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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ACP MASTER, LTD., AURELIUS CAPITAL MASTER, LTD., and AURELIUS OPPORTUNITIES FUND II, LLC, Plaintiffs, v. SPRINT CORPORATION, SPRINT COMMUNICATIONS, INC., ERIK PRUSCH, JOHN W. STANTON, WILLIAM R. BLESSING, BRUCE A. 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, STARBURST I, INC., and SOFTBANK CORP., Defendants.	)	C.A. No. 8508-VCL
ACP MASTER, LTD., AURELIUS CAPITAL MASTER, LTD., and AURELIUS OPPORTUNITIES FUND II, LLC, Petitioners, v. CLEARWIRE CORPORATION, Respondent.	)	C.A. No. 9042-VCL

EXPERT REPORT OF BRADFORD CORNELL

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I. QUALIFICATIONS

1. I am currently a Visiting Professor of Financial Economics at the California Institute of Technology ("Caltech"). Previously, I was a Professor of Finance and Director of the Bank of America Research Center at the Anderson Graduate School of Management at the University of California, Los Angeles for 26 years.

2. I earned a master's degree in Statistics from Stanford University in 1974 and earned my doctorate in Financial Economics from Stanford in 1975. I have served as an editor of numerous journals relating to business and finance and have written more than 100 articles and two books on finance and securities, including *Corporate Valuation: Tools for Effective Appraisal and Decision Making* (1993), published by McGraw-Hill, and *The Equity Risk Premium and the Long-Run Future of the Stock Market* (1999), published by John Wiley & Sons. To complement my academic writing, I have also authored articles for *The Wall Street Journal* and the *Los Angeles Times*.

3. My research has been widely recognized. In 1988, I was cited by the Financial Management Association as one of the ten most prolific authors in the field of finance. I have received prizes and grants for my research from the Chicago Board of Trade, the Chicago Mercantile Exchange, and the Institute for Quantitative Research in Finance. My article, "Corporate Stakeholders and

Corporate Finance," received the 1987 Distinguished Applied Research Award from the Financial Management Association. In 1999, I was awarded the I/B/E/S prize for empirical work in finance and accounting (with Wayne Landsman and Jennifer Conrad). Richard Roll and I received a Graham and Dodd Scroll Award in 2006 from the Financial Analyst Society for our work on delegated agent asset pricing theory. I won this award again in 2011 for my work on economic growth and equity investing. My paper entitled "Luck, Skill, and Investment Performance" in *The Journal of Portfolio Management* won an Outstanding Article prize from the 11th Annual Bernstein Fabozzi/Jacobs Levy Awards. My work in valuation has also been cited and relied upon by the Delaware Court of Chancery.[1]

4. I have also been active in my profession. I have served as a Vice President of the Western Finance Association. I am also a past Director of both the American Finance Association and the Western Finance Association. I have served as an Associate Editor of numerous professional journals, including *The Journal of Finance, The Journal of Futures Markets, The Journal of Financial Research* and *The Journal of International Business Studies*. I have served as a reviewer for nearly a dozen other professional journals.

5. My teaching and writing have focused on a number of different

1. *See, e.g.*, *Del. Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290, 331 n.102 (Del. Ch. 2006); *Andaloro v. PFPC Worldwide, Inc.*, C.A. No. 20336, 2005 WL 2045640, at *18 n.75 (Del. Ch. Aug. 19, 2005).

financial and economic issues, many of which are relevant to the subject matter of this report. I currently teach Applied Corporate Finance and Investment Banking at the California Institute of Technology. Examples of other classes I have taught over the course of my academic career include Corporate Valuation, the Law and Finance of Corporate Acquisitions and Restructurings, Corporate Financial Theory, and Security Valuation and Investments.

6. In addition to my teaching, writing, and research studies, I serve as a Senior Consultant to Compass Lexecon, an international consulting firm. In my position as a Senior Consultant, I advise business and legal clients on financial economic issues. Prior to joining Compass Lexecon in December 2011, I served as a Senior Consultant to Charles River Associates from March 1999 through December 2011. Between 1990 and March 1999, I operated FinEcon, a financial economic consulting company, through which I also advised business and legal clients on financial economic issues.

7. I have served as a consultant and have given testimony for both plaintiffs and defendants in a variety of securities, regulatory and commercial lawsuits. During my many years of experience as an expert witness and consultant, I have provided economic analyses and expert testimony (again, for both plaintiffs and defendants) related to valuation, corporate finance, portfolio management, and damages issues.

8. I have provided testimony in several states on the appropriate cost of capital associated with leasing unbundled elements from the Regional Bell Operating Companies' Local Exchange Networks. I have also testified in several other telecom valuation-related matters, including *FairPoint Communications, Inc. v. Verizon Communications Ltd., et al.*, *Boeing v. TMI Communications*, *Enovsys v. Sprint*, *AT&T v. Microsoft*, and *Verizon v. NorthPoint*, and was appointed as an arbitration master in a dispute over the value of St. Petersburg Telecom. Finally, I served as an expert on behalf of Sprint Nextel Corporation (n/k/a Sprint Corporation, "Sprint") and submitted expert declarations in both the state and federal actions regarding the strategic investment by SoftBank Corporation ("SoftBank") in Sprint by way of a merger. My testimony responded to plaintiffs' claims regarding the merger's deal protection provisions and Sprint's proxy statement disclosures.

9. My background is described more fully in my curriculum vitae, which is attached as **Appendix A**. A list of my publications may also be found in Appendix A. A list of testimony I have given in deposition or at trial over the past five years, compiled to the best of my knowledge and recollection, may be found in **Appendix B**. A list of the documents that I relied upon in forming my opinions set forth in this report may be found in **Appendix C**. I am being compensated for my work on this matter at the rate of $1,050 per hour. I have been assisted by

Compass Lexecon's professional staff.[2] Neither my compensation nor the compensation paid to Compass Lexecon for its assistance in this matter is dependent on my opinions or the outcome of the litigation.

10. The analyses and opinions expressed in this report are my own. My work on this matter is ongoing, and I reserve the right to supplement my opinions in the event that I become aware of additional facts, information or contentions of the parties or witnesses.

II. ASSIGNMENT

11. On June 20, 2013, Sprint and Clearwire Corporation ("Clearwire" or the "Company") announced that they had entered into an amendment to a merger agreement, pursuant to which Sprint would acquire Clearwire's remaining shares for $5.00 per share (the "Transaction"). The Transaction closed on July 9, 2013 ("Appraisal Date").[3] 82% of the Company's non-Sprint shares voted in favor of the Transaction.[4]

12. On October 28, 2013, ACP Master, Ltd., Aurelius Capital Master, Ltd., and Aurelius Opportunities Fund II, LLC ("Petitioners") petitioned the Delaware Court of Chancery for appraisal, pursuant to 8 *Del. C.* § 262, seeking a

2 Compass Lexecon is being compensated for its professional services at its standard rates which are $220-$875 per hour.
3. Clearwire Corporation, Form 8-K, July 9, 2013.
4. Clearwire Corporation, Form 8-K, July 9, 2013, Exhibit 99.1.

determination of the fair value of Clearwire common stock (the "Appraisal Action").[5]

13. On December 20, 2013, ACP Master, Ltd., Aurelius Capital Master, Ltd., and Aurelius Opportunities Fund II, LLC (previously defined as Petitioners, also "Plaintiffs") filed their First Amended Verified Complaint ("Complaint") in an action alleging breach of fiduciary duty and related claims (the "Fiduciary Action") against Sprint, Sprint Communications, Inc., Erik Prusch, John W. Stanton, William R. Blessing, Bruce A. 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, Starburst I, Inc., and SoftBank ("Defendants").[6]

14. Counsel for respondent, Clearwire, in the Appraisal Action and Defendants in the Fiduciary Action asked me to analyze the economic evidence and to provide my opinion regarding the fair value of Clearwire as of July 9, 2013.

III. SUMMARY OF OPINIONS

15. Based on my analysis of the record evidence and the results of the economic analyses described below, as well as my background and expertise, I

5. *ACP Master, Ltd., et al. v. Clearwire Corporation*, C.A. No. 9042, Verified Petition for Appraisal of Stock.
6. *ACP Master, Ltd., et al. v. Sprint Corporation, et al.*, C.A. No. 8508, First Amended Verified Complaint, December 20, 2013, p. 1.

have determined the fair value of Clearwire, as of July 9, 2013, was $2.13 per share including the proceeds from a possible partial sale of spectrum.

IV. BACKGROUND

A. Overview of Clearwire's Industry and Business

16. During the relevant time period, the wireless industry in the United States was highly concentrated and dominated by two major carriers, AT&T and Verizon, followed by two smaller players, Sprint and T-Mobile, and a variety of smaller providers who focused on different geographies or segments. The industry was highly competitive with high barriers to entry. It was also subject to a variety of economic effects that influence the potential returns for a provider, particularly a provider whose primary business model was to provide wholesale wireless network services to one or more of the other larger carriers.

17. Clearwire was formed in November 2008 as a combination of Sprint's mobile WiMAX business with Clearwire Legacy LLC (formerly known as Clearwire Corporation), with concurrent investments by Comcast Corporation and its affiliates ("Comcast"), Time Warner Cable Inc. and its affiliates ("Time Warner"), Intel Capital Corporation and its affiliates ("Intel"), Google Inc. ("Google"), and BHN Spectrum Investments ("BHN Spectrum" or "Bright

House").[7] Eagle River Holdings, LLC ("Eagle River"), formerly a significant shareholder of Clearwire Corporation, remained a Clearwire shareholder.[8] Concurrently with Clearwire's formation, Clearwire entered into the Equityholders' Agreement with Sprint, Eagle River, Intel, Comcast, Google, Time Warner, and Bright House.[9] This agreement provided for corporate governance arrangements such as nomination rights for the Clearwire Board of Directors (the "Clearwire Board"), consent and approval provisions, preemptive rights, standstill obligations, and certain transfer restrictions with respect to common stock and other equity interests.[10]

18. Clearwire provided both retail and wholesale wireless network services, primarily using what is commonly referred to as the 2.5GHz spectrum band.[11] In an industry characterized by high capital expenditures, active competition, and continually evolving technology, Clearwire struggled financially. Clearwire spent $1.5 billion, $2.7 billion, and $225 million in capital expenditures

7. Clearwire Corporation, Schedule 14A, April 23, 2013 ("April Proxy"), p. 14. *See* **Exhibit 1A** for stock price chart from the IPO to the close of the Transaction.
8. April Proxy, p. 14. Eagle River was controlled by Clearwire founder Craig McCaw.
9. April Proxy, p. 14; Clearwire Corporation, Form 8-K, December 1, 2008, Exhibit 4.1 (the "Equityholders' Agreement").
10. April Proxy, p. 14.
11. Clearwire leased or owned a total of approximately 47 billion "megahertz-pops" ("MHz-POPs") of spectrum. A MHz-POP is a measurement of spectrum quantity and coverage, denominated as a multiple of the sum of the various amounts of spectrum controlled in a given geographic area multiplied by the amount of people covered in each geographic area or $\sum_1^n$(spectrum amount in given area x population of area).

in 2009, 2010, and 2011, respectively, to construct, maintain, and improve a WiMAX network.[12] It was perennially in search of additional capital to cover operating losses, network expansion, and spectrum acquisitions.[13] WiMAX technology never caught on in the marketplace.[14] At the time that Clearwire was investing in WiMAX technology, other major industry participants, such as Verizon and AT&T, were investing in Frequency Division Duplex Long Term Evolution ("FDD-LTE").[15] As a result, a robust WiMAX ecosystem, including the adoption of mobile WiMAX by other companies and the availability of mobile WiMAX devices, did not develop as quickly as, and in the manner that, the

12. Clearwire Corporation, Form 10-K for the period ended December 31, 2011 ("2011 10-K"), pp. 49, 52; Clearwire Corporation, Form 10-K for the period ended December 31, 2010 ("2010 10-K"), pp. 35, 49, 63, 65.
13. Clearwire Corporation, Form 10-K for the period ended December 31, 2008 ("2008 10-K"), pp. 25-26; Clearwire Corporation, Form 10-K for the period ended December 31, 2009 ("2009 10-K"), pp. 2-3.
14. Deposition of Theodore Schell ("Schell Deposition"), pp. 37-38 ("We were caught at a point in time in what I'll call … the VHS/Betamax kind of an issue where the WiMAX technology, which had originally been brought forward, wound up being displaced by LTE technology.").
15. 2008 10-K, p. 34. *See also* Deposition of John Stanton ("Stanton Deposition"), p. 85 ("A number of things were changing in the industry. Our business at the time was based primarily on Wi-Max, W-I, hyphen, M-A-X technology. And the world was moving to the FDD-LTE approach at a much more rapid rate than we had expected."); CLWRDEL-01639666, at 667 ("Today we utilize the WiMAX technology which is used by only one US wireless carrier: Sprint."); *id.* ("Based on continuing changes in the industry and feedback from Sprint, we have concluded that WiMAX technology will be phased out in three to five years.... We expect Sprint as well as its competitors to be operating primarily on LTE networks by 2013.… In order to remain commercially relevant, we believe that Clearwire needs to add LTE to our networks to have a reasonable path to generate meaningful revenue as WiMAX revenue begins to decline.").

