He has served as a director since November 2008. Stanton was nominated to the Clearwire Board by Sprint.

18. Defendant William R. Blessing (“Blessing”) is a member of the Clearwire Board. He has served as a director since December 2010. Blessing was nominated to the Clearwire Board by Sprint. From 1990 until 2005, Blessing held various executive positions at Sprint, including Senior Vice President, Corporate Strategy

and Development; Vice President, Business Development and Strategy, PCS Division; Vice President of Wireless; and, Vice President of International Product Management and Marketing.

19. Defendant Mufit Cinali (“Cinali”) is a member of the Clearwire Board. He has served as a director since December 2010. Cinali was nominated to the Clearwire Board by Sprint.

20. Defendant Jose A. Collazo (“Collazo”) is a member of the Clearwire Board. He has served as a director since November 2008. Collazo was nominated to the Clearwire Board by Sprint.

21. Defendant Hossein Eslambolchi (“Eslambolchi”) is a member of the Clearwire Board. He has served as a director since December 2010. Eslambolchi was nominated to the Clearwire Board by Sprint.

22. Defendant Brian P. McAndrews (“McAndrews”) is a member of the Clearwire Board. He has served as a director since February 2009. McAndrews was nominated to the Clearwire Board by Sprint.

23. Defendant Jennifer L. Vogel (“Vogel”) is a member of the Clearwire Board. She has served as a director since June 2011. Vogel was nominated to the Clearwire Board by Sprint.

24. Defendant Bruce Chatterley (“Chatterley”) is a member of the Clearwire Board. He has served as a director since June 2011. Chatterley was nominated to the Clearwire Board by Intel Corporation (“Intel”).

25. Defendant Dennis S. Hersch (“Hersch”) is a member of the Clearwire Board. He has served as a director since November 2008. Hersch was nominated to the Clearwire Board by the Strategic Investors (defined below).

26. Defendant Kathleen H. Rae (“Rae”) is a member of the Clearwire Board. She has served as a director since June 2011. The Clearwire Board appointed Rae to the board.

27. Defendant Theodore H. Schell (“Schell”) is a member of the Clearwire Board. He has served as a director since January 2009. Schell was nominated to the Clearwire Board by the Strategic Investors.

28. Defendant Slade Gorton (“Gorton”) is a member of the Clearwire Board. He has served as a director since July 2012. The Clearwire Board appointed Gorton to the board. Gorton has close ties to Stanton.

29. Individual defendants Stanton, Blessing, Cinali, Eslambolchi, Vogel, McAndrews and Collazo are collectively referred to herein as the “Sprint Director Defendants.”

30. The Sprint Director Defendants together with Prusch, Chatterly, Hersch, Rae, Schell and Gorton are collectively referred to herein as the “Director Defendants.”

31. Sprint, Eagle River, Clearwire and the Director Defendants are collectively referred to herein as the “Defendants.”

FACTUAL ALLEGATIONS

I. The Wireless Communications Industry

32. Spectrum is the foundation on which a wireless network is built. The more spectrum a network has, the bigger the network's pipe and the greater its ability to move large amounts of data. Clearwire's unique broadband spectrum includes 160 MHz of spectrum in some markets and an average of 120 MHz in the large urban markets. This spectrum enables Clearwire to provide one of the fastest wireless broadband networks in the world. Its 4G network spans the nation and covers over 130 million people in approximately 80 U.S. markets. As stated on its website, Clearwire holds the deepest portfolio of wireless spectrum available for data services in the United States. Indeed, one analyst has described Clearwire's spectrum as "rich beyond the grandest dreams of any other U.S. carrier."

33. The mobile industry is growing at an exponential pace. According to Clearwire's 2011 Annual Report, "global mobile broadband data consumption is expected to grow at approximately a 92% compound annual growth rate from 2010 to 2015." But there is only a finite amount of spectrum available in U.S. markets. The combination of meteoric growth in demand and limited supply make Clearwire's unique spectrum portfolio exceptionally valuable.

II. The Formation of Clearwire and Its Valuable Spectrum

34. Plaintiff and its affiliates have a long history of investing in the spectrum that Clearwire currently holds. In 1996, the Federal Communication Commission awarded to Digital & Wireless, a Crest affiliate, licenses providing rights to frequencies in 19 markets in a BTA auction. In June of 2004, Clearwire, then still a

privately-held corporation, acquired these licenses from Digital & Wireless. As part of the consideration for this sale, Crest received a significant number of Clearwire shares.

35. Clearwire was founded by Craig O. McCaw in late 2003 to establish a nationwide Worldwide Inter-Operability for Microwave Access (“WiMAX”) mobile broadband network. WiMAX is a technology used for providing internet access for several miles (as opposed to Wi-Fi, which generally has a coverage area of several hundred feet). Clearwire went public in a March 7, 2007 initial public offering. At that time, McCaw continued to hold a majority of the shares through a holding company, defendant Eagle River.

36. In May 2008, Clearwire and Sprint’s Xohm wireless broadband unit announced a plan to merge in order to combine the companies’ broadband wireless networks based on the WiMAX standard (the “2008 Transaction”).

37. As stated in Clearwire’s S-4 filed in connection with the 2008 Transaction, that transaction was intended “to expedite the development of a nationwide wireless broadband network, expedite the commercial availability of wireless broadband services over the wireless broadband network, enable the offering of a greater depth and breadth of wireless broadband services and promote wireless broadband development.”

