

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Application of
T-Mobile US, Inc. and Sprint Corporation

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) WT Docket No. 18-197
) ULS File No. 0008224209, et al.
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**REPLY OF CELLULAR SOUTH, INC. D/B/A C SPIRE
TO THE JOINT OPPOSITION OF
T-MOBILE US, INC. AND SPRINT CORPORATION**

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INTRODUCTION AND SUMMARY

The Applicants have chosen to file a Joint Opposition that merely repeats the unsubstantiated claims that the Proposed Transaction will produce enormous consumer benefits and intensify competition. In the process, they barely acknowledge the well-pled objections of a broad cross-section of local, regional and rural carriers (collectively referred to herein as “competitive carriers”) who have demonstrated the significant harmful effects that this merger would have on essential wholesale services. The Applicants also have failed to address or distinguish the binding precedents cited by competitive carriers – precedents that T-Mobile itself has invoked and endorsed in the past – showing that the conditions sought by the competitive carriers are necessary and appropriate. C Spire simply is asking the Commission to follow its own precedent by putting concrete conditions in place to guarantee that the vague assurances New T-Mobile offers to competitive carriers will be realized if the Commission permits the Proposed Transaction. As noted previously by C Spire, “Trust us!” is not an adequate public interest showing.¹

The Applicants inaccurately claim that opponents are attacking the proposed four-to-three merger “on the untenable thesis that such combinations *per se* harm consumers and competition.”² But, the challengers aren’t asserting a *per se* violation of the antitrust laws. Rather, they have shown that the particular characteristics of the post-merger wireless market would create a significant risk of competitive harm and coordinated oligopoly conduct. The

¹ Petition to Condition, or in the Alternative, Deny Any Grant of the Sprint/T-Mobile Transaction of Cellular South Inc., d/b/a C Spire, Sections II.D and III.C, filed Aug. 27, 2018, (WT Docket No. 18-197, ULS File No. 0008224209) (“Petition”).

² Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at 5, filed Sept. 17, 2018 (WT Docket No. 18-197) (“Joint Opposition”).

increased risk of coordination among and between the nationwide wireless carriers is self-evident when the number drops from four to three and all three have similar economic scale, resources and incentives. The record contains substantial credible evidence indicating that the Proposed Transaction will result in an unprecedented accumulation of spectrum, an alarming increase in market concentration, and a dangerous oligopoly market structure. While the aggregation of spectrum and assets might enable a benevolent New T-Mobile to increase capacity, improve quality, and lower prices, the Applicants have utterly failed to demonstrate that they would have the economic incentive or obligation to do so. To the contrary, generally-accepted economic theory establishes that the best profit-maximizing strategy in the post-merger wireless market structure will be for New T-Mobile to engage in coordinated conduct with the two other nationwide players.

Even if New T-Mobile were inclined to honor its non-binding commitments to wholesale partners **IF** the rosy, high-capacity, low-cost post-merger scenario it paints actually unfolds, there is absolutely no assurance New T-Mobile will realize these benefits. If any of the favorable post-transaction economic assumptions made by Applicants fail,³ New T-Mobile will have an even greater incentive to behave as an oligopolist. Whether by circumstance or design, the New T-Mobile – which will be nearly 70% controlled by the former German monopolist Deutsche Telekom – will act exactly like the old AT&T and Verizon, to the detriment of consumers and competitive carriers alike.

³ The Applicants assert numerous alleged pro-consumer and pro-competitive effects of the merger based upon various contested claims concerning the synergies to be achieved by merging the Applicants, the resulting increases in capacity and decreases in cost, the speed and breadth of New T-Mobile's 5G deployment, and the competitive response of other carriers, among other claims. *Compare* Joint Opposition, Section I to Petition to Deny of DISH Network Corporation, WT Docket No. 18-197, *passim* (filed Aug. 27, 2018) (“DISH Petition”).

The reasonable, pro-competitive conditions requested by C Spire should be accepted voluntarily by New T-Mobile or imposed by either the FCC or the Department of Justice (“DOJ”) as conditions to approval of the Proposed Transaction. Otherwise, the Application should be denied.