Clearwire Board had hoped.[16] Clearwire decided it needed to add Time Division Duplex Long Term Evolution ("TDD-LTE") technology to Clearwire's network and phase out its WiMAX infrastructure.[17] TDD-LTE, however, was a different form of network technology than the FDD-LTE technology used by other major players.[18] In 2012 and 2013, TDD-LTE was being developed overseas, but it was not being used in the United States.[19] Clearwire's decision to start construction of a TDD-LTE network resulted in a substantial increase in Clearwire's capital expenditures beginning in 2012.[20]

19. Clearwire had difficulty obtaining financing to cover its operating losses and capital expenditures. By the fall of 2012, Clearwire's access to equity financing was constrained by the small number of unissued authorized shares.[21] Further, Clearwire had limited access to additional debt financing on acceptable

16. *See, e.g.*, CLWRDEL-00478133, at 148 ("All Wireless Operators prefer LTE to WiMAX for technical, legacy migration, as well as ecosystem reasons [and] [t]he MSOs prefer LTE to WiMAX…."); CLWRDEL-01639666, at 669 (Verizon and AT&T "had no interest in WiMAX").
17. 2011 10-K, p. 26.
18. 2011 10-K, p. 27.
19. 2011 10-K, p. 13.
20. 2011 10-K, p. 27. *See also* Schell Deposition, p. 214 ("[A]t that point, in time, we … still – had the WiMAX network in place and we needed to raise billions of dollars in order to convert it to LTE."); CLWRDEL-01555183 ("[W]e have a substantial funding gap and to build an LTE network, we need financing for our operations and capital expenditures.").
21. Clearwire Corporation, Form 10-K for the period ended December 31, 2012 ("2012 10-K"), p. 27. Deposition of Hope Cochran ("Cochran Deposition"), p. 257 (testifying that equity financing "was limit[ed] because we only have a certain amount of shares available to us, and we would have needed to get more shares authorized to raise enough equity …."); Deposition of Erik Prusch ("Prusch Deposition"), pp. 242-243 (testifying that, in the fall of 2012, Clearwire was not in a position to issue more equity).

terms because of its high level of indebtedness and its inability to issue additional secured indebtedness under existing indentures.[22]

20. In addition, between the fall of 2010 and the Appraisal Date, Clearwire consistently explored the possibility of selling certain spectrum assets that were not being used at that time. In the fall of 2010, Clearwire engaged in an exhaustive effort to sell approximately 40MHz of Clearwire spectrum with the assistance of Deutsche Bank.[23] By the spring of 2011, the entire process had only yielded "material and actionable" bids from two parties, T-Mobile and Sprint.[24] Clearwire concluded that a sale to either party would likely have had a negative net present value because T-Mobile and Sprint were also "the largest existing and future revenue sources."[25] T-Mobile's bid was subsequently mooted by its agreement to be acquired by AT&T. Thereafter, Clearwire discussed potential spectrum sales with a host of third parties, but none progressed to the point that a

22. 2012 10-K, p. 27; Cochran Deposition, pp. 256-257 (testifying that "unsecured debt … would just be enormously expensive" and Clearwire had "filled [its secured debt] buckets"); Deposition of Dennis Hersch ("Hersch Deposition"), p. 297 (testifying that if Clearwire had secured debt capacity, "it was extremely limited"); Prusch Deposition, p. 242 (testifying that he did not believe that Clearwire was in a position to take on more debt in fall 2012).

23 Stanton Deposition, pp. 303, 308, 360-62. *See also* Cochran Deposition, p. 268; DIRECTOR-00039093, at 39103.

24. DIRECTOR-00039093, at 39103. *See also* Hersch Deposition, p. 232; Cochran Deposition, p. 268; Prusch Deposition, pp. 226-227.

25 CLWRDEL-00003198, at 3219. *See also* DIRECTOR-0039093, at 39103 (noting that a sale of spectrum to Sprint "would effectively eliminate our wholesale revenue stream leaving us with no ongoing business after 2012"); Cochran Deposition, p. 255 ("That was, I would say, a big challenge for us in regards to the spectrum sale, is that if we sold a large carrier spectrum, then they clearly would not become a wholesale partner.").

third party made an actionable offer that the Clearwire Board felt was in the best interests of its shareholders.[26]

21. Clearwire's revenues did not keep up with its operating losses and capital expenditures. While Clearwire initially had wholesale agreements with a number of partners, including Sprint, Comcast, Time Warner, and Bright House Networks, each of which resold Clearwire's wireless broadband services under their own brand names,[27] on December 2, 2011, Comcast, Time Warner, and Bright House announced that they had entered into an agreement with Verizon to sell bundled services and would discontinue their wholesale partnerships with Clearwire.[28] Thereafter, Sprint accounted for substantially all of Clearwire's wholesale revenues.[29]

22. By early 2012, Clearwire reported that its business plan depended on its ability to attract new wholesale partners with substantial capacity needs.[30] Clearwire continued to approach all potential significant wholesale partners available – Verizon, AT&T, and T-Mobile – but the Company was unable, despite consistent and repeated efforts, to find another significant wholesale customer.[31]

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26. *See* Appendix D.
27. 2008 10-K, p. 12.
28. 2011 10-K, p. 25.
29. Clearwire Corporation, Form 8-K, May 1, 2013, Exhibit 99.1 ("May Investor Presentation"), p. 11; 2011 10-K, p. 25.
30. 2011 10-K, p. 26.
31. Stanton Deposition, pp. 81-83; Hersch Deposition, pp. 139-140; Schell Deposition, pp.

B. Events Prior to the Transaction

23. In the fall of 2011, Clearwire hired advisors to explore the possibility of a financial restructuring and whether or not to satisfy an aggregate interest payment of $237 million due on December 1, 2011 on Clearwire's 12.00% Senior Secured Notes due December 1, 2015 ("2015 Notes"), 12.00% Second-Priority Secured Notes due December 1, 2017 ("2017 Notes"), and 8.25% Exchangeable Notes due December 1, 2040 ("Exchangeable Notes").[32] Clearwire was prepared to pursue a restructuring if it was unable to secure additional funding or reach an agreement on another strategic alternative.[33]

24. On December 1, 2011, Clearwire and Sprint agreed to modify their wholesale agreement. Under the new terms, (1) Sprint agreed to pay Clearwire $926 million (two-thirds of which would be paid in 2012) for unlimited 4G WiMAX retail services during 2012 and 2013; (2) Sprint and Clearwire established long-term usage-based pricing for WiMAX services for 2014 and beyond; and (3) Clearwire agreed to give Sprint access to Clearwire's WiMAX network through 2015.[34] Sprint also agreed to pay Clearwire up to $350 million in a series of prepayments over a period of up to two years for TDD-LTE capacity if Clearwire

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382-383; Cochran Deposition, pp. 251-252; CLWRDEL-00712117, at 121, 127; CLWRDEL-00006873, at 6971.

32. April Proxy, p. 18.
33. April Proxy, p. 18.
34. April Proxy, p. 18; Clearwire Corporation, Form 8-K, December 1, 2011, Exhibit 99.1.

began building a TDD-LTE network and achieved certain build-out targets and network specifications by June 2013.[35] Finally, Sprint committed to providing additional equity funding to Clearwire, in the event of an equity offering, on a *pro rata* basis up to $347 million.[36]

25. Also on December 1, 2011, Clearwire satisfied the interest payments totaling $237 million on its First Priority Notes, Second Priority Notes, and Exchangeable Notes.[37] Upon the disclosure of these events, Clearwire's stock price increased from $1.78 per share on November 30, 2011 to $2.50 per share on December 6, 2011 (an overall increase of 40%). (*See* **Exhibit 1B**.)

26. On February 24, 2012, Google announced that it would seek to sell all of its shares of Clearwire stock.[38] Pursuant to the Equityholders' Agreement, Google first offered its shares to the other non-Clearwire parties to the agreement ("Equityholders") at a price of $1.60 per share.[39] When no other Equityholder exercised its right of first refusal, Google sold into the market. On or about March 1, 2012, Google sold all 29,411,765 of its Clearwire shares at $2.26 per share.[40]

27. On May 4, 2012, Clearwire entered into an agreement with Cantor

35. Clearwire Corporation, Form 8-K, December 1, 2011, Exhibit 99.1.
36. *Id.* On December 13, 2011, Clearwire completed the equity offering at $1.91 per share. Clearwire raised net proceeds of $715.5 million, of which Sprint purchased $331.4 million. April Proxy, p. 18; Clearwire Corporation, Form 8-K, December 13, 2011, Exhibit 99.2.
37. Clearwire Corporation, Form 8-K, December 1, 2011, Exhibit 99.1.
38. Clearwire Corporation, Schedule 13D/A, February 24, 2012.
39. *Id.* at Exhibit 99.21.
40. Clearwire Corporation, Schedule 13D/A, March 14, 2012.

Fitzgerald & Co. ("Cantor Fitzgerald") whereby Cantor Fitzgerald would undertake to sell up to $300 million in new Clearwire common stock.[41] After only selling $58.5 million net of stock through Cantor Fitzgerald at an average price of $1.23 per share, Clearwire terminated the agreement because for thirty consecutive days the trading price of the Clearwire's common stock fell below the floor price of $1.20 per share established by the Clearwire Board in approving the sale.[42]

28. On August 7, 2012, Clearwire received a preliminary non-binding proposal from DISH Network Corporation ("DISH") that contemplated purchasing 11.5 billion MHz-POPs of Clearwire's spectrum for approximately $2.2 billion, a commercial agreement, and DISH receiving approximately $1.0 billion in senior PIK notes that could be converted into approximately 45% of Clearwire's outstanding common stock at an exercise price of $1.20 per share.[43] The Clearwire Board engaged Evercore Partners ("Evercore") to help evaluate DISH's proposal.[44]

29. On August 8, 2012, DISH disclosed in its 10-Q for the period ended June 30, 2012 that it held $396 million of debt of a single issuer that "will need substantial additional capital to meet its business and financial obligations beyond

41. Clearwire Corporation, Form 8-K, May 4, 2012.
42. Clearwire Corporation, Form 8-K, July 26, 2012; April Proxy, p. 19; Clearwire Corporation Form 10-Q for the period ended June 30, 2012, p. 25.
43. April Proxy, p. 19; CLWRDEL-01294232.
44. April Proxy, p. 19.

the next 12 months."[45] A Wells Fargo analyst report, also issued on August 8, 2012, stated that there was much speculation that the single issuer was Clearwire.[46] Clearwire's stock price increased from $1.50 on August 7, 2012 to $1.78 on August 8, 2012 (an increase of 19%). (*See* **Exhibit 1B**.)