38. In connection with the 2008 Transaction, Sprint agreed to contribute all of its 2.5 GHz spectrum holdings and its WiMAX-related assets to Clearwire. According to Clearwire, upon completion of the Sprint transaction it would:

hold more wireless spectrum in the United States than any other mobile carrier, with holdings expected to exceed more than 42 billion MHz-POPs of spectrum in the 2.5 GHz (2495-2690 MHz) band in our portfolio, including spectrum we will own, lease or have pending agreements to

acquire or lease. We will hold approximately 150 MHz of spectrum on average in the Top 100 markets in the United States. . . . *We believe that our significant spectrum holdings, both in terms of spectrum depth and breadth, in the 2.5 GHz band will be optimal for delivering broadband access services*, and our substantial spectrum depth will allow us to offer premium services and data intensive multimedia content.

39. The new publicly traded entity created through this merger was incorporated on or about May 14, 2008, and was known as “New Clearwire Corporation” until approximately November 28, 2008, when the 2008 Transaction closed.

40. As a result of the 2008 Transaction, Clearwire created two classes of capital stock: (1) Class A common stock (the “Class A Shares”); and (2) Class B common stock (the “Class B Shares”). The Class B Shares have equal voting rights to Class A Shares, but unlike the Class A Shares, the Class B Shares have no right to dividends and no right to any proceeds on liquidation other than the par value of the Class B Shares. As of December 7, 2012, Clearwire had approximately 1,464,966,472 shares of common stock outstanding: 691,233,800 Class A Shares and 773,732,672 Class B Shares.

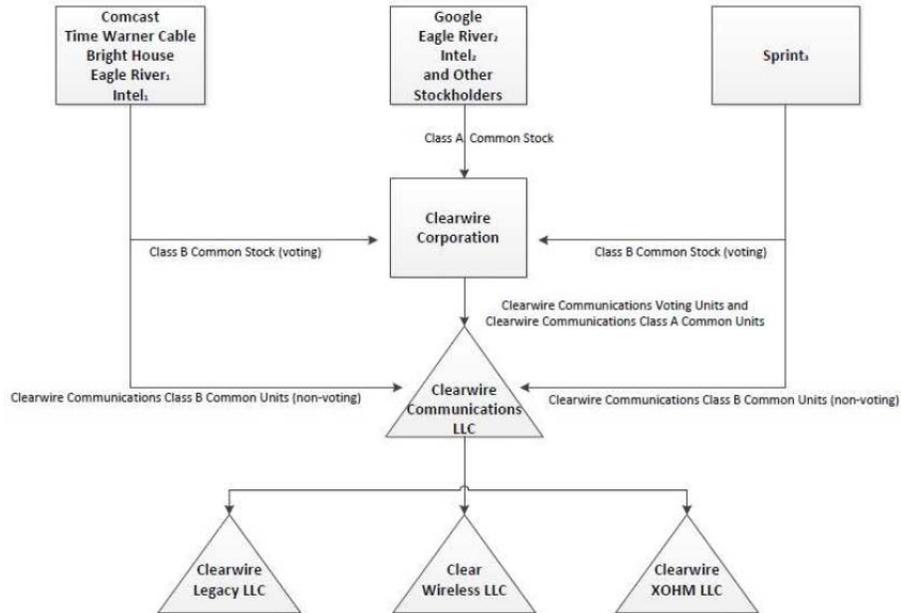
41. In addition to Sprint, the 2008 Transaction included four significant investors: Comcast Corporation (“Comcast”), Time Warner Cable Inc. (“Time Warner”), Bright House Networks LLC (“Bright House”), Google Inc. (“Google”) (collectively, the “Strategic Investors”), and Intel (together with the Strategic Investors, the “Investors”). These Investors infused \$3.2 billion into Clearwire and its related entities in connection with the 2008 Transaction. Sprint and the Investors, other than Google, owned Class B Shares. Sprint and the Investors, other than Google, held

the economic rights associated with their shares of Class B Shares through ownership of Clearwire Communications Class B Common Units. Each Class B Share plus one Clearwire Communications Class B Common Unit is convertible into one Class A Share.

42. Through the 2008 Transaction (valued at approximately \$14.5 billion), Sprint and Eagle River gained control of Clearwire. When the 2008 Transaction closed on November 28, 2008, Sprint held 73.3% of Clearwire's Class B Shares, which represented a 53.3% voting interest in Clearwire. Together, Eagle River and Sprint held 58.5% percent of the total voting power of Clearwire and controlled Clearwire.

43. Sprint, Eagle River, and the other Investors simultaneously entered into a November 28, 2008 Equityholders' Agreement (the "EHA") setting forth their rights and obligations regarding the governance of Clearwire. Pursuant to the EHA, the Clearwire Board consists of thirteen directors nominated as follows: (i) seven directors nominated by Sprint; (ii) one director nominated by Eagle River; (iii) one director nominated by Intel; (iv) two directors nominated by the Strategic Investors as a group; (v) one independent director nominated by Intel and the Strategic Investors as a group; and (vi) one independent director nominated by the Company's Nominating and Governance Committee. Because of its right to nominate seven out of the thirteen directors (the Sprint Director Defendants), Sprint controls a majority of Clearwire's Board.

44. The following diagram illustrates the structure of Clearwire, its subsidiaries and its stockholders:¹



45. Combining their respective coverage areas, Sprint and Clearwire created a national WiMAX network and eventually transitioned to the 4G WiMAX and 4G LTE networks. As a result, at the time of the 2008 Transaction, controlling stockholder Sprint also became Clearwire’s largest customer, since the combined Clearwire spectrum was vastly superior to the Sprint PCS Network on which Sprint operated before 2008. Sprint continues to use Clearwire’s LTE network today.