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Cellular South, Inc. d/b/a C Spire (“C Spire”), by its attorneys and pursuant to Section 1.939(f)⁴ of the rules and regulations of the Federal Communications Commission (the “FCC” or “Commission”), hereby submits its reply (“Reply”) to the Joint Opposition (“Joint Opposition”) of T-Mobile US, Inc. and Sprint Corporation filed with respect to the application (“Application”) seeking Commission consent to the proposed transfer of control (the “Proposed Transaction”) of the licenses, authorizations, and spectrum leases held by Sprint Corporation and its subsidiaries (collectively, “Sprint”) to T-Mobile US, Inc. (“T-Mobile”) (T-Mobile and Sprint, collectively, the “Applicants;” the proposed post-merger company is referred to as “New T-Mobile”). The following is respectfully shown:

⁴ See 47 C.F.R. § 1.939. This Reply is timely filed pursuant to the procedural schedule established by the Commission. See *Public Notice*, DA 18-240, released July 28, 2018.

I. THE RECORD, VIEWED AS A WHOLE, SUPPORTS THE RELIEF C SPIRE REQUESTS

C Spire made clear in its Petition that its primary concern arising out of the Proposed Transaction is that the reduction of nationwide carriers from four to three (and of CDMA carriers to zero within a short time frame) will have a substantial harmful effect on C Spire's ability to offer essential roaming services and other wholesale services to its customers.⁵ It is highly significant that many of the concerns expressed by C Spire have now been voiced by a broad cross-section of competitive carriers,⁶ representatives of competitive carriers,⁷ and public interest advocates.⁸ For example,

- C Spire averred that the Proposed Transaction is particularly troubling because it would result in the elimination of Sprint, which has been a critical roaming partner for competitive carriers such as C Spire.⁹ NTCA, which represents 850 rural incumbent local exchange carriers, many of whom also provide wireless and

⁵ See, e.g., Petition to Condition, or in the Alternative, Deny Any Grant of the Sprint/T-Mobile Transaction of Cellular South Inc., d/b/a C Spire, Sections II.D and III.C, filed Aug. 27, 2018, (WT Docket No. 18-197, ULS File No. 0008224209) ("Petition").

⁶ See, e.g., Petition to Deny of Union Telephone Company, Cellular Network Partnership, an Oklahoma Limited Partnership, Nex-Tech Wireless, LLC, SI Wireless, LLC filed August 27, 2018 ("Union et al. Petition"); Petition to Condition or Deny of Altice filed August 27, 2018 ("Altice Petition").

⁷ See, e.g., Petition to Deny of the Rural Wireless Association, Inc. filed August 27, 2018 ("RWA Petition"); Petition to Deny of NTCA - The Rural Broadband Association filed August 27, 2018 ("NTCA Petition"),

⁸ See, e.g., Petition to Deny of Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge, and Writers' Guild of America, West, Inc. filed August 27, 2018 ("Common Cause et al. Petition"); Petition to Deny of the Greenlining Institute filed August 27, 2018 ("Greenlining Petition"); Petition to Deny of the American Antitrust Institute filed August 27, 2018 ("AAI Petition").

⁹ Petition at 15.

- broadband services, echoes this concern, noting that “rural providers rely on their relationship with Sprint to offer a seamless mobile broadband product to rural customers,” and that “there are no assurances that New T-Mobile will do the same.”¹⁰
- C Spire pointed out that, as between Sprint and T-Mobile, Sprint has been the market leader in terms of its willingness to offer creative, attractive and reasonable roaming arrangements to competitive carriers.¹¹ The Rural Wireless Association, which represents a broad cross-section of independent non-nationwide wireless carriers and wireless carriers affiliated with rural telephone/broadband companies, resoundingly affirms this point. Its Petition indicates that Sprint routinely offers rural carriers “reciprocal, strategic roaming agreements at commercially reasonable rates” thereby establishing itself as a “partner critical to the provision of wireless services in rural America.”¹² In contrast, T-Mobile is described as offering competitive carriers one-sided roaming arrangements that are uneconomic.¹³
 - C Spire indicated that the Proposed Transaction would eliminate not one but two “mavericks” by according New T-Mobile the same benefits of scale and network scope that have caused the two largest carriers (AT&T and Verizon) to resist fair and reasonable roaming arrangements.¹⁴ The petition filed by Common Cause, Consumers Union, New America’s Open Technology Institute, Public Knowledge,

¹⁰ NTCA Petition at 1.

¹¹ Petition at 4.

¹² RWA Petition at 7.

¹³ Id. at Sections II.b and III.a.

¹⁴ Petition at Section II.C.