30. On September 14, 2012, Time Warner informed the Equityholders that it would seek to sell all of its shares of Clearwire stock.[47] Pursuant to the Equityholders' Agreement, Time Warner first offered its shares to the Equityholders at a price of $1.40 per share.[48] When no other Equityholder exercised its right of first refusal, Time Warner sold into the market. On October 3, 2012, Time Warner sold all of its 46,404,782 shares of Clearwire stock at a price per share of $1.37.[49]

31. On October 11, 2012, rumors of a potential transaction between Sprint and SoftBank surfaced.[50] Clearwire's stock price increased from $1.30 per share on October 10, 2012 to $2.22 per share on October 11, 2012 (an increase of 71%). (*See* **Exhibit 1B**.) On October 15, 2012, SoftBank agreed to acquire a 70% stake in Sprint and invest $8 billion (this amount was subsequently reduced to $5

45. DISH Network Corporation, Form 10-Q for the period ended June 30, 2012, p. 9.
46. Wells Fargo, Flash Comment, "CLWR: DISH Speculated To Have Purchased CLWR Debt," August 8, 2012.
47. Clearwire Corporation, Schedule 13D/A, September 14, 2012.
48. *Id.* at Exhibit 99.24.
49. Clearwire Corporation, Schedule 13D/A, October 3, 2012.
50. April Proxy, p. 20.

billion).[51]

32. On October 17, 2012, Eagle River delivered a notice to all non-Clearwire parties to the Equityholders' Agreement declaring its intent to offer for sale all of its equity interests in Clearwire for a blended price of $2.97 per share.[52] I understand that Sprint and Eagle River negotiated that price prior to Eagle River's notice issuance as part of efforts by Sprint, in connection with its negotiations with SoftBank about a strategic investment in Sprint, to acquire more than 50% of Clearwire's stock. Sprint accepted Eagle River's offer on the day the notice was issued and declared that it would purchase all of Eagle River's Clearwire interests if no other Equityholder exercised its right to participate *pro rata*.[53] No other Equityholder exercised its *pro rata* right, and Sprint purchased all of Eagle River's interests in Clearwire on December 11, 2012.[54]

33. On November 2, 2012, John Stanton, Clearwire's Executive Chairman, met with Dan Hesse, Sprint's then-CEO, Masayoshi Son, SoftBank's Chairman, and Ron Fisher, SoftBank's Vice Chairman, and discussed, among other things, whether Sprint should acquire the remainder of Clearwire.[55] On November 9, 2012, Mr. Hesse called Mr. Stanton and indicated that Sprint was

51. April Proxy, p. 21; Sprint Nextel Corporation, Form 8-K, October 15, 2012, Exhibit 99.1; Sprint Nextel Corporation, Form 8-K, June 11, 2013, Exhibit 99.1.
52. Clearwire Corporation, Schedule 13D/A, October 18, 2012.
53. *Id.*, Exhibit 99.30.
54. Clearwire Corporation, Schedule 13D/A, December 20, 2012.
55 April Proxy, p. 22.

preparing to submit a non-binding indication of interest to purchase all of the outstanding shares of Clearwire common stock that it did not already own.[56] On November 13, 2012, the Clearwire Board approved the formation of a special committee composed of directors not nominated by Sprint to evaluate the anticipated indication of interest from Sprint and explore other strategic alternatives (the "Special Committee").[57] The Special Committee hired Centerview Partners LLC ("Centerview") as its financial advisor in mid-November.[58]

34. On November 21, 2012, Sprint made a written non-binding indication of interest to purchase Clearwire's common shares it did not own for $2.60 cash per share (a premium of 100% over its stock price on October 10, 2012).[59] Sprint also offered to purchase up to $600 million of Clearwire's newly issued 1.00% Exchangeable Notes due 2018 at an exchange price of $1.25 per share.[60]

35. On November 30, 2012, following receipt of Sprint's indication of interest, Mr. Stanton contacted Charlie Ergen, DISH's Chairman, to encourage a written proposal.[61] Mr. Ergen indicated that DISH was waiting for "approval from the FCC on its application requesting to build a cellular network on spectrum

56. April Proxy, p. 22.
57. April Proxy, p. 23.
58. April Proxy, p. 23.
59. April Proxy, p. 24.
60. April Proxy, p. 24.
61. April Proxy, p. 25.

previously allocated to satellite services" before it made any move.[62]

36. In early December 2012, the Special Committee rejected Sprint's offer of $2.60 per share and countered with $3.15 per share.[63] On December 6, 2012, DISH made a preliminary non-binding proposal to purchase approximately 11.4 billion MHz-POPs of Clearwire's spectrum for approximately $2.2 billion with an option to purchase or lease an additional 2 MHz of spectrum.[64] After several back and forth negotiations, on December 17, 2012, the Special Committee recommended and Clearwire Board approved an offer by Sprint to acquire the remaining Clearwire shares for $2.97 per share (the "December Agreement").[65]

37. Under the December Agreement, Clearwire's implied enterprise value was approximately $10 billion.[66] The proposed acquisition price of $2.97 per share represented a 128% premium over Clearwire's stock price of $1.30 on October 10, 2012, the day before rumors of the Sprint-SoftBank transaction surfaced, which, in turn, led to speculation of a Sprint-Clearwire transaction.[67] Both Centerview and Evercore opined that the $2.97 offer was fair from a financial point of view to Clearwire's non-Sprint shareholders.[68] Each of the remaining members of the

62. April Proxy, p. 25.
63. April Proxy, p. 26.
64. April Proxy, p. 27.
65. April Proxy, p. 32-33.
66. Clearwire Corporation, Form 8-K, December 17, 2012, Exhibit 99.1.
67. ($2.97-$1.30)/$1.30 = 128.5%.
68. Centerview Partners, Project Canine, Confidential Discussion Materials for the Special

Equityholders' Agreement agreed to support the $2.97 offer and entered into a Right of First Offer agreement with Sprint.[69] Sprint also promised Clearwire it would purchase a total of $800 million of newly issued 1.00% Exchangeable Notes due 2018 at an exchange price of $1.50 per share, in ten $80 million monthly installments, if Clearwire determined to draw down on the financing.[70] The transaction was subject to the approval of a majority of the non-Sprint shareholders.[71]

38. On December 28, 2012, DISH sent Clearwire a preliminary proposal for a packaged deal to (i) purchase certain spectrum assets from Clearwire, (ii) enter into a commercial agreement with the Company, (iii) receive certain governance rights from Clearwire, (iv) acquire up to all of Clearwire's shares for $3.30 per share, and (v) provide interim financing.[72] DISH said it would withdraw this proposal if Clearwire decided to draw a monthly installment on the $800 million in additional financing offered by Sprint.[73] Clearwire declined to draw down both the January and February monthly financing installments from Sprint.[74]

39. A group of Clearwire minority investors comprised of Mount Kellett

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Committee of the Board of Directors of Collie, December 16, 2012; Evercore Partners, Clearwire, Board of Directors Presentation, December 16, 2012.

69. SPRDEL-000091292; April Proxy, pp. 125-126, Annex B, Annex C.
70. Clearwire Corporation, Form 8-K, December 18, 2012, pp. 2-3, Exhibit 10.1.
71. April Proxy, pp. 10, 137.
72. April Proxy, pp. 33-35; Clearwire Corporation, Form 8-K, January 9, 2013, Exhibit 99.1.
73. April Proxy, p. 35.
74. April Proxy, pp. 35-36; Clearwire Corporation, Form 8-K, February 1, 2013, Exhibit 99.1.

Capital Management, Glenview Capital Management, Chesapeake Partners Management, and Highside Capital Management (the "Mount Kellett Group") publicly opposed Sprint's acquisition of the shares of Clearwire stock it did not own at $2.97 per share. The opposition from these shareholders started on November 1, 2012, when Mount Kellett sent a letter to the Clearwire Board. Crest Financial Limited ("Crest") also joined in the opposition, first sending a letter on November 6, 2012. Together, Crest and the Mount Kellett Group controlled more than 25% of available non-Sprint shares,[75] which meant "they had a lot of power" and gave them substantial leverage because of the majority-of-the-minority provision in the merger agreement.[76] The Mount Kellett Group and Crest sent numerous public letters and actively opposed the December Agreement. Moreover, Crest filed suit in this Court challenging any Sprint-Clearwire merger on December 12, 2012 (C.A. No. 8099-CS), five days before the December Agreement; filed petitions with the FCC seeking to block the merger; and ran a proxy contest against the merger. Clearwire was able to get Sprint to increase its offer price due, in part, to the actions of these minority shareholders.

40. On May 21, 2013, Sprint increased its proposed acquisition price for

75. The Mount Kellett Group owned approximately 18% of the Clearwire stock not owned by Sprint. Clearwire Corporation, Form 8-K, June 20, 2013, Exhibit 99.2. Crest controlled approximately 7.9% of Clearwire stock not owned by Sprint. Clearwire Corporation, Schedule 13D/A, July 3, 2013.

76. Cochran Deposition, pp. 192-193 and 277-278; Hersch Deposition, pp. 322-323; Stanton Deposition, pp. 311-312.

Clearwire's remaining shares to $3.40 per share ("May Proposal"), an increase of over 14% from the December Agreement,[77] a premium of 3% over DISH's proposed acquisition price of $3.30,[78] and a premium of 162% over Clearwire's stock price of $1.30 on October 10, 2012.[79] Clearwire's implied enterprise value under Sprint's revised offer was approximately $11.4 billion.[80]

41. On May 30, 2013, DISH announced a tender offer for all of the outstanding Clearwire shares at $4.40 per share (the "DISH Tender Offer").[81] The DISH Tender Offer was subject to certain terms and conditions, including, among other things, (i) the execution of an investor rights agreement between Clearwire and DISH providing DISH certain governance rights, (ii) the termination of the Sprint-Clearwire merger, and (iii) DISH's acquisition of at least 25% of Clearwire's fully diluted voting stock.[82] The Clearwire Board and the Special Committee reviewed the DISH Tender Offer and recommended that shareholders vote against a Sprint acquisition and vote in favor of the DISH Tender Offer.[83] The DISH Tender Offer represented an increase of over 33% from DISH's

77. ($3.40-$2.97)/$2.97 = 14%.
78. ($3.40-$3.30)/$3.30 = 3%.
79. ($3.40-$1.30)/$1.30 = 161%.
80. Evercore Partners, Clearwire Board of Directors Presentation, June 20, 2013 ("Evercore June Fairness Opinion"), p. 5.
81. Clearwire Corporation, Form 8-K, May 31, 2013, Exhibit 99.1.
82. DISH Network Corporation, Schedule TO, May 30, 2013, p. 8; DISH Network Corporation, Schedule TO/A, June 12, 2013, p. 2.
83. Clearwire Corporation, Schedule 14A, June 13, 2013.