46. Clearwire’s spectrum is vastly superior to that used by other wireless carriers. For example, the top two wireless providers, AT&T and Verizon, hold

¹ In the diagram, Note 1 includes Eagle River and Intel with respect to Class B Stock and Clearwire Communications Class B Common Units. Note 2 includes Eagle River and Intel (with respect to shares held in Old Clearwire that were converted into shares of Clearwire Corporation’s Class A Shares upon closing of the Transactions). And Note 3 indicates that Sprint holds its equity interests in Clearwire and Clearwire Communications through Sprint HoldCo.

significantly less spectrum space, particularly in densely populated urban markets: AT&T holds less than 60 MHz of prime spectrum in the top U.S. markets and Verizon holds less than 55 MHz. AT&T and Verizon are actively pursuing transactions to acquire more spectrum. As reported on Bloomberg:

- (a) AT&T and Verizon are trying to acquire as much spectrum as they can;
- (b) AT&T has proposed at least 24 deals in the past four months for the rights to spectrum, the radio waves used to transmit mobile-phone calls, and data connections;
- (c) Verizon won U.S. approval on August 23, 2012, to buy airwave rights from Comcast and three other cable companies for \$3.9 billion;
- (d) AT&T is working to unlock unutilized spectrum for mobile Internet usage and adding capacity to keep pace with skyrocketing consumer demand;
- (e) AT&T tried to address its spectrum needs in 2011 through a \$39 billion takeover of the fourth-biggest carrier, T-Mobile USA Inc. Facing opposition by regulators AT&T killed the deal in December 2011; and
- (f) With almost 200 million customers combined, Verizon and AT&T have both the greatest need for more spectrum and the most money to buy it.

47. Following the 2008 Transaction, Clearwire undertook substantial efforts to develop the robust network that the parties envisioned when they announced that transaction. As Clearwire itself has explained, its 4G network “will be unlike any other in the wireless industry” because “Clearwire will be able to deliver more capacity to high-density, high-demand markets than other wireless networks.”

III. Sprint's Desperate Need for Additional Spectrum

48. With the increase in popularity of smartphones, spectrum has become increasingly important for cellular phone companies anxious to keep customers satisfied. At the same time, developments in the communications industry have increased demand for this spectrum.

49. In July 2011, Sprint and LightSquared (a wholesale-only integrated 4G LTE wireless broadband network) announced a 15-year agreement that included hosting and network services, 4G wholesale, and 3G roaming. That agreement was an important component of a plan by Sprint to acquire enough spectrum to offer robust 4G LTE service to its customers.

50. Because of, among other things, an underdeveloped network compared to leading providers Verizon and AT&T, Sprint was having difficulty retaining customers. Indeed, in mid-2011 Sprint did not yet offer its customers the popular iPhone, which AT&T began selling in 2007.

51. By September 2011, Sprint was losing customers at an alarming rate. Sprint knew that adding the iPhone would be a double-edged sword: while offering an iPhone would increase smartphone sales, such sales would put additional stress on Sprint's network as a result of its unlimited data plans.

52. But Sprint's hemorrhaging of customers left it little choice, and on October 3, 2011, Sprint agreed to purchase more than \$20 billion worth of iPhones (approximately 30 million iPhones) over the next four years.

53. Assuming this obligation made securing sufficient spectrum even more important for Sprint, which faced increasing customer demand. Indeed, the failure

to do so would mean losing the customers (and revenue) Sprint needed to make the substantial payments due to Apple.

54. To that end, on December 1, 2011, Sprint and Clearwire entered into a multi-faceted deal which would, among other things, offer Sprint critical spectrum capacity. Sprint and Clearwire entered into a number of agreements potentially worth up to \$1.6 billion to Clearwire over the next four years. In a press release announcing the agreements with Sprint, Clearwire disclosed the following:

The agreements further align Clearwire's LTE network build as a complement to Sprint's Network Vision strategy. . . . "These agreements are a result of the technical MOU we outlined during our third quarter results call and extend our relationship with Clearwire," said Dan Hesse, Sprint CEO. "It provides Sprint improved pricing, allows us to continue to provide WiMAX 4G services to our customers today and to new customers in the future and provides additional LTE capacity to help complement our Network Vision strategy and meet our customers' growing data demands." "Today's announcement further cements the mutually beneficial relationship between our two companies," said Erik Prusch, president and CEO of Clearwire. "It is an important step toward meeting Clearwire's key goals of extending our current 4G network arrangement, securing a commitment to our future LTE Advanced-ready network, and funding the business. We continue to move closer to realizing the full value of our deep spectrum resources as we are uniquely positioned to meet the rapidly growing demand for 4G mobile broadband."

* * *

The agreements also lay the foundation for the deployment of Clearwire's planned LTE Advanced-ready overlay network and outline the terms for Sprint to gain access to the additional LTE capacity. The TDD-LTE rollout will capitalize on Clearwire's deep spectrum resources to deliver on 4G capacity needs over the long-term. Under the terms, Sprint will pay Clearwire up to \$350 million in a

series of prepayments over a period of up to two years for LTE capacity if Clearwire achieves certain build-out targets and network specifications by June 2013. The agreements also establish long-term usage-based pricing for LTE services for 2012 and beyond. The companies have agreed to collaborate on a network build plan and will jointly select LTE macro-cell sites to cover Sprint's high usage area "hotspots." Clearwire plans to seek additional funding before initiating the build-out of its LTE Advanced-ready network.

55. Just two months later, Sprint's plans were substantially undermined when, on February 14, 2012, the National Telecommunications and Infrastructure Administration advised the Federal Communications Commission ("FCC") that the wireless network to be deployed by LightSquared (with whom Sprint had signed a 15-year contract to share capacity just seven months before) "posed a significant and perhaps insurmountable threat to global positioning devices." The same day the FCC announced that it would revoke LightSquared's conditional license, and one month later (on March 16, 2012), Sprint cancelled its contract with LightSquared.

56. After LightSquared lost its license, several of its customers entered into agreements to purchase spectrum from Clearwire. On March 14, 2012, one of LightSquared's largest clients, Leap Wireless, announced that it would buy LTE connectivity from Clearwire for its Cricket prepaid service. This was hardly surprising, for after LightSquared exited the market, Clearwire was the only wholesale wireless company in the United States.