Writers' Guild of America, and West, Inc. likewise points out that "the Proposed Transaction would eliminate two disruptive forces that have taken on the larger incumbent providers...."¹⁵ In the final analysis, "the merged company is likely to settle in to the anticompetitive coordination so familiar in a concentrated market."¹⁶

- C Spire demonstrated that the Applicants' claims about their inability to compete effectively with AT&T and Verizon and to build out competitive 5G networks are blatantly inconsistent with prior public statements made by both companies.¹⁷ Other petitioners also point out that these assertions cannot be reconciled with prior public representations made by the Applicants.¹⁸
- C Spire highlighted in its Petition the adverse effects the merger would have on the MVNO market, and urged the Commission to adopt concrete enforceable conditions to address this concern.¹⁹ Altice, Inc., a facilities-based MVNO in 21 states, expresses the same concern that MVNOs will suffer substantial harms if New T-Mobile is not made subject to detailed transaction-specific conditions that protect both existing MVNO agreements and facilitate future agreements.²⁰
- C Spire expressed its serious concern that a reduction in the number of nationwide carriers from four to three would facilitate collusion and parallel pricing by the "Big Three" (AT&T, Verizon, and New T-Mobile) and provide a strong incentive for New

¹⁵ Common Cause et al. Petition at Section II.E.

¹⁶ Id.

¹⁷ Petition at 6-7.

¹⁸ See, e.g., Common Cause et al. Petition at Section III.A.1.

¹⁹ Petition at 22.

²⁰ Altice Petition at Sections I and III.

T-Mobile to avoid seeking to gain market share by cutting prices.²¹ The American Antitrust Institute concurs that “the merged firm would undoubtedly find that maintaining a competitive ‘peace’ with its rivals would be more profitable than trying to gain market share by competing aggressively on price, quality and innovation.”²²

The Commission is obligated to make its decision based on the record as a whole.²³ Here the record, viewed its entirety, clearly compels the Commission to address these critical wholesale-related issues raised by C Spire and many others. As it has done in the past, the Commission must impose appropriate conditions designed to protect the public interest if the Commission chooses to approve the Proposed Transaction.

II. PROTECTIVE CONDITIONS ARE NECESSARY TO SAFEGUARD ESSENTIAL WHOLESALE SERVICES

Significantly, the Applicants effectively concede that the Proposed Transaction serves the public interest only if it preserves and promotes roaming. Section E.4 of the Joint Opposition cites a laundry list of supposed benefits roaming partners will receive. The Applicants claim that New T-Mobile will continue the Applicants’ “long history of partnering with other carriers to further wireless deployment.”²⁴ They promise to provide “long-term roaming access to the robust New T-Mobile network on industry leading terms.”²⁵ They indicate that New T-Mobile

²¹ Petition at 12.

²² AIA Petition at 4.

²³ See, e.g., *AT&T Corporation v. FCC*, 86 F.3d 242, 247 (D.C. Cir. 1996) (citing 5 U.S.C. § 706(2)(E) (stating that “[u]nder the APA, we must set aside a Commission order if the record lacks “significant evidence”...considering the whole record”).

²⁴ Joint Opposition at 98.

²⁵ *Id.*

will “maintain T-Mobile’s and Sprint’s existing roaming arrangements,”²⁶ and allow roaming partners with existing roaming agreements with both companies “to determine which rates will govern their relationship with New T-Mobile.”²⁷ Finally, the Applicants indicate that “New T-Mobile will cooperate with rural carriers on their 5G roll out, including providing technical assistance and advice on 5G deployment.”²⁸ The obvious problem is that these assertions are vague and unenforceable. The terms “long-term,” “robust,” and “industry leading” are not quantifiable. The public interest mandate obligates the Commission to impose explicit conditions on any approval of the Proposed Transaction so that the Applicants’ assurances have the force and effect of law.

Incredibly, the Applicants actively oppose the relief that C Spire and others are seeking, arguing that the requested conditions are “unnecessary and unjustified,”²⁹ even though they provide neither binding commitments, nor econometric analyses to support this claim – and in spite of the fact that T-Mobile previously requested similar conditions on transactions with far less anti-competitive scope. As noted in C Spire’s Petition, T-Mobile itself filed a Petition for Conditions against a proposed transaction not long ago, taking the position that ensuring roaming partners are not harmed in a purchase transaction is consistent with Commission policy.³⁰ In that filing, T-Mobile asked the Commission to require the buyer, AT&T, to continue to allow the seller’s roaming partners to roam under the terms of the previous agreement “for a period of not

²⁶ *Id.* at 100.

²⁷ *Id.* at 98-99.

²⁸ Joint Opposition at 99.

²⁹ *Id.* at 101.