December 28, 2012 preliminary proposal,[84] an increase of over 29% from Sprint's May Proposal,[85] and a premium of 238% over Clearwire's stock price of $1.30 on October 10, 2012.[86] It implied an enterprise value for Clearwire of approximately $13.0 billion.[87]

42. On June 17, 2013, Sprint filed suit in the Court of Chancery against DISH and Clearwire, alleging that the DISH Tender Offer was structurally coercive and predicated upon an agreement that granted DISH governance and other rights that Clearwire's governing documents and Delaware law precluded Clearwire from granting to DISH.[88]

43. On June 20, 2013, Sprint increased its proposed acquisition price for Clearwire's remaining shares to $5.00 per share (previously defined as the "Transaction"),[89] an increase of 285% over Clearwire's stock price of $1.30 on October 10, 2012,[90] over 47% from Sprint's May Proposal,[91] and an increase of 14% over the DISH's Tender Offer.[92] The Transaction valued Clearwire at more

84. ($4.40-$3.30)/$3.30 = 33%.
85. ($4.40-$3.40)/$3.40 = 29%.
86. ($4.40-$1.30)/$1.30 = 238%.
87. Evercore June Fairness Opinion, p. 5.
88. Clearwire Corporation, Schedule 14A, June 25, 2013 ("June Proxy"), p. S-42.
89. Clearwire Corporation, Form 8-K, June 20, 2013, Exhibit 99.2.
90. ($5.00-$1.30)/$1.30 = 285%.
91. ($5.00-$3.40)/$3.40 = 47%.
92. ($5.00-$4.40)/$4.40 = 14%.

than $14 billion.[93]

44. On June 20, 2013, the Mount Kellett Group executed a voting agreement in favor of the Transaction.[94]

45. On June 24, 2013, ISS recommended that Clearwire shareholders vote in favor of the Transaction.[95] On June 25, 2013, Clearwire issued the June Proxy, which included the opinions from Evercore and Centerview that the Transaction was fair, from a financial point of view, to Clearwire's non-Sprint affiliated shareholders.[96] Also in the June Proxy, the Clearwire Board and the Special Committee withdrew their recommendations that Clearwire shareholders tender their shares into the DISH Tender Offer and instead recommended that shareholders vote in favor of the Transaction.[97]

46. On July 3, 2013, Crest executed a voting agreement in favor of Sprint's $5.00 per share offer and publicly declared it would vote in favor of the Transaction.[98]

47. On July 5, 2013, the FCC approved SoftBank's acquisition of Sprint and Sprint's acquisition of Clearwire.[99] On July 8, 2013, approximately 82% of

93. Clearwire Corporation, Form 8-K, June 20, 2013, Exhibit 99.1.
94. Clearwire Corporation, Schedule 13D/A, June 21, 2013.
95. Clearwire Corporation, Form 8-K, June 24, 2013, Exhibit 99.1.
96. June Proxy, pp. S-J-3 and S-K-3.
97. June Proxy, pp. S-1, S-4.
98. Clearwire Corporation, Schedule 13D/A, July 3, 2013.
99. Clearwire Corporation, Form 8-K, July 5, 2013, Exhibit 99.1.

shares not held by Sprint voted in favor of the Transaction, and the Transaction closed the following day.[100]

C. Clearwire Projections

48. Clearwire provided Evercore and Centerview with two sets of updated projections in May 2013: (1) the Single-Customer Case ("SCC"), which assumed Sprint would remain Clearwire's only major wholesale customer (*see* **Exhibit 2**), and (2) the Multi-Customer Case ("MCC"), which assumed Clearwire would generate additional revenue from one or more additional major wholesale partners beginning in 2014.[101]

49. Both sets of projections were expected to require "significant amounts of capital to fully finance the corresponding business plans," even after assuming that all outstanding debt would have been refinanced at existing rates and no new debt would be issued.[102] The SCC and MCC forecasted peak cumulative cash shortfalls of approximately $3.5 billion in 2017 and $2.1 billion in 2015, respectively.[103] Clearwire also had $2.9 billion of debt maturing in December 2015, $300 million maturing in December 2016, and $740 million maturing in

100. Clearwire Corporation, Form 8-K, July 9, 2013 and Exhibit 99.1.
101. Clearwire Corporation, Schedule 14A, May 28, 2013, pp. S-5-S-6. Clearwire had also provided Centerview and Evercore earlier projections following their engagement in November 2012. CVIEW00005841, CVIEW00005843, CVIEW00005844.
102. June Proxy, pp. S-25 and S-33.
103. Clearwire Corporation, Schedule 14A, May 22, 2013 ("May Proxy"), pp. S-21, S-29-S-30; June Proxy, pp. S-25, S-33-S-34.

December 2017.[104] As shown in **Exhibits 3A and 3B**, combining the cumulative cash shortfall in the SCC forecast of $3.5 billion in 2017 as well as $4.0 billion of debt maturing by 2017 demonstrated that Clearwire needed almost $7.5 billion of financing three and half years after the Appraisal Date to be in the position to achieve the results in the SCC forecast.

50. In spite of this projected funding gap, my review of the record evidence indicates that the SCC represented Clearwire's best estimate of its projections as a going concern as of the Appraisal Date. For example, Clearwire director Theodore Schell testified that the SCC "was a reflection of the only reality that we knew."[105] The MCC required a second wholesale customer providing "significantly greater" revenue than Sprint was projected to provide.[106] In May 2013, Clearwire's management informed Centerview that the likelihood of achieving the MCC had fallen since the end of 2012.[107] Because there was an estimated nine-month lead time to get any traffic from a second customer on the network, the MCC implied that Clearwire would secure a second large wholesale

104. Clearwire Corporation, Form 10-Q for the period ended March 31, 2013 ("March 2013 10-Q"), p. 22. Clearwire also had $240 million in Sprint Notes due in 2017 that are not listed at p. 22 of the 10-Q. EVER00035048.xlsx, Tab: "Financial Summary."
105. Schell Deposition, p. 215.
106. CLWRDEL-01921410.
107 Centerview Partners, Project Canine, Confidential Discussion Materials for the Special Committee of the Board of Directors of Collie, May 21, 2013, p. 12.

customer almost immediately.[108] And while Clearwire included the MCC in its proxy statements, my review of the contemporaneous public statements and deposition testimony indicates that Clearwire's representatives did not believe Clearwire would be able to obtain a second customer and thus did not view the MCC as achievable as of the Appraisal Date.[109] Specifically, Clearwire stated in the April Proxy and May Proxy, "[Clearwire] does not expect to be able to obtain a second significant wholesale customer and has been unable to obtain a second significant wholesale customer in spite of its efforts to do so for the last two years."[110] Similarly, Clearwire's May Investor Presentation and May 6, 2013 and May 13, 2013 letters to shareholders addressed what it called an "investor misperception" that the MCC was achievable. In those public statements, Clearwire reiterated that it had "extensively pursued, but ha[d] been unsuccessful in attracting a second large wholesale customer."[111]

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108. Centerview Partners, Project Canine, Confidential Discussion Materials for the Special Committee of the Board of Directors of Collie, June 20, 2013 ("Centerview June Fairness Opinion"), p. 11; May Investor Presentation, pp. 13-14.
109. CLWRDEL-00008452, at 8473 ("[T]he members of the Special Committee and the Audit Committee agreed that it was not realistic to think the Company would be able to attract [significant wholesale customers] in the foreseeable future."); Stanton Deposition, pp. 306-307; Prusch Deposition, pp. 242, 253, 258-261; Cochran Deposition, pp. 90-91, 251-253; Hersch Deposition, pp. 140; 230-231; Schell Deposition, pp. 213-215; Deposition of Kathleen Rae, pp. 331-232.
110. April Proxy, p. 80; May Proxy, pp. S-34.
111. May Investor Presentation, pp. 40-41; Clearwire Corporation, Form 8-K, May 6, 2013, Exhibit 99.1 ("May 6 Letter"), p. 2; Clearwire Corporation, Form 8-K, May 13, 2013, Exhibit 99.1 ("May 13 Letter"), pp. 2-3.

D. Valuation Analyses of Centerview and Evercore

51. On June 20, 2013, financial advisors to the Clearwire Board and Special Committee issued fairness opinions with respect to Sprint's offer at $5.00 per share. Evercore and Centerview both determined that the $5.00 per share price was fair from a financial point of view to Class A shareholders other than Sprint, SoftBank, or their affiliates.[112] Both advisors had also previously concluded that the proposed transaction at $2.97 per share in December 2012 and at $3.40 per share in May 2013 were fair, from a financial point of view, to the Class A shareholders other than Sprint, SoftBank, or their affiliates.[113]

Centerview Fairness Opinion

52. Centerview supported its fairness opinion with valuations based on analyses of selected precedent spectrum transactions, precedent premiums paid, and discounted cash flow ("DCF") analyses of the SCC and MCC projections discounted using a weighted average cost of capital ("WACC").[114]

53. Centerview analyzed certain precedent spectrum transactions and determined the implied price per MHz-POP for each transaction. Centerview then derived an implied equity value per Clearwire share of $1.55 to $3.75.[115]

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112. June Proxy, Annex S-J, Annex S-K.
113 April Proxy, Annex J, Annex K; May Proxy, Annex S-J, Annex S-K.
114. Centerview June Fairness Opinion, p. 5.
115. Centerview June Fairness Opinion, pp. 5, 8.

Centerview also analyzed the premiums paid in all-cash transactions and minority buy-in transactions. The premiums paid in precedent all-cash transactions implied an equity value per share of Clearwire of $1.70 to $3.30.[116] The premiums paid in nine cash-only minority buy-in transactions implied an equity value per share of Clearwire of $1.70 to $3.10.[117]

54. Centerview's DCF analysis discounted Clearwire's cash flows using a WACC ranging from 10.0% to 17.5% and perpetuity growth rates ranging from 1.0% to 3.0%, and estimated an implied valuation range for Clearwire of ($2.25) to $0.68 per share using the SCC projections and $3.27 to $13.94 using the MCC projections.[118]

Evercore Fairness Opinion

55. Evercore supported its fairness opinion with valuations based on selected publicly traded companies, selected precedent spectrum transactions, precedent premiums paid, and a DCF of the SCC and MCC projections discounted

116. Centerview June Fairness Opinion, pp. 6, 9. Centerview included all-cash transactions involving U.S.-based companies with equity values between $1 billion and $5 billion announced since January 1, 2009. Centerview applied the premiums of precedent transactions to Clearwire's stock price on October 10, 2012 (the day before rumors of a transaction involving Sprint and SoftBank were reported), November 20, 2012 (the day before Sprint's initial proposal), and December 10, 2012 (the day before rumors of a transaction involving Sprint and Clearwire were reported).
117. Centerview June Fairness Opinion, pp. 6, 10. Centerview applied the premiums to Clearwire's stock price on the same dates as they did in its analysis of all-cash transactions.
118. Centerview June Fairness Opinion, p. 13.

using a WACC.[119]

56. Evercore analyzed the implied spectrum value (denominated in $/MHz-POP) based on public market trading values of Globalstar and LightSquared and determined an implied range of equity values per share of Clearwire was $1.98 to $2.34.[120] Evercore also determined the implied $/MHz-POP of precedent spectrum transactions and determined the implied ranges of equity values per share of Clearwire was $1.66 to $4.40 (using an estimate of net debt as of June 30, 2013) and $1.31 to $4.07 (using an estimate of net debt as of December 31, 2013).[121] In addition, Evercore analyzed the premiums paid in precedent transactions and determined an implied equity value per share of $1.64 to $2.36 (by applying the premiums of precedent transactions to Clearwire's stock price one day, one week, and one month prior to October 10, 2012, the day before rumors of a transaction involving Sprint and SoftBank surfaced) and $2.38 to $2.95 (by applying the premiums of precedent transactions to Clearwire's stock price one day, one week, and one month prior to November 21, 2012, the day of Sprint's initial proposal).[122]