57. LightSquared's departure worked two separate harms on Sprint. Not only did Sprint lose a long-term partner in the provision of LTE service, but now

there would be increased demand on Clearwire's valuable spectrum—which Sprint needed for itself.

58. It immediately became clear to the market that Sprint's iPhone obligations, combined with its lack of quality spectrum, presented potentially devastating problems. On March 19, 2012, Sanford Bernstein reported that Sprint could be “in deep trouble,” and that bankruptcy was “a very legitimate risk” because of the iPhone, which “will likely be badly disadvantaged on Sprint's network, impairing sales when Sprint is subject to a punishing take-or-pay deal with Apple.”

59. Sprint was well aware of these issues. During a March 27, 2012 investor conference, Sprint's Chief Financial Officer, Joe Euteneuer, admitted that the company “is expected to be under a lot of scrutiny in the next few years as it grapples with the cost of upgrading its network.” During that same conference, Euteneuer discussed Sprint's possible purchase of spectrum to expand its network capacity. But Sprint knew that because of its depressed share price, it lacked the currency necessary to obtain spectrum through an acquisition.

60. While Sprint was struggling to acquire spectrum, Clearwire was building out its 4G LTE network. In April 2012, Clearwire reaffirmed its strategy to expand its 4G LTE network by: (1) targeting the build-out of 8,000 additional sites, (2) completing the build-out of 5,000 sites by June 2013, (3) utilizing capital expenditures of \$350 to \$400 million for the build-out, and (4) raising funds to support the build-out program. In a number of public statements throughout the year, the Company continued to affirm its commitment to develop its 4G LTE build-out program.

61. This build-out presented a substantial opportunity for Clearwire to realize value for its stockholders. In May 2012, Clearwire CEO Prusch labeled 2013 “‘a year of opportunity’ in terms of adding new wholesale customers[.]” Prusch further indicated that the wholesale customers could include Sprint’s direct competitors: Verizon and AT&T. To help raise capital, on May 4, 2012 Clearwire entered into an agreement with Cantor Fitzgerald to sell \$300 million worth of Class A Stock. That course of action was in the best interest of both Clearwire and its stockholders, who would realize substantial value from the development and monetization of Clearwire’s prime spectrum.

IV. Sprint Uses Clearwire To Further Its Unique Interests, To The Detriment Of Its Minority Stockholders

62. By the middle of 2012, Sprint found itself in a desperate position. It lacked the spectrum it needed to remain competitive. It owed Apple billions of dollars. And it separately had debt obligations of \$800 million, \$1.4 billion and \$2.6 billion maturing in 2013, 2014 and 2015 respectively. As a result, Sprint could not fund a much-needed build-out of spectrum. And Sprint faced increasing competition for the limited spectrum that was available.

63. Sprint knew that it needed to do two things: First, it needed to ensure that Clearwire’s spectrum would be available for Sprint’s use, even if that required Clearwire to forgo opportunities to return greater value to all shareholders through, among other things, offering its valuable spectrum in the open market. Second, Sprint knew that it needed funding to finance spectrum development.

64. Sprint began discussions with Softbank about a potential transaction in June 2012. Softbank is a Japanese telecommunications and media corporation. With a market capitalization of approximately \$20 billion, Softbank is one of the largest Internet-related companies in Asia. With Japanese wireless markets having fallen more than 25% in the past five years, Softbank was looking to enter the growing United States wireless market. And a United States presence offered Softbank the opportunity to position itself as a global provider like Vodafone.

65. Clearwire had particular value for Softbank. In Japan, Softbank uses the same type of 4G wireless data technology (TD-LTE) that Clearwire uses in the United States. At the same time, Sprint saw Softbank as a potential source of the substantial funds that it desperately needed.

66. Rather than conduct a fair process to either sell Clearwire or its assets for the benefit of all Clearwire stockholders or to permit Clearwire to operate as an independent company and carry out its build-out and growth plans, Sprint launched a scheme to deliver unfettered control of Clearwire and its key spectrum assets to Softbank on the cheap—while unfairly extracting maximum benefit for itself.

67. At this time, Clearwire was pursuing its \$300 million common stock offering, which threatened to undermine Sprint's control of Clearwire. In July 2012—just one month after discussions between Softbank and Sprint began, and only two months after launching the offering—the Sprint-controlled Clearwire board abruptly cancelled Clearwire's stock offering. Before terminating the offering, Clearwire had sold just \$59 million of the \$300 million offering.

68. Around this same time, Sprint approached the other Class B stockholders about purchasing their holdings. While Sprint had the right to nominate seven of the thirteen members of the Clearwire Board, acquiring the interests of other Class B stockholders would further enhance Sprint's control. Among other things, Sprint knew that if it acquired the interest of another Class B stockholder, it would secure the right to nominate a majority of the Clearwire Board without any obligation under the EHA to nominate an independent director.

69. Sprint's desire to acquire Class B Shares represented an abrupt about-face from its efforts, just one year earlier, to reduce its voting rights. On June 1, 2011, Sprint advised Clearwire that it had elected to surrender Class B voting shares to reduce its voting interests to just under 50 percent (from 54 percent). Sprint did this to avoid Clearwire being treated as a subsidiary for financial reporting purposes.

70. During the 2012 discussions with Sprint, none of the Class B stockholders other than Eagle River accepted overtures from Sprint to buy their interests. Indeed, in September 2012, Class B holder Time Warner converted its Class B Shares into marketable Class A Shares and liquidated its position. At the time of its stock sale, Time Warner Cable's stake had dropped in value to about \$63.5 million. This is about \$486.5 million less than its initial investment. In September 2012, Comcast converted all of its Class B shares into Class A shares—preparing Comcast to sell the shares on the open market. Bright House similarly completed an exchange of all of its 8.5 million Class B Shares into Class A Shares on October 18, 2012. And earlier this year, Intel, which initially invested \$1 billion in Clearwire, “wrote down the entire value of its 7.3% voting stake in Clearwire.”