³⁰ Petition at 21 (*citing* T-Mobile USA, Inc. Petition for Conditions, WT Docket No. 14-144, at 9 (“AT&T–Plateau Wireless Petition”)) (filed Oct. 17, 2014)).

less than five years.”³¹ The Commission should be particularly skeptical when licensees talk out of both sides of their mouths in different pleadings to the Commission. In this instance, T-Mobile has offered absolutely no explanation as to why the result should be different now than the one it so recently advocated. The same Commission roaming rules – which T-Mobile claims now are adequate “to address the possibility that wireless industry consolidation might reduce the motivation to enter into a roaming agreement”³² – were in full force and effect in 2014 when T-Mobile found them to be inadequate and advocated for specific roaming conditions in the context of a merger.³³ If anything, the need for additional protection is even greater now than it was in 2014. There has been additional significant consolidation in the industry that greatly reduces the roaming options for competitive carriers and vastly increases the bargaining power of the nationwide carriers.

Ironically, many of the alleged benefits that the Applicants claim the Proposed Transaction will bring to rural Americans actually serve to exacerbate the adverse impact on the roaming market. The Applicants boast that “New T-Mobile will have an industry leading network and larger national footprint enabling it to be a very desirable alternative to AT&T and

³¹ *AT&T-Plateau Wireless Petition* at 9.

³² Joint Opposition at 102.

³³ T-Mobile’s opposition to the imposition of conditions also cannot be reconciled with the position it took in 2016 that, if the Commission’s decision to reclassify broadband internet as a Title II service was upheld, the agency should “promptly commence a proceeding to reclassify data roaming as a Title II service subject to the same standards as voice roaming, and promulgate new rules to ensure competitive access to this essential service.” *See* Comments of T-Mobile USA, Inc., WT Docket No. 16-137, at 24-25 (filed May 31, 2016). T-Mobile should not be heard to argue that C Spire is adequately protected by the existing rules when T-Mobile is on record in the recent past saying that those rules should be strengthened.

Verizon.”³⁴ As the Commission knows well, the serious problems smaller carriers experienced in seeking to secure fair and reasonable roaming arrangements from AT&T and Verizon were greatly increased when the largest carriers achieved near-nationwide footprints and, as a result, gained no new service territory when they entered into reciprocal roaming arrangements with smaller local or regional carriers. The result was that AT&T and Verizon became reluctant to enter into reasonable roaming agreements, and they used their market power to extract unfair concessions from roaming partners because these largest carriers with nearly nationwide footprints got little or no service benefit from reciprocal roaming.

The unwillingness of the largest nationwide carriers to enter into commercially reasonable roaming arrangements led to an extensive rulemaking proceeding related to roaming in which T-Mobile repeatedly took the position that protecting and promoting roaming arrangements was essential to promote and protect competition.³⁵ Indeed, according to T-Mobile, the Commission did not go far enough in its data roaming proceedings to ensure fair and reasonable roaming agreements.³⁶ As C Spire pointed out in its Petition, T-Mobile previously complained that carriers in control of “must-have” networks “possess the incentive and ability to establish anti-competitive and unreasonable [roaming] rates and terms as a method of raising

³⁴ *Id.* at 100.

³⁵ *See, e.g.*, Reply Comments of T-Mobile USA, Inc in WT Docket No. 05-265 filed August 20, 2014 at p.1 (serious roaming problems “are only worsening as the nation’s two largest providers [AT&T and Verizon] continue to consolidate and expand their spectrum holdings and market share”). This is exactly the concern C Spire has if the Commission allows T-Mobile to join the club of carriers with “must have” networks.

³⁶ *See Note 32 supra; see also* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, *Declaratory Ruling*, 29 FCC Rcd 15483 (2014).

their rivals' costs and diminishing their rivals' quality of service."³⁷ It is, therefore, alarming to competitive carriers when Applicants insist that roaming conditions are not necessary while asserting that New T-Mobile will operate on par with AT&T and Verizon.³⁸

Even if T-Mobile abides by its vague and unenforceable statements to honor existing Sprint roaming agreements – which is not at all assured – the threat to the roaming market posed by the Proposed Transaction will not be solved. As outlined above, multiple interested parties have filed comments showing that T-Mobile – unlike Sprint – has not been an eager, collaborative roaming partner willing to offer competitive carriers reasonable market rates and forward-looking agreements that include advanced technologies. C Spire knows this first hand, and T-Mobile's uncooperative attitude has only intensified since the Proposed Transaction was announced. In fact, although T-Mobile outlined a process by which it would meet with competitive carriers to discuss wholesale relationships post-merger, and even though C Spire specifically followed the process that T-Mobile set forth, T-Mobile has refused to meet with C Spire and certain other competitive carriers to have those conversations. To date, C Spire has been frozen out of any discussions with T-Mobile about the going-forward wholesale arrangements, perhaps as retribution for C Spire's exercise of its right to raise legitimate public interest issues in the Petition it filed. Upon information and belief, a number of other competitive carriers have had the same experience with T-Mobile following their filings. That

³⁷ Comments of T-Mobile USA, Inc., WT Docket No. 16-137, at 24-25 (filed May 31, 2016).