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119. Evercore June Fairness Opinion, p. 6.
120. Evercore June Fairness Opinion, pp. 6, 18. LightSquared was in restructuring at the time, so Evercore attributed zero value to its common equity when determining LightSquared's enterprise value.
121. Evercore June Fairness Opinion, pp. 6, 8.
122. Evercore June Fairness Opinion, pp. 6, 9. Evercore included transactions from three data sets: (1) all-cash transactions for U.S.-based companies with transaction values between

57. Evercore's DCF analyses of the SCC and MCC projections were discounted using a WACC ranging from 10.0% to 17.5% and perpetuity growth rates ranging from 2.0% to 4.0%. Using the SCC projections, Evercore estimated an implied valuation range for Clearwire of ($1.91) to $1.94 per share.[123] Evercore also incorporated into its SCC DCF analysis an estimated $1.983 billion of net proceeds (or an additional $1.19 to $1.32 per share) from a hypothetical sale of 40MHz of spectrum, based on summary terms contained in DISH's December 6, 2012 preliminary non-binding proposal.[124] The implied valuation range derived from the SCC with a hypothetical sale of 40MHz of spectrum was ($0.59) to $3.14 per share.[125] Evercore's MCC DCF estimated an implied valuation range for Clearwire of $3.81 to $16.77 per share.[126]

58. Evercore noted that the SCC and MCC projections estimated peak cumulative cash shortfalls of $3.9 billion in 2017 and $2.1 billion in 2015, respectively, and assumed that any existing debt ($3.8 billion of which matured

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$500 million and $10 billion since January 2000 in which the acquirer purchased 100% of the target; (2) all-cash transactions for U.S.-based companies with transaction values between $500 million and $10 billion since January 2000 in which the acquirer owned less than 50% of the target prior to the transaction and acquired the remaining equity, increasing its ownership to 100%; and (3) all-cash transactions for U.S.-based companies with transaction values between $500 million and $10 billion since January 2000 in which the acquirer owned more than 50% of the target prior to the transaction and acquired the remaining equity, increasing its ownership to 100%.

123. Evercore June Fairness Opinion, p. 11.
124 June Proxy, p. S-34.
125. Evercore June Fairness Opinion, p. 11. June Proxy, p. S-34.
126. Evercore June Fairness Opinion, p. 11.

between 2015 and 2017) could be refinanced at existing rates.[127]

V. FAIR VALUE OF CLEARWIRE AS OF JULY 9, 2013

59. I estimate Clearwire's fair value as of the Appraisal Date based on the results of a version of the DCF valuation model, the Adjusted Present Value ("APV") method, using the SCC projections prepared by Clearwire management and disclosed to its shareholders in the May Proxy. I increase my APV valuation by adding two additional components: (1) the value of net operating losses ("NOLs") and (2) an amount attributable to a possible partial sale of certain spectrum assets.

60. I discuss below why discounting Clearwire's projected free cash flows using the APV method provides a more reliable estimate of the fair value of Clearwire's operations than the more common WACC approach. First, I explain why Clearwire's fair value is best estimated using a DCF valuation based on the APV method instead of an asset-based valuation. In particular, the DCF valuation method is widely adopted by academics and valuation experts as the valuation method that most clearly reflects the underlying value of an enterprise , *i.e.*, an explicit estimate of the enterprise's ability to generate future cash flows.[128] A DCF valuation of Clearwire uses projections that account for the operative reality of the

127. Evercore June Fairness Opinion, p. 11; June Proxy, p. S-33-S-34.
128. Tim Koller, Marc Goedhart, & David Wessels, *Valuation 5th Edition*: John Wiley & Sons, Inc., 2005 *("Valuation 5th Edition")*, pp. 101-102, 311, 322.

Company as a going concern provider of wireless network capacity to wholesale customers and wireless network services to retail customers, as opposed to reflecting the hypothetical liquidation value of the Company's spectrum assets. The DCF method also provides a critical advantage over other valuation methodologies (such as values obtained from precedent spectrum transactions) by accounting for Clearwire's characteristics that make the Company's operations and its spectrum assets unique relative to other businesses.[129]

A. Adjusted Present Value Method

61. The APV method is one of two forms of a DCF valuation model. The other is the WACC.[130] Both methods, APV and WACC, measure the same value of the firm. In situations where both can be applied, the APV and the WACC methods are mathematically identical. Both require an estimate of the future unlevered cash flows that a firm will generate for investors. The choice between them depends on the nature of the data available and the expected capital structure of an enterprise over time. In particular, in situations where a firm has, and is expected to maintain, a constant debt-to-equity ratio, the WACC method is easier to apply. However, in situations where the capital structure is changing, the

129. Damodaran, Aswath, "An Introduction to Valuation – Fall 2012," p. 8 (http://pages.stern.nyu.edu/~adamodar/).
130. Robert W. Holthausen & Mark E. Zmijewski, *Corporate Valuation: Theory, Evidence, & Practice, First Edition*, Cambridge Business Publishers, 2014 ("*Corporate Valuation: Theory, Evidence & Practice*"), p. 166.

WACC method becomes unwieldy because the changing capital structure requires a different WACC estimate for each year. The APV method solves this problem by using the all-equity cost of capital as the rate to discount the projected cash flows and then separately accounting for the value attributable to the interest tax deduction related to those cash flows. Using this approach, it is therefore unnecessary to adjust the discount rate as the capital structure changes. The APV method also makes it easier to explicitly take account of situations in which a firm cannot take advantage of any interest tax deduction in years during which it does not have positive projected taxable income.

62. The choice between the two methods has been widely analyzed in the academic literature.[131] As noted above, if a firm is expected to have a constant proportion of debt and equity in its capital structure, then the proper method is the WACC.[132] Conversely, if a firm is expected to have a constant amount of debt and/or a changing proportion of equity and debt in its capital structure then the proper valuation method is the APV.[133] Furthermore, Koller et al., recommend using the APV method rather than the WACC method to value companies with

131. Steven Kaplan & Richard Ruback, 1995, "The Valuation of Cash Flow Forecasts: An Empirical Analysis," *Journal of Finance* 50, 1059-1093; *Corporate Valuation: Theory, Evidence & Practice*, Chapter 5; *Valuation 5th Edition*, Chapter 6; Richard A. Brealey, Stewart C. Myers, & Franklin Allen, *Corporate Finance, 10th Edition*, McGraw-Hill, 2011, Chapter 19.
132. *Corporate Valuation: Theory, Evidence & Practice*, pp. 176-177.
133. *Corporate Valuation: Theory, Evidence & Practice*, pp. 176-177.

below investment grade debt.[134] Lastly, the APV method is also the recommended method for valuing companies that do not have sufficient taxable income (either through losses or net operating loss carryforwards) to capture the benefits of its interest tax shields.[135]

63. Since the SCC projections forecasted a constant amount of debt, an unsustainable capital structure, a funding shortfall that could only be met by issuing equity (therefore changing the capital structure), negative earnings for half the projection period, and usable net operating loss carryforwards, the most appropriate method to value Clearwire is the APV method.

B. Clearwire's Projections as of the Appraisal Date

64. My standard practice is to base my valuations on the most contemporaneous management projections whenever possible.[136] Based on my review of the evidence in the record regarding the long-term projections for Clearwire prepared during 2012 and 2013, I believe the SCC projections updated in May 2013 are the most reasonable projections for valuing Clearwire on a going

134. *Valuation 5th Edition*, p. 257.
135. *Corporate Valuation: Theory, Evidence & Practice*, p. 177.
136. This Court has generally preferred the use of contemporaneous management projections prepared in the ordinary course of business. *See, e.g.*, *Cede & Co. v. Technicolor, Inc.*, C.A. No. 7129, 2003 WL 23700218, at *7 (Del. Ch. Dec. 31, 2003, *revised* July 9, 2004), *aff'd in part, rev'd in part*, 884 A.2d 26 (Del. 2005); *Gearreald v. Just Care, Inc.*, C.A. No. 5233-VCP, 2012 WL 1569818, at *4 n.28 (Del. Ch. Apr. 30, 2012) (citing *Cede*); *The World According to Delaware Chancery: A Vice Chancellor Offers Ten Tips to Appraisers*, referencing *eMachines*.

concern basis as of July 9, 2013 for the following reasons[137]:

- The SCC projections were the most contemporaneous projections prepared by Clearwire management, provided to the Special Committee's and the Clearwire Board's advisors for their fairness opinions, and disclosed to shareholders in the May Proxy; and
- The evidence in the record indicates that Clearwire's management and the Clearwire Board did not believe there was a reasonable chance that the Company could obtain a second major wholesale customer, as required by the MCC.[138]

65. Although Clearwire disclosed an earlier version of the MCC Projections in the April Proxy and an updated version in the May Proxy, I do not perform an APV valuation based on those projections since the record evidence discussed above suggests those projections do not reflect the operative reality of Clearwire beyond the Appraisal Date.

C. Clearwire's Long-Term Growth Rate Beyond the Forecast Period

66. Using the APV method, I estimate Clearwire's enterprise value as the sum of the discounted free cash flows in the explicit forecast period (2013 – 2020) and the present value of its free cash flows beyond the explicit forecast period (*i.e.*, its terminal value). The growth in perpetuity model (or Gordon Growth Model) is a method of estimating a terminal value in a discounted cash flow model that is widely accepted by financial economists, practitioners, and courts.[139] Investment

137. *See* ¶ 50.
138. *See* ¶ 50.
139. The Gordon Growth Model values the company at the end of the forecast period (time t),

bankers often instead estimate a company's terminal value by applying an exit multiple based on the trading multiples of representative peer companies. Such an approach to estimating a company's terminal value results in a mix of relative and intrinsic valuation[140] and explicitly assumes the target company at the terminal date is comparable in terms of growth, margins and return on investment to that of the selected comparison companies as of the valuation date.[141] Based on my review of the record evidence and market data, I concluded that there were no publicly traded companies that I consider to be sufficiently comparable to Clearwire in order to perform a relative valuation. Therefore, it is my opinion that the use of a growth in perpetuity model is the proper way to estimate Clearwire's terminal value.

67. One assumption implicit in applying the growth in perpetuity method is that free cash flows have reached a steady state in the terminal period.[142] The growth rate used to estimate the terminal value should therefore also reflect a long-term, stable growth rate for the firm's free cash flows (*i.e.*, the rate at which they

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Vt = FCFt+1/(WACC – g), which FCFt+1 = FCFt×(1+g), FCF = free cash flow and g = growth in perpetuity rate. Shannon P. Pratt & Alina Niculita, *Valuing a Business* 5th Edition: McGraw Hill, 2008 ("*Valuing a Business 5th Edition*"), p. 242. *See also* Cornell, Bradford, *Corporate Valuation,* Business One Irwin, 1993 ("*Corporate Valuation*"), pp. 146-148; *In re PNB Holding Co. S'holders Litig.*, C.A. No. 28, 2006 WL 2403999, at *31 (Del. Ch. Aug. 18, 2006).

140. *See, e.g.*, Damodaran, Aswath, *Investment Valuation 3rd Edition*: John Wiley & Sons, Inc. 2012 ("*Investment Valuation 3rd Edition*"), pp. 305-306; Hitchner, James R., *Financial Valuation: Applications and Models, Second Edition*: John Wiley & Sons, Inc., 2006 ("*Financial Valuation*"), p. 126.

141. *See, e.g.*, *Valuation 5th Edition*, pp. 226-227; *Corporate Valuation*, pp. 160, 166-167.