71. Thus, at about the same time, all of the original Class B investors except Sprint and Eagle River converted, liquidated, or marked down their Clearwire shares, positioning themselves to either realize the actual value of Clearwire if it could be unlocked through the Company's capital raising and build-out, which was already underway or dispose of their interests if Sprint solidified its control.

72. Fortunately for Sprint it had Eagle River. Eagle River is an investment entity owned by Clearwire's founder, Craig McCaw, and held important rights with respect to Clearwire under the EHA, including, among other things: (i) the right to nominate a member of the Clearwire Board so long as Eagle River continues to hold a certain amount of stock in the Company; (ii) an exemption from transfer restrictions that apply to the other Equityholders (including Sprint); and (iii) a right to approve or block amendments to the Company's bylaws or any change to the size of the Clearwire Board in certain circumstances. As one research analyst previously noted:

Eagle River is an important shareholder because we believe it retains rights under the shareholders agreement that require its approval for a change of control under a standstill agreement between all the strategic partners. . . . [Eagle River] is important to public shareholders because other strategic partners could presumably be incentivized to provide their consent to Sprint taking control of Clearwire at an unattractive stock price based on operational considerations that are not aligned with the public shareholders

73. Because Eagle River owned five percent of Class A Shares and 2.3 percent of the voting power in the Company, the Eagle River Transaction would increase Sprint's voting interest to more than 50 percent. Even more importantly, as Sprint acknowledged in its September 30, 2012 Form 10-Q, upon the closing of the Eagle River

Transaction, “Sprint will no longer be subject to the requirement that one of its seven designees [on Clearwire’s 13-member board of directors] be . . . an independent director of Sprint.” Stated differently: upon closing the Eagle River Transaction, Sprint would be able to nominate a majority of the Clearwire Board, and none of those directors need be independent of Sprint. The closing of the Eagle River Transaction would also eliminate Eagle River’s ability to veto significant transactions of the Company

74. Together with its existing holdings, an acquisition of Eagle River’s interests in Clearwire would give Sprint more than fifty percent voting power over Clearwire and the ability to nominate a majority of the Clearwire Board without any obligation to nominate an independent director.

75. Shoring up its control was critical to Sprint because Softbank’s ability to control Clearwire unilaterally was critical to the lenders that would finance a transaction between Sprint and Softbank. Indeed, the Wall Street Journal reported that Softbank’s lenders sought assurances that Sprint (and through it Softbank) would acquire unilateral control over Clearwire.

76. On or about October 13, 2012, Eagle River and Sprint agreed on the terms by which Sprint would acquire Eagle River’s interests in Clearwire in exchange for \$100 million. As reflected in its securities filings, in a coordinated series of events the same day, Eagle River gave notice of its intention to transfer its interests in Clearwire and Sprint gave notice of its interest in buying those interests. Eagle River also gave notice that it was insisting on “Make Whole” payments from Sprint—*i.e.*, an additional amount of cash that would be paid to Eagle River in the event that Sprint acquires or

disposes of any Class A Shares or Class B Shares before October 2015 at a price higher than \$2.97164 or a higher price established in a subsequent transaction.

77. The \$100 million that Sprint agreed to pay Eagle River exceeds the value of the interests it was acquiring. Sprint allocated \$2.00 per share to the Class A Shares and \$13.98 per share to the Class B Shares. On the day the agreement was announced, Clearwire Class A Shares were trading at \$2.26. Had Eagle River converted its Class B shares into Class A shares, the shares sold by Eagle River were worth approximately \$76 million at then-current market prices. Thus, Sprint agreed to pay Eagle River an extra \$24 million in connection with the Eagle River Transaction. Both Sprint and Eagle River entered into this transaction to facilitate Softbank's unilateral control of Clearwire at the closing of the Softbank Transaction.

78. In the Eagle River Transaction, Sprint allocated the consideration disproportionately away from the Class A Shares. Specifically, Sprint allocated just \$2.00 per share to the Class A Shares (which was below the prevailing market prices). Sprint allocated the balance (\$13.98 per share) to the Class B Shares. This allocation is not supported by the fair value for either class of shares. Instead, Sprint has manipulated the allocation to create the appearance that Clearwire's Class A Shares—the common stock that is publicly traded—are worth less than their actual value in order to facilitate Softbank's acquisition of the balance of Clearwire for below fair market value. Moreover, by luring McCaw into the Eagle River Transaction with the valuable make whole, Sprint now had Clearwire's founder (McCaw) essentially telling the market what he thought the value of Clearwire to be.

79. Absent a waiver, the Eagle River Transaction was prohibited by a standstill provision in the EHA and is a breach of that agreement. The EHA provides for a five-year Standstill Period, ending on November 28, 2013. EHA ¶ 3.7. This Standstill Period applies to the Standstill Equityholders, which includes Sprint. *Id.* ¶ 3.7(d)(ii). Paragraph 3.7 of the Equityholders’ Agreement provides that during the Standstill Period, none of the Standstill Equityholders may, directly or indirectly, effect or participate in “any direct or indirect acquisition of any Common Stock[.]” Thus, before November 28, 2013, absent a waiver, Sprint is prohibited from any direct or indirect acquisition of Common Stock. Although there are some exceptions to the standstill, and in certain circumstances the provision would not apply to Sprint, those exceptions are inapplicable to the Eagle River Transaction. *Id.* at ¶ 3.7(a)(i)(A).