³⁸ The Applicants seek comfort in the fact that Alaska-based carrier GCI Communication Corp. ("GCI") has filed a letter in support of the Proposed Transaction. Joint Opposition, at 99. Notably, however, GCI is in the position of providing a breadth and depth of coverage in Alaska that larger nationwide carriers do not replicate, and thus, such carriers do indeed receive a reciprocal benefit which enables their customers to roam in areas in Alaska where they otherwise could not receive service.

this type of behavior is occurring while the transaction is pending approval is cause for concern that New T-Mobile will not, in fact, be a reasonable and willing roaming partner post-transaction.

The stark reality is that every existing Sprint roaming arrangement is, in the overall scheme of things, a short-term arrangement. Based on past performance and current behavior, competitive carriers and the Commission cannot expect New T-Mobile to offer suitable roaming and MVNO arrangements. The risk is particularly great with respect to roaming on 5G and other advanced service systems since these technologies often are not covered by existing agreements. If the Commission approves the transaction without strict, enforceable conditions, it will only make the wholesale market worse for competitive carriers and, by extension, their customers.

A. The Applicants' Empty Promises Must Be Reflected in Explicit Enforceable Conditions

The Joint Opposition fails to rebut the claims of C Spire³⁹ and others⁴⁰ that Sprint has been the low-cost provider of roaming and MVNO services to competitive carriers. This fact alone exacerbates the concern about the potential loss of Sprint as an independent carrier on the market. And, this loss is not adequately addressed by the Applicants' claim that roaming partners can pick and choose between the rates they receive from Sprint and T-Mobile.

First, absent an express condition that codifies this principle, the Applicants' offer must be considered non-binding and subject to modification or termination by New T-Mobile on a going forward basis.

³⁹ Petition at 12.

⁴⁰ See, e.g., Union et. al Petition at 39; NTCA Petition at 8-9.

Second, there are a broad array of roaming agreements in place in the industry, some of which are terminable at will, some of which are beyond their initial terms and now are month-to-month agreements, some of which are due to expire in the near term, some of which have major change clauses that would not allow them to survive a transfer of control, and some of which cover legacy services but not advanced services, etc. The reality is that being able to pick and choose between agreements, or opting to maintain an existing agreement, may not provide any meaningful benefit to a competitive carrier depending upon the term and terms of its current agreement.

That is why C Spire proposed a concrete condition to the Proposed Transaction that would require, “[a]t a minimum, that the existing agreements, or the selected agreement, must be allowed to remain in place for the remaining term of the agreement, or for four years after the consummation of the transaction, whichever is longer” and that “New T-Mobile also must forgo exercising any change of control or termination for convenience rights that would enable it to accelerate the termination of such agreements.”⁴¹ Notably, this request is consistent with a similar condition imposed by the Commission in the not-too-distant past.⁴²

Third, since the wireless market is at the relatively early stage of the transition to VoLTE and 5G, many current agreements do not adequately address the manner in which advanced

⁴¹ Petition at 22-23.

⁴² See in the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 at ¶ 178 (FCC conditioned approval of the Verizon/Alltel transaction on Verizon’s commitment to (1) honor existing Alltel roaming agreements; (2) offer each regional, small and/or rural carrier that has an existing roaming agreement to keep the rates of such agreement in force for the agreement’s full term; (3) allow each regional, rural, or small carrier to have the option to select which agreement to govern roaming traffic post-transaction; and (4) apply such selected rates for the full term of the agreement or four years from the closing date, whichever occurs later).

technologies will be treated and accommodated in the future. Maintaining existing agreements and allowing roaming partners to pick and choose between agreements does no good if the existing agreement does not fully address new technologies. That is why a specific condition obligating New T-Mobile “to enable requesting carriers to roam or resell on the combined Sprint/T-Mobile network using new technologies” is crucial to the public interest.⁴³ Sprint and T-Mobile attempt to sell the entire Proposed Transaction on the basis of the benefits of “5G.”⁴⁴ If such benefits only stay with New T-Mobile, and do not flow to competitive carriers and their customers – particularly those in rural areas – the vast consolidation of spectrum and resources by New T-Mobile is much more likely to harm consumers.

B. Accelerating the Dismantling of