142. *Corporate Valuation*, pp. 146-147; *Valuation 5th Edition*, p. 214.

are expected to grow in perpetuity).[143] A reasonable long-term growth rate for a viable firm is likely at or above the rate of inflation (*i.e.*, zero real growth) but should not be greater than that of the economy in which the firm operates (*i.e.*, the nominal GDP growth rate for a firm with domestic operations).[144]

68. As the table below shows, the most recent available estimates of long-term real GDP growth as of the Appraisal Date ranged from 2.2%-2.6%, while long-term inflation ranged from 1.7%-2.5%. Expected nominal GDP growth ranged from 4.2%-5.1% as of the Appraisal Date.

TABLE 1
Estimates of Long Term Nominal GDP Growth as of July 9, 2013

Source	Time Period	Expected Real GDP Growth Rate	Expected Inflation Growth Rate		Expected Nominal GDP Growth Rate
			Amount	Type	
Congressional Budget Office[145]	2019 – 2023	2.20%	2.00%	GDP Price Index	4.30%
Budget of U.S. Government[146]	2023	2.30%	2.20%	CPI Index	4.50%
Blue Chip Economic Indicators[147]	2023	2.50%	2.30%	CPI Index	4.80%
Livingston Survey[148]	2012 – 2022	2.60%	2.50%	CPI Index	5.10%
Energy Information Administration[149]	2011 – 2040	2.50%	1.70%	GDP Price Index	4.20%
Median		2.50%	2.20%		4.50%

143. *Valuation 5th Edition*, p. 214.
144. *Investment Valuation 3rd Edition*, pp. 323-324; *Corporate Valuation*, p. 147. The expected growth rate of the U.S. economy is generally measured by the nominal GDP growth rate.
145. Congressional Budget Office, The Budget and Economic Outlook: Fiscal Years 2013 to 2023, p. 42 (numbers do not total due to rounding).
146. Fiscal Year 2014, Analytical Perspectives, Budget of the U.S. Government, April 2013, p. 15 (published annually).
147. *Id.*
148. The Livingston Survey, June 7, 2013, p. 4. (Published biannually.)
149. U.S. Energy Information Administration, Annual Energy Outlook 2013, April 2013, p. 158 (published annually).

69. **Exhibit 2** shows that the double-digit growth in Clearwire's projected Revenues and Adjusted EBITDA reflected in the SCC projections beginning in 2015 falls to approximately 6% in the final year of the explicit forecast period (2020). This growth rate is not significantly in excess of forecasted nominal GDP growth (4.5%), and EBIT and EBITDA margins were expected to have stabilized in the final two years of the projection period. Thus, it is my opinion that there is no need to extend management's projections until they have reached a steady-state (*i.e.*, a stable, long-term growth rate with normalized operating margins).

70. Based on my review of the evidence in the record regarding Clearwire's business prospects and the macroeconomic data forecasts summarized above, I have determined that a terminal growth rate of 3.35% is a reasonable estimate of Clearwire's long-term, stable growth rate beyond the explicit forecast period. My selection of a 3.35% perpetuity growth rate represents the midpoint of the range of median macroeconomic estimates of inflation (2.2%) and nominal GDP (4.5%). It is my opinion that a perpetuity growth rate less than the expected growth rate of the U.S. economy (*i.e.*, nominal GDP) is reasonable because Clearwire's projected operating results are based on the successful implementation of its planned TDD-LTE network (and the market's acceptance of that technology) beyond the end of the explicit forecast period. On the other hand, my selection of

a perpetuity growth rate in excess of inflation is consistent with the assumption that Clearwire will continue to be a viable company (*i.e.*, will have positive real growth in free cash flows) in the terminal period.

D. Clearwire's Discount Rate as of the Appraisal Date

71. In order to estimate enterprise value using the APV method, one discounts the firm's expected free cash flows over the life of the firm using a risk-adjusted discount rate. Risk-adjusted discount rates are the rates of return required by the market to induce market participants to invest capital. Conceptually, risk-adjusted discount rates are determined by three factors: (i) the rate of return required by the market for a risk-free investment, (ii) the underlying relevant risk of the expected free cash flows of the investment, and (iii) the rate of return required by the market to bear that additional risk.[150]

72. As discussed above, there is considerable evidence in the record (and specifically in the SCC) that Clearwire would need to obtain significant additional financing and refinance much of its existing debt during the explicit forecast period in order to achieve the results contemplated in the SCC Projections. As a result, I employ a method of estimating the present value of Clearwire's free cash flows that explicitly allows for changing capital structures. The APV method focuses on

150. *See, e.g.*, *Investment Valuation 3rd Edition*, p. 12.

first discounting a firm's free cash flows using an unlevered cost of equity capital (*i.e.*, the cost of the firm assuming it has 100% equity capital), and then separately accounts for the value obtained from the tax shields provided by the firm's interest payments.

Cost of Equity

73. I use the widely accepted Capital Asset Pricing Model ("CAPM") as the basis for measuring the unlevered equity cost of capital for Clearwire.[151] The CAPM defines a firm's risk-adjusted rate of return on equity as equal to the risk-free rate of return plus a premium for risk (a measure of the firm's risk relative to the market's risk, multiplied by a measure of the premium associated with the riskiness of the equity market as a whole – referred to as the "equity risk premium"). A firm's relative or systematic risk is typically called "beta," and it measures both the operating risk and financial risk for the firm.[152] The equity risk premium measures the rate of return necessary to compensate investors for the added risk of purchasing equity securities instead of a risk-free security (for example, a government bond). The CAPM is often supplemented by a size premium, intended to reflect the higher return observed historically for smaller

151. *See, e.g.*, *Valuation 5th Edition*, pp. 234-236.
152. A beta equal to 1.0 means the firm's stock is as variable as the market as a whole (generally measured by an index such as the S&P 500), whereas a beta less (greater) than 1.0 implies that the firm's stock is less (more) variable than the market.

capitalization companies. Thus, the cost of equity is calculated as follows:

Cost of Equity = Risk Free Rate + (Beta × Equity Risk Premium) + Size Premium

Risk Free Rate

74. The risk free rate is generally estimated by U.S. government bonds with terms that approximate those of the cash flows being discounted.[153] I use the yield of 20-year U.S. Treasury as of July 9, 2013 for the risk-free rate of return: 3.36%.[154] While valuation professionals commonly estimate risk free rates using the yield on long-term Treasury securities ranging in maturity from between 10 and 30 years, it is my customary practice to use the 20-year government bond yield as it represents a midpoint between the 10-year and 30-year maturities that is widely used by many analysts.[155]

153. *Valuation 5th Edition*, pp. 236-238. *Corporate Valuation*, pp. 209-212, advocates using a long-term government bond yield (*i.e.*, 10-30 years) and netting out the implied term premium, but notes that this adjustment is not widely employed in practice.
154. Board of Governors of the Federal Reserve System (U.S.), 20-Year Treasury Constant Maturity Rate [DGS20], FRED, Federal Reserve Bank of St. Louis. On this date, the 10 and 30-year Treasury Constant Maturity Rates [DGS10 and DGS30] were 2.65% and 3.64%, respectively. (http://research.stlouisfed.org/fred2/data/DGS20.txt)
155. Grabowski, Roger, "Developing the Cost of Equity Capital: Risk-Free Rate and ERP During Periods of 'Flight to Quality,'" Duff & Phelps Working Paper, January 29, 2011, p. 3; *Investment Valuation 3rd Edition*, p. 155; *Corporate Valuation: Theory, Evidence & Practice*, pp. 316-317; *2013 Ibbotson Stocks, Bonds, Bills, and Inflation Yearbook*, Morningstar, 2013 ("*SBBI Valuation Yearbook*"), p. 55. The yield of 10-Year Total Constant Maturity Treasury as of July 9, 2013 was 2.65%. (http://research.stlouisfed.org/fred2/data/DGS10.txt). The yield of 30-Year Total Constant Maturity Treasury as of July 9, 2013 was 3.64%. (http://research.stlouisfed.org/fred2/data/DGS30.txt).

Beta

75. I estimate Clearwire's levered beta by measuring the weekly returns of Clearwire's traded equity against the weekly returns of the S&P 500 for five years prior to October 10, 2012.[156] I calculate the beta as of October 10, 2012 since rumors of a transaction between Sprint and SoftBank were publicly disclosed

156. The choice of a five-year versus a shorter estimation period such as two years involves a trade-off: "A longer estimation period provides more data, but the firm itself might have changed in its risk characteristics over the time period." *Investment Valuation 3rd Edition*, p. 188. Thus, it is important to examine the company's beta over time "for structural changes or short-term deviations. For instance, changes in corporate strategy or capital structure often lead to changes in risk for stockholders. In this case, a long estimation period would place too much weight on irrelevant data." *Valuation 5th Edition*, p. 247. I reviewed Clearwire's beta calculated over its trading history calculated using weekly data and estimation periods of 2, 3, 4 and 5 years. My review of that data indicates that there was a significant decline in Clearwire's beta in late 2011 around the time that Sprint and Clearwire disclosed that they had modified their wholesale agreement, Sprint agreed to provide additional equity funding to Clearwire, and Clearwire was able to meet its December interest payments. My review of analyst reports around this time frame suggests to me that this decline in Clearwire's beta is at least in part the result of the market's interpretation that Sprint's increased investment reassured investors that Clearwire would not default on its debt and therefore does not measure the underlying risk of Clearwire's operations (which did not decrease following Sprint's increased investment). *See*, *e.g.*, Morgan Stanley, "Clearwire Corporation – Sprint Deal a Positive, but Is it Enough?" December 2, 2011 ("Both companies will benefit from taking restructuring risk off the table for now."); Credit Suisse, "Clearwire (CLWR) – Updating Estimates; Remain Overweight; Positive Catalysts Ahead," December 5, 2011 ("The Sprint deal is transformative to CLWR equity, because it establishes Sprint's long term commitment to the asset."); Wells Fargo, "CLWR/S: Clearwire Announces Upsized Equity Offering," December 8, 2011 ("We believe this equity raise is a positive for CLWR as it eliminates the near term solvency issue and the company can now focus on the LTE network build."). The unlevered beta measures the risk of a company's operating assets after removing the effects of its capital structure, including the impact on its equity beta of whether the company's equity is held in majority or minority ownership positions or the fact that it has a majority stockholder that is motivated to keep it out of bankruptcy. *Corporate Valuation: Theory, Evidence & Practice*, p. 384. Since the fundamental risk of Clearwire's operating assets did not decline within the last two years ending October 10, 2012, I have determined that it is more appropriate to measure Clearwire's beta as of October 10, 2012 based on its five-year weekly beta.

on October 11, 2012. Any returns after October 10, 2012 were therefore influenced by the expectation of the effects of that transaction on Clearwire. This results in an adjusted beta of 1.534.[157] Since I am using the APV method, I discount the cash flows using the unlevered cost of equity, which requires that I estimate Clearwire's unlevered beta.[158]

76. While it is appropriate to unlever the beta of a firm that has primarily investment grade debt by only accounting for its existing capital structure, for a firm with below investment grade debt, the basic unlevering formula must be supplemented with an estimate of the firm's debt beta[159]:

$$\beta_{Unlevered} = \left(\beta_{Equity} \times \frac{\mathrm{E}}{D+E}\right) + \left(\beta_{Debt} \times \frac{D}{D+E}\right),$$

$$\text{where } D = \text{Debt and } E = \text{Equity.}$$

Under these conditions, the inclusion of a debt beta is necessary so that the resulting cost of equity estimate is not understated due to a failure to account for the enterprise risk associated with below investment grade debt.[160] Clearwire was

157. Bloomberg. The adjusted beta uses a standard adjustment factor (*i.e.*, weighting the subject company's beta by 2/3 and the market beta by 1/3) to incorporate the fact that over time betas revert to the market beta of 1.0. *Valuation 5th Edition*, p. 253.
158. *Valuation 5th Edition*, pp. 779, 784-785.
159. *Valuation 5th Edition*, p. 785 (using formula that assumes tax shields have the same risk as operating assets and debt either (1) varies on a dollar level, or (2) is a constant dollar level but is risky).
160. *Valuation 5th Edition*, p. 785 ("For investment-grade companies, debt is nearly risk free, so any errors using [the unlevering formula without a debt beta] will be small. If the company is highly leveraged, however, errors can be large. In this situation, estimate the beta of

rated CCC by S&P and Caa by Moody's in October 2012 and had highly variable yields.[161] In addition, Clearwire had explored restructuring options within the prior year, was projected to have a significant funding shortfall, and needed to refinance $3.0 billion in debt in 2015.[162] I therefore believe it is appropriate to include a debt beta in estimating the Company's unlevered cost of equity.