80. Despite this, Clearwire—which is a party to the EHA—refused to withhold its consent to this transaction from its controlling stockholders even while Sprint and Eagle River breached the EHA and the fiduciary duties they owe to the Company’s minority stockholders. The failure to do so—which Clearwire could and should have done to frustrate this scheme and maximize the value of its spectrum assets for all of its stockholders—results from, and is further evidence of, the fact that the Clearwire Board is not functioning independently and is failing to represent the interests of all Clearwire stockholders.

81. The Clearwire Board, the majority of which is nominated by Sprint and Eagle River, is breaching its fiduciary duties by facilitating the Sprint, Eagle River, and Softbank scheme. On information and belief, the Clearwire Board approved the

Eagle River Transaction even though it breaches the EHA. In fact, Reuters reported on December 11, 2012 that the Eagle River Transaction had closed.

V. **Sprint and Softbank Announce the Transaction**

82. On October 15, 2012, Sprint and Softbank announced a transaction under which Softbank will acquire 70% of Sprint for nearly \$20 billion. This represents at least \$10 billion more than the value of the interests acquired. On information and belief, this additional payment is attributable to the value of Clearwire and its spectrum assets that are being unfairly extracted at the expense of Plaintiff and Clearwire's other minority stockholders. This transaction is subject to review and approval by the Federal Communications Commission, whose review currently is expected to be completed on or about May 29, 2013.

83. A joint Softbank-Sprint filing with the FCC confirms Softbank's ultimate goal to control Clearwire and its spectrum. In that filing, Sprint and Softbank admit that: (1) Sprint currently controls Clearwire and Clearwire's assets; and (2) after the close of the Softbank Transaction and subject to regulatory approval, Softbank will control Clearwire and Clearwire's assets:

Softbank and Sprint are submitting applications to transfer control of Sprint's FCC licenses, leases, and authorizations to Softbank. ***Sprint and Softbank also are filing transfer of control applications to transfer Sprint's prospective de jure controlling interest in Clearwire's licenses, authorizations, and leases to Softbank because Softbank, by virtue of its acquisition of an approximately 70 percent indirect interest in Sprint, also will indirectly acquire Sprint's interest in Clearwire.***

84. The market immediately recognized Softbank and Sprint's intentions. An October 28, 2012 article in Forbes titled *Softbank's Brilliant Buy One*

(Sprint), *Get One Free Deal* (Clearwire), concluded that the actual target of the Softbank Transaction is Clearwire: “That one single transaction with McCaw and Eagle River reinforced for me this deal is all about Clearwire’s spectrum and not at all about Sprint’s better known brand name.” The article goes on to state:

This whole deal is about Clearwire and its V A S T spectrum position. That’s the pot of gold and it comes with this deal almost for free, at least so far. . . .What Sprint does have to offer is just control of Clearwire and its very broad spectrum position. . . . So what is the lure? *Sprint’s much abused stepchild Clearwire is spectrum rich beyond the grandest dreams of any other U.S. carrier.* It has 160 MHz of spectrum in some markets and an average of 120 MHz in the big urban markets where it really matters because that is where the traffic is that causes bottlenecks and poor service.

* * *

By gaining control of Sprint, Softbank is now in the cat bird’s seat. The offer is for only 70% of Sprint, an odd number. It is hard to know why 70% was chosen unless there is a plan for some future dilution from a public share sale or to use shares to make acquisitions that would reduce Softbank’s share below 50%. Last year, Sprint officers made public statements implying they would be at the negotiating table if Clearwire were to be forced into bankruptcy. They seemed not to know that the spectrum it was after, would go to the bondholders and not to Sprint in a CLWR bankruptcy filing or bond default. At that same time, Sprint did know that a control position in Clearwire would set off cross defaults at Sprint pertaining to covenants on old bonds floated years ago by Nextel. Sprint went to great pains to give shares back to Clearwire’s Treasury to reduce its economic interest below 50%. It retained the right, however, to reclaim those shares at a future time. And in about the most confusing set of partnership documents ever seen going back to 2008, Clearwire’s various cable partners and founding partner Craig McCaw’s Eagle River, have different voting and control rights than the public shareholders. It took Craig McCaw about 72 hours to cough up his shares to Sprint so

that they could immediately resume more than 50% ownership after this Softbank Sprint deal was announced.

85. Other publications similarly confirmed that Softbank's target in the Softbank Transaction is the Clearwire spectrum. For example, on October 22, 2012, the Wall Street Journal published an article entitled *Softbank Deal for Sprint Turns on Spectrum*.

86. Sprint and Softbank have been suspiciously vague about their plans regarding Clearwire. During an investor conference call on October 15, 2012, an analyst asked about Softbank's and Sprint's future plan regarding Clearwire. Softbank's CEO, Masayoshi Son, indicated that Softbank has a strategy regarding Clearwire, but would not disclose what that strategy is.

Q – David Dixon – FBR Capital Markets: Yes, good morning and congrats again on the deal, a question for Masa and then a question for Dan to follow up. Masa, Sprint has a tremendous amount of spectrum or access to spectrum that touch about a third of the country here with TD-LTE, but they don't have as much spectrum for coverage in order to reach the other two-thirds of the population. So as a new and major investment and a major investor into the company, I wanted to get your thoughts on that mismatch today.

And then secondly, Dan, *looking ahead to using Clearwire and their spectrum in the network, when we think about the network sharing concept*, do you think that it would be an either/or decision in terms of looking forward to a potential deal with Clearwire or a potential tie-up with DISH? *Is there enough room to really leverage both of those, or do you think it's an either/or decision for the company?* Thanks very much.

A – Masayoshi Son – Softbank Corp.: Okay, so I don't talk about any specific detail of our strategy. I never do that in advance. But *we have a very strong strategy and a very strong plan to make it happen. And we have the capital,*

we have the knowhow, we have the experience. So just wait and see, I'm going to prove how strong that is, but I cannot tell any detail of our next move.

87. The undisclosed strategy clearly relates to exploitation of Sprint's and Softbank's control over Clearwire and its spectrum. Yet when specifically asked to address the market rumors regarding a subsequent transaction with Clearwire, all Softbank would state is that it is not contractually required to enter into an agreement with Clearwire or do business with them in the future:

Q –: I'm [ph] Shibata (01:19:08) from TV Asahi. So you start with a strategic partnership with Sprint, but how about potential acquisition of MetroPCS or increasing stake in Clearwire? Is that what you are thinking about now, planning for?

A – Masa Son – Softbank Corp.: *I cannot rule out any possibilities. Anything could happen. Maybe we could acquire entity, but which company am I going to acquire? I don't want to make any comment on the future and I don't want to make any comment on when.* Now, about Clearwire, there are a lot of rumors spreading, which resulting market share price, but I'd like Dan to make comment on this.

A – Dan Hesse – Sprint Nextel Corp.: Clearwire, Sprint obviously enjoys very good relationship with Clearwire and we are a significant investor. But *there are no elements in this agreement between Softbank and Sprint that require either party, Softbank or Sprint, to enter into any new agreements with Clearwire* or with anyone else.

88. These statements were made to cause Clearwire's stock price to fall, further positioning Clearwire for a takeover at a below-market price.

89. Moreover, on October 25, 2012—after the announcement of the Softbank Transaction, the Company suddenly announced that it had slashed the build-out target that it had reaffirmed in April of this year by 60% (from a 5,000 build-out target to

a 2,000 build-out target). Subsequent reports have indicated that the Company has actually built out just 800 sites—far fewer than the originally projected 5,000-site target and even the recently modified 2,000-site target. Given the \$600 million total cost that Clearwire has estimated was necessary to build-out 8,000 sites, the current difference between what Clearwire would have spent going forward with its build-out plan before the Softbank Transaction was announced and what Clearwire has told the market it will spend on this reduced build-out after the announcement is \$225 million.

90. Like the cancellation of the equity offering, the scaling back of the build-out plans reflected needless curtailment of Clearwire’s business development efforts. Such curtailment facilitates Sprint’s efforts to buy out Clearwire’s minority stockholders at an artificial discount.

91. While Sprint desperately needs Clearwire to further its interest, Clearwire’s success is not dependent upon Sprint’s controlling position or the Sprint-Softbank Transaction. Clearwire already has in its possession the resources necessary to meet the April 2012 build-out targets. Clearwire is sitting on a spectrum gold mine worth billions of dollars, yet Sprint, in conjunction with Eagle River, has curtailed the Company’s ability to take advantage of that asset value. By pursuing the already planned and initiated share offering through Cantor Fitzgerald, Clearwire could raise the necessary additional capital. Moreover, simply by selling *excess* spectrum, beyond what is needed to build-out its network, Clearwire could raise the additional capital it needs to succeed as an independent public company.

92. The Clearwire Board’s failure to follow its own independent plan is particularly troubling in light of a statement by a Fitch Ratings analyst on October 25,

2012 that, “[g]iven their annual cash burn, [Clearwire] could be a going-concern risk late this year or in early 2013 without another cash infusion.”

93. Other Clearwire investors have been troubled by the Clearwire Board’s idleness and failure to protect the interests of all stockholders. As reported in the Wall Street Journal:

In a letter to Clearwire’s board, Mount Kellett Capital Management LP said it believes the company’s stock is “substantially undervalued” but that Clearwire stands to benefit from growing U.S. demand for high-speed wireless broadband given its large holdings of wireless spectrum.

Mount Kellett, which owns around 7.3% of Clearwire’s voting stock, pressed directors to explore options such as selling excess wireless spectrum to help fund its network expansion, and “not allow the company to reach a point where the only alternative presented is Sprint’s acquisition of Clearwire at a price that reflects the company’s unnecessary distress.”

* * *

Earlier this month, Sprint agreed to buy out Eagle River Holdings LLC’s stake in Clearwire, a move that gave Sprint the right to appoint a majority of Sprint-affiliated directors to Clearwire’s board. Sprint, which is selling 70% of itself to Japan’s Softbank Corp. for \$20 billion, struck the Eagle River deal partly to reassure Softbank’s lenders it would have the ability to control Clearwire’s board, people familiar with the matter said earlier.

The Eagle River deal disappointed many Clearwire shareholders, who had been expecting Sprint to buy out its wireless network partner with the cash infusion from Softbank. Some Clearwire investors said at the time they felt directors had let Sprint gain influence over the company without a due premium. Sprint Chief Executive Dan Hesse said recently that Sprint, which owns a little over 50% of Clearwire, could seek to buy additional stakes from the company’s other investors.

* * *

In its letter, Mount Kellett said that by its calculation, the standstill agreement that prohibits Sprint from acquiring Clearwire ends at around the same time that Clearwire is expected to run out of cash for its network build-out, roughly a year from now. Rather than sell to Sprint out of distress, Clearwire directors should take steps to make sure the company has enough cash to build out its network independently, the letter said.

Mount Kellett suggested that Clearwire could raise between \$6 billion and \$9 billion if it sold all its excess spectrum, at a time when airwaves are in short supply amid growing mobile data usage.

94. Attached hereto as Exhibit A is a copy of the Mount Kellett letter. Crest likewise sent a letter supporting Mount Kellett's call to action. In its letter, Crest stated that "immediate steps to raise capital through the offering and sale of additional common shares would be among the steps a board of directors, acting in the best interests of all shareholders, would pursue." Crest also explained that "[p]roceeds from such an offering, together with proceeds from the sale of a portion of the Company's excess spectrum to a third party or parties, would ensure a successful build-out of the Company's network and bolster its position as it renegotiates the lease of its spectrum to Sprint." A copy of that letter is attached as Exhibit B.