77. In cases where a firm's debt is publicly traded, one can estimate the debt beta in the same manner as the equity beta (*i.e.*, using a regression of debt returns against an appropriate market benchmark).[163] Alternatively, the debt beta may be estimated by substituting bond returns for firms with the same credit rating as the subject firm (*e.g.*, CCC-rated bonds for Clearwire) in the regression against returns of the market benchmark.[164] I employ both approaches to estimate Clearwire's debt beta.

78. First, I regress the weekly returns of Clearwire's 2017 Notes against the returns of the S&P 500 from December 2010 (when the 2017 Notes were issued) to October 2012.[165] This results in a beta of 1.83. Second, I regress the

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debt, and use the more general version of this formula.").

161 Bloomberg.

162. *See supra*, ¶¶ 23, 49.

163. Shannon P. Pratt & Roger J. Grabowski, *Cost of Capital: Applications and Examples Fifth Edition*: John Wiley & Sons, Inc. 2015 ("*Cost of Capital 5th Edition*), pp. 219-220.

164. *Cost of Capital 5th Edition*, pp. 220-221; *Corporate Valuation: Theory, Evidence & Practice*, p. 356.

165. This debt represents the Company's only non-convertible, publicly traded debt with

returns of a CCC-rated index against the returns of the S&P 500 from October 2007 to October 2012. This results in a beta of 0.46.[166] The midpoint of these two estimates of Clearwire's debt beta is 1.14. Lastly, *Cost of Capital 5th Edition* estimates a beta of Caa-rated debt (Clearwire's Moody's rating) as of October 2012 of 0.91.[167] In light of all of this information, I conclude that a reasonable estimate of the beta of Clearwire's debt is 0.90.

79. I calculate an unlevered beta of 1.089 based on the unlevering formula above (*see supra* ¶ 76) and the following inputs: equity beta of 1.534 (β_{Equity}), debt beta of 0.90 (β_{Debt}), Clearwire's market capitalization (of Clearwire's Class A and Class B shares) as of October 10, 2012 of $1.9 billion (E) and the par value of Clearwire's debt as of September 30, 2012 of $4.5 billion (D).[168]

80. Lastly, I adjust the unlevered beta calculated above to reflect the fact that the excess cash Clearwire had on its balance sheet has a beta of zero.[169] This

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sufficient data in order to estimate Clearwire's debt beta.

166. It is not surprising that the observed debt beta for Clearwire's publicly traded debt is higher than that for the CCC-rated bond index given the concern regarding Clearwire's ability to meet its annual interest obligations discussed above (*see* ¶ 23), as well as the fact that as of October 10, 2012 the yield on each of Clearwire's publicly traded debt instruments (which ranged from 11.51% for its 2040 Exchangeable Notes to 14.08% for its 2017 Second Priority Notes, with a weighted average yield of 12.50%) exceeded that of the yield on CCC-rated bonds (11.48%). Bloomberg.
167. *Cost of Capital 5th Edition*, p. 221
168. Bloomberg. Clearwire Corporation, Form 10-Q for the period ended September 30, 2012, pp. 6, 16.
169. Because Clearwire had excess cash on its balance sheet (which has a beta of zero), its observed beta estimate (*i.e.*, the variance of its stock price with the market index)

results in an unlevered cash adjusted beta of 1.338.

Equity Risk Premium

81. The appropriate equity risk premium to be employed in the CAPM calculation is the premium investors will demand in order to invest in equities rather than risk free securities over the period of the cash flows to be discounted in the DCF. There are several approaches to estimating the equity risk premium commonly used by practitioners and academics in their calculations of the cost of equity. The standard approach for many years was to estimate the future equity risk premium using the observed historical market equity risk premium.[170] Over the last two decades, however, there has been significant research by academics and practitioners indicating that the forward-looking equity risk premium is significantly lower than the long-run historical average.[171] Valuation professionals

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understates the underlying risk of the Company's operations. *See, e.g.*, http://pages.stern.nyu.edu/~adamodar/New_Home_Page/lectures/cash.htm.

170. *See, e.g.*, *Valuation 5th Edition*, pp. 238-239; *Corporate Valuation*, pp. 212-219; *2013 SBBI Valuation Yearbook*, p. 53. Ibbotson Associates data, published in the *2013 SBBI Valuation Yearbook*, estimate the historical equity risk premium using data on the arithmetic average premium that equity securities have generated above risk free securities over the period 1926-2012. Historical equity risk premium estimates from Ibbotson Associates have been accepted for valuing companies in appraisals and other valuation disputes in the Delaware Court of Chancery. *See, e.g.*, *Hintmann v. Fred Weber, Inc.*, C.A. No. 12839, 1998 WL 83052, at *3-4 (Del. Ch. Feb. 17, 1998); *In re PNB Holding Co.*, 2006 WL 2403999, at *30.

171. *See* Cornell, Bradford, *The Equity Risk Premium: The Long-Run Future of the Stock Market*, John Wiley & Sons, 1999. *See also* Cornell, Bradford "Economic Growth and Equity Investing," *Financial Analysts Journal*, Volume 66, No. 1, 2010; Robert D. Arnott & Peter L. Bernstein, "What Risk Premium Is "Normal"?," *Financial Analysts Journal*, Volume 58, No. 2, March/April 2002; Eugene F. Fama & Kenneth R. French, "The Equity

have also advocated use of the so-called supply-side equity risk premium, which adjusts the historical equity risk premium to reflect more recent expectations of equity returns based on real earnings growth.[172] The historical average premium is also inconsistent with the current level of stock prices, payout yields, and expected future growth in payouts. My selection of an equity risk premium of 5.50% is based on a current application of this growth model as well as a thorough review of academic and practitioner literature, and my experience, research, and writings.[173]

Premium," *The Journal of Finance*, Volume LVII, No. 2, April 2002. In addition, surveys of CFOs consistently report an average equity risk premium significantly lower than the historical equity risk premium. A survey of 404 CFOs conducted by Professors John Graham and Campbell Harvey in September 2013 reported an average equity risk premium of 3.11%. John R. Graham & Campbell R. Harvey, "The Equity Risk Premium in 2014," Duke University Working Paper, p. 8, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2422008.

172. Ibbotson Associates forecasts the equity risk premium through a supply-side model using historical returns data. The model decomposes historical returns into four pieces (inflation, income return, growth in real earnings per share, and growth in P/E ratios). The model, however, eliminates the fourth component, growth in P/E ratios (which reflect investor's expectation of earnings growth), in estimating the forward-looking equity risk premium based on the assumption that the historical growth in P/E ratios will not continue. (*2013 SBBI Valuation Yearbook*, pp. 64-68; Roger G. Ibbotson & Peng Chen, "Long-Run Stock Returns: Participating in the Real Economy," *Financial Analysts Journal* (January/February 2003), pp. 88-98. *See also* Siegel, Jeremy, "Perspectives on the Equity Risk Premium," *Financial Analysts Journal* (2005), pp. 61-73; Pratt, Shannon P., "Valuers Should Lower Equity Risk Premium Component of Discount Rate," *Business Valuation Update* (Nov. 2003); *Cost of Capital 5th Edition*, pp. 138-139. The most recent estimate of the supply-side equity risk premium and the historical equity risk premium as of the valuation date, measured using data through December 31, 2012, was 6.11% and 6.70%, respectively. *2013 SBBI Valuation Yearbook*, p. 216.

173. Professor Damodaran calculates implied equity risk premiums on a monthly basis based on the required return on the S&P 500 Index (measured using its dividend and stock buyback yields) less the risk free rate. The monthly ERP for October 2012 was 5.92% (http://pages.stern.nyu.edu/~adamodar/).

Size Premium

82. Academic research has documented that actual realized stock returns for smaller companies are larger than predicted by the CAPM.[174] Thus, valuation practitioners often advocate adding a size premium to adjust for this understatement in the CAPM-calculated cost of equity capital.[175] While the cause of this so-called size effect is not fully understood, researchers have hypothesized that it is caused by higher risk associated with lower liquidity or some other variable omitted from or not captured by the CAPM that is correlated with size.[176]

83. I add a size premium when calculating Clearwire's cost of equity based on its equity market capitalization as of October 10, 2012 of $1.905 billion.[177] Ibbotson Associates publishes size premium estimates by equity market capitalization decile. Using data through December 31, 2012, Clearwire's pre-

174. *See, e.g.*, *2013 SBBI Valuation Yearbook*, pp. 85-106; *Cost of Capital 5th Edition*, Chapter 14; Eugene F. Fama & Kenneth R. French, *The Cross-Section of Expected Stock Returns*, 47 J. Fin. 427 (June 1992); Banz, Rolf W., *The Relationship between Return and Market Value of Common Stocks*, 9 J. Fin. Econ. 3 (1981). Critics of the size premium argue that the empirical result that smaller companies realize higher returns has disappeared in more recent years, but Pratt and Grabowski present evidence to the contrary. *See Cost of Capital 5th Edition*, Chapter 15. *See also* Banz, *The Relationship between Return and Market Value of Common Stocks*, p. 3; *2013 SBBI Valuation Yearbook,* pp. 101-105.

175. *See, e.g.*, *2013 SBBI Valuation Yearbook*, pp. 85-106; *Cost of Capital 5th Edition*, Chapter 14 and 15. The use of a size premium has been accepted in the Delaware Court of Chancery for valuing small capitalization companies. *See, e.g.*, *Del. Open MRI Radiology Assocs.*, 898 A.2d at 338; *In re Emerging Commc'ns, Inc. S'holders Litig.*, C.A. No. 16415, 2004 WL 1305745, at *19-20 (Del. Ch. June 4, 2004); *Hintmann*, 1998 WL 83052, at *4-5.

176. *2013 SBBI Valuation Yearbook*, p. 85.

177. *See* ¶ 79.

transaction market capitalization fell within the 6th decile ($1.346-$1.909 billion), with a corresponding size premium of 1.72%.[178]

Unlevered Cost of Equity Estimate

84. I estimate Clearwire's unlevered cost of equity to be 12.44% based on a risk free rate of 3.36%, a beta of 1.338, an equity risk premium of 5.5%, and a size premium of 1.72%. (*See* **Exhibit 4**.)

E. APV Valuation of Clearwire as of the Appraisal Date

Unlevered Value of Firm

85. I base my estimate of Clearwire's fair value on the APV method using the SCC projections (*See* **Exhibit 5**.) I discount the unlevered free cash flows and the savings from the interest tax shield at the unlevered cost of equity of 12.44%.[179] Beyond the explicit forecast period, I grow both the unlevered free cash flows and the interest tax shield at 3.35%. The present value of the unlevered free cash flows is $3.159 billion and the present value of the interest tax shield is $1.389 billion.

Value of Net Operating Losses

86. I separately determine the present value of the tax savings from the NOL carryforwards. I assume Clearwire had $0 in available NOLs as of January

178. *2013 SBBI Valuation Yearbook*, Table C-1.
179. Clearwire is only able to utilize the tax savings from the interest tax shield when the Company has positive taxable income.

1, 2013 due to a change of control under Section 382 of the Internal Revenue Code that occurred in 2011 and 2012.[180] I grow the NOL balance from January 2013 to June 2013 using the corresponding EBIT figures in the SCC projections, in order to estimate a NOL balance as of June 30, 2012. As of June 30, 2013, Clearwire had a NOL balance of $287 million. The present value of the resulting tax savings in the SCC projections from the NOLs is $620 million. (*See* **Exhibit 6**.)

Potential Proceeds from the Sale of Other Spectrum Assets

87. Lastly, based on my review of the record, I identified the prospect of Clearwire selling spectrum that would not be needed to serve the needs of a single wholesale customer as a potential avenue for Clearwire to generate additional value for its business beyond the explicit cash flows based on the SCC projections. The prospect of Clearwire selling certain spectrum assets was raised on at least the following occasions:

- Discussions with DISH in August 2012;[181]
- Discussions with DISH in November and December 2012;[182]
- Discussions concerning DISH's proposals between December 28, 2012 and April 15, 2013; [183]

180. March 2013 10-Q, p. 16.
181. April Proxy, p. 19; CLWRDEL-01294232, at 1294234 (August 7, 2012 letter conveying DISH preliminary proposal to purchase spectrum assets for $2.184 billion).
182. April Proxy, pp. 23-33 (describing discussions with DISH in November and December 2012).
183. April Proxy, pp. 33-39; DISHCLR00006964 (December 12, 2012 letter to Clearwire Special Committee conveying DISH preliminary proposal to purchase spectrum assets for

- Discussions with Verizon in spring 2013; [184]
- Prior unsuccessful discussions between 2010 and 2012 with various parties.[185]

88. I understand that there are a number of reasons why such a sale would face substantial obstacles. These included:

- The fact that, despite multiple discussions, Clearwire has never been able to reach an agreement on terms for a sale with any of the potential buyers;[186]
- Buyers generally sought to purchase spectrum in locations or in amounts that Clearwire was unwilling to sell or that reflected only the most valuable portions of Clearwire's spectrum;[187]
- DISH sought to purchase spectrum that Clearwire did not believe it could sell without potentially affecting its ability to meet its contractual obligations to other customers; [188]
- Buyers, such as DISH, frequently included significant additional conditions or added covenants in proposals that were not acceptable to

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$2.46 billion); DISHCLR00000852 (December 28, 2012 revision to December 12, 2012 Proposal); DISHCLR00004998 (January 11, 2013 letter from DISH to Clearwire conveying proposal for DISH Tender Offer); CLWRDEL-01486872 (March 8, 2013 letter from Clearwire to DISH conveying determination that the Dish proposal was not actionable).

184. May Investor Presentation, p. 24 (describing Verizon proposal); CLWRDEL-01033336 (Verizon's April 8, 2013 non-binding indication of interest).

185. May Investor Presentation, p. 29; DIRECTOR-00038982, at 38991-92; CLWRDEL-00005566, at 5727; CLWRDEL-00006818, at 6855-57 (all describing efforts to sell spectrum).

186. *Id.*; April Proxy, pp. 15-19, 41; Hersch Deposition, pp. 132 (discussing failed attempts to sell spectrum between 2008 and 2012); Schell Deposition, p. 241 (same).

187. May Investor Presentation, pp. 29, 42 (describing characteristic of Verizon and DISH spectrum proposals); CLWRDEL-00008452, at 8476 (February 15, 2013 Clearwire Board minutes reflecting discussion of the DISH proposal, including "the fact that the DISH proposal was for high quality spectrum of the Company and would leave the Company with less valuable spectrum").

188. CLWRDEL-01486872, at 1486873 ("Dish desires to purchase in certain markets cannot be sold (or sold and leased back) to Dish at this time without potentially implicating our existing contractual commitments.").

or achievable by Clearwire;[189] and

- Sprint and other parties to the Equityholders' Agreement held rights by which they could block certain sales.[190]

89. Despite these obstacles, I assume that a sale of certain spectrum assets was possible. I made this assumption based on certain economic factors, including Clearwire's demonstrated need for capital, the potential benefits that Sprint might achieve as a potential purchaser of the spectrum, the Clearwire Board's ongoing efforts to explore spectrum sales, DISH's preliminary proposals in 2012 and 2013 seeking a sale, and the general economic interest of the Clearwire Board and Clearwire's management in increasing Clearwire's cash flows. In light of the possibility of a sale, I looked for contemporaneous evidence of what third parties may have been willing to pay for specific portions of Clearwire spectrum in 2012 and 2013. These included the following: Clearwire's efforts to solicit interest in its spectrum assets in late 2012;[191] a preliminary proposal for the purchase of approximately 11.5 billion MHz-POPs for gross proceeds of $2.2 billion made by

189. *See* CLWRDEL-01294232, DISHCLR00006964, DISHCLR00000852, and DISHCLR00004998 (DISH proposals seeking, among other things, payment of certain debt obligations, a $240M termination fee in the event of a failed spectrum purchase, limiting Clearwire's access to Sprint financing, seeking additional governance rights, and seeking purchase of spectrum assets unavailable for sale due to contractual obligations); CLWRDEL-01486872 (discussing Clearwire's determination that the DISH proposal was not actionable).

190. Equityholders' Agreement § 2.7(c) (requiring separate approval for specified transactions); May Investor Presentation, p. 24.

191. April Proxy, p. 31; CLWRDEL-00007410 (December 14, 2012 minutes describing outreach to potential counterparties).

Dish in August 2012 (the "August Dish Proposal");[192] a preliminary proposal for the purchase of 11.4 billion MHz-POPs for a gross purchase price of $2.46 billion made by Dish in December 2012 (the "December Dish Proposal");[193] and a preliminary proposal for the purchase of 5 billion MHz-POPs for a gross purchase price of $1.0 – $1.5 billion made by Verizon (the "Verizon Spectrum Proposal") in April 2013.[194]

90. Based on my review, I believe the December DISH Proposal, net of the estimated net present value of spectrum leases and tax losses, which DISH continued to pursue until at least March 2013, is the best evidence of the potential value as of the Appraisal Date of the proceeds from a sale of certain Clearwire spectrum assets not currently utilized in the SCC. The December DISH Proposal was the most actively negotiated.[195] It remained open longer than other proposals.[196] DISH was the most active potential buyer, and, though Clearwire ultimately determined it was not actionable, the December DISH Proposal results in the highest estimated total proceeds for Clearwire.

192. April Proxy, p. 19; CLWRDEL-01294232.
193. DISHCLR00006964 (December 12, 2012 proposal); DISHCLR00000852 (December 28, 2012 proposal).
194. CLWRDEL-01033336; June Proxy, p. S-32.
195. April Proxy, pp. 21-39 (describing negotiations with Dish and outreach efforts to potential counterparties for spectrum sale); June Proxy, p. S-32 (describing April Verizon proposal).
196. *Id.*

91. The following table reflects that economic value of the DISH proposal:

TABLE 2
December DISH Proposal

Item	Amount
Gross Proceeds[197]	$2,460
Estimated NPV Spectrum Leases[198]	($277)
Estimated Tax Leakage[199]	($200)
Estimated Net Proceeds	$1,983

92. The table below summarizes the inputs to Clearwire's Enterprise Value:

TABLE 3
Enterprise Value

Item	Amount
Present Value of Unlevered Cash Flows	$3,159
Present Value of Interest Tax Shield	$1,389
Present Value of NOLS	$620
Proceeds from a Sale of Spectrum Assets	$1,983
Enterprise Value	**$7,151**

93. I add Clearwire's estimates as of June 30, 2013 of cash and short term investments of $605 million and subtract total debt of $4.6 billion to calculate an equity value of $3.140 billion. I divide the equity value by the fully diluted Class

197. DISHCLR00006964; DISHCLR00000852 (reflecting gross value of DISH proposals).
198. DISHCLR00000852 (reflecting value of DISH proposal as $2.183B, net of estimated net present value of spectrum leases of $277M); CLWRDEL-00008781, at 8889 (April 23, 2013 Clearwire Board materials, reflecting estimated $277M NPV of spectrum leases).
199. Evercore June Fairness Opinion, pp. 6, 8 (reflecting estimated tax leakage per Clearwire Management Estimates as of December 2012).

A and Class B shares which results in an equity value per share of $2.13. In the event the Court were to find that no weight should be allocated to my estimate of the proceeds from a sale of spectrum assets, then the equity value per share would be $0.79.

VI. REASONABLENESS CHECKS ON FAIR VALUE CONCLUSION

94. In this section, I further examine the reasonableness of my valuation conclusion by analyzing (1) the prior sales of Clearwire shares and (2) the value of Clearwire if it were to enter bankruptcy. I demonstrate that my valuation conclusion falls within the range of these reasonableness checks.

A. Prior Sales of Clearwire Shares

95. Since December 2011 Clearwire and three of its significant shareholders (Google, Time Warner and Eagle River) have sold over 532 million Clearwire shares at prices below $3.00 per share. (*See* **Exhibit 7**.) In fact, the weighted average price per share for the over $1 billion in Clearwire shares sold from December 2011 through December 2012 was $1.89 (utilizing the reported blended price of $2.97 for the December 2012 Eagle River sale).[200] The individual and collected market behavior of well-informed parties during these periods is a

200. April Proxy, p. 22 ("The blended price of $2.97 per share was based upon a purported allocation by Eagle River of the purchase price of $2.00 per share of Class A Common Stock and $13.98 per share of Class B Common Stock and corresponding equity security in Clearwire Communications.").

useful and confirmatory check on my analysis of the value of Clearwire at the Appraisal Date.

B. Possibility of Bankruptcy

96. As an additional check on my valuation numbers, I also examined deposition testimony of certain Clearwire directors and officers regarding the advice given to the Special Committee and the Clearwire Board by Clearwire's restructuring advisor. I understand that Clearwire engaged Blackstone as a restructuring advisor beginning in 2011. Based on Blackstone's advice, the Special Committee determined that the $2.97 reflected in the December Agreement for all of the outstanding shares of Clearwire stock provided greater value than what the Special Committee and other Clearwire Board members thought was achievable in a bankruptcy.[201] This is also consistent with Clearwire's public statements to its shareholders.[202] At a February 15, 2013 Special Committee meeting, Blackstone provided analysis to the Special Committee and advised that Clearwire common stock could realize values between $0.18 and $1.04 per share in a bankruptcy.[203] Comparing the valuation of $2.13 per share derived from my

201. Stanton Deposition, pp. 308-311; Prusch Deposition, pp. 244-246, 251-254; Cochran Deposition, pp. 273-274; Hersch Deposition, pp. 298 (with errata corrections), 300; Schell Deposition, pp. 152, 272-274.
202. May Investor Presentation, pp. 33-34, 40, 44; May 6 Letter, pp. 3-4; May 13 Letter, pp. 3-4.
203. CLWRDEL-00008452, at 8452-53; Prusch Deposition, pp. 244-46; Hersch Deposition, p. 300.

analysis, my valuation is greater than the numbers articulated by Blackstone, which also lends support for the concerns of the Clearwire directors that the Clearwire common stock would not recover fair value – or any value at all – in a bankruptcy.[204]

VII. CONCLUSION

97. Based on the analysis presented above, I conclude that the fair value of Clearwire, as of July 9, 2013, was $2.13 per share including the proceeds from a possible partial sale of spectrum.

Bradford Cornell

September 25, 2015

204. Stanton Deposition, pp. 308-11; Prusch Deposition, pp. 251-54; Hersch Deposition, p. 298 (with errata corrections); Schell Deposition, pp. 152, 207, 272-74.