95. Despite the calls to action, the Clearwire Board and management continues sit on Clearwire's spectrum assets. The Clearwire Board is failing to act despite the Company's dire financial situation and the existence of numerous options. This failure to act is furthering Sprint's interest in obtaining the benefit of Clearwire's valuable spectrum at a below-market price, to the detriment of Clearwire's minority stockholders. In short, Clearwire's board is positioning Clearwire to have only one

option—a takeover by Sprint at a distressed price far below the value of Clearwire’s spectrum.

96. In fact, Sprint and Softbank are—even before the closing of the Softbank Transaction—undertaking efforts to take Clearwire private. As reported by CNBC on December 11, 2012, Sprint and Clearwire “are in active negotiations” by which “Sprint would acquire the roughly 49 percent of the company it doesn’t already own.” Indeed, the report suggests that an announcement could come before the end of the year. The reported price of \$3 per share is facially unfair—especially when analysts expect the Company’s stock price to outperform current estimates—but more importantly the reported negotiation is the capstone in Sprint’s ongoing effort to interfere with Clearwire’s ability to operate as an independent company, to thwart the planned development of Clearwire’s network, and to take a corporate asset for itself and denying other owners of their pro rata share.

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST SPRINT AND EAGLE RIVER

97. Plaintiff repeats the allegations in Paragraphs 1-96 as if set forth fully herein.

98. Sprint, by virtue of, among other things, its voting power, its designees on the Clearwire Board, its rights under the EHA, and its status as Clearwire’s largest customer, is a controlling stockholder of Clearwire. As a controlling stockholder, Sprint is a fiduciary of Clearwire and may not use its power or strategic position to suppress or exploit the Company’s minority stockholders. Nor may Sprint use its

position as a controlling stockholder to obtain the benefit of Clearwire's valuable spectrum for itself to the detriment of Clearwire's minority stockholders.

99. Eagle River, by virtue of, among other things, its voting power, designee on the Clearwire Board, its rights under the EHA, and its concerted action with Sprint was, at the time of its actions, a controlling stockholder of Clearwire along with Sprint. As a controlling stockholder, Eagle River was a fiduciary of Clearwire and could not use its power or strategic position to suppress or exploit the Company's minority stockholders. Nor could Eagle River use its position as a controlling stockholder to obtain the benefit of Clearwire's valuable spectrum for itself to the detriment of Clearwire's minority stockholders.

100. By taking the actions described above, Sprint and Eagle River have breached their fiduciary duties.

101. As a result, both the Eagle River Transaction and the Sprint-Softbank Transaction are the result of and constitute breaches of fiduciary duty by Clearwire's controlling stockholders.

102. The Eagle River Transaction has harmed Plaintiff, and the Sprint-Softbank Transaction, if permitted to close, will work irreparable harm upon Plaintiff and Clearwire's other minority stockholders by, among other things, depriving them forever of any opportunity to profit from the use of Clearwire's valuable spectrum for the benefit of all stockholders.

COUNT II

BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST CLEARWIRE

103. Plaintiff repeats the allegations in Paragraphs 102 as if set forth fully herein.

104. The Director Defendants, as directors of Clearwire, owe Plaintiff and the other minority holders of Class A Shares of Clearwire the highest duties of care and loyalty. The Director Defendants are duty bound to protect the interests of the public stockholders of Clearwire and safeguard the minority from, among other things, inequitable efforts by the Company's controlling stockholders to profit at their expense.

105. The Director Defendants—as part of and to further the scheme to allow Sprint and Eagle River to unfairly extract value from Clearwire and its spectrum assets for themselves—have breached their fiduciary duties by, among other things, cancelling the public stock offering, scaling back development plans, and not selling excess spectrum all in order to facilitate Sprint's sale of control of Clearwire for Sprint's own, unique benefit. The Director Defendants likewise have breached their fiduciary duties, and Clearwire has aided and abetted a breach of fiduciary duty by Sprint and Eagle River, by not objecting to the Eagle River Transaction, by consenting to actions contrary to the standstill provision in the EHA against Sprint, and by permitting Clearwire's business to stagnate at an opportune time to develop or monetize its spectrum assets. In doing so, the Director Defendants have placed Sprint and Eagle River's interests ahead of the interests of Clearwire and its minority stockholders.

106. The Eagle River Transaction has harmed Plaintiff, and the Sprint-Softbank Transaction, if permitted to close, will work irreparable harm upon Plaintiff and Clearwire's other minority stockholders, among other things, paving the way for Sprint's controlling stockholders to usurp for themselves, at the expense of all stockholders, the substantial value embedded in Clearwire.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that, the Court enter judgment against Defendants as follows:

A. Finding that, at all relevant times, Sprint and Eagle River were controlling stockholders and breached their fiduciary duties to Plaintiff;

B. Finding that the Director Defendants have breached their fiduciary duties to Plaintiff;

C. Permanently enjoining the closing of the Sprint-Softbank Transaction;

D. Permanently enjoining Sprint from: (i) interfering with Clearwire's pursuit or implementation of any plans to raise capital through the issuance of additional shares and to build-out Clearwire's network, including the plans previously announced by Clearwire, or through other means; and (ii) interfering with any future sale by Clearwire of its spectrum. Such relief against interference may include an order setting aside out of the initial consideration from Softbank to Sprint, for the build-out of Clearwire's network, the \$225 million difference between what Clearwire would have spent going forward with its build-out plan before the Softbank Transaction was announced and what Clearwire has told the market it will spend on the reduced build-out being pursued after the announcement;

E. Awarding compensatory damages against Defendants, both jointly and severally, in an amount to be determined at trial, together with pre-judgment and post-judgment interest;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees and reimbursement of expenses; and

G. Granting such other and further relief as this Court may deem just and proper.

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December 12, 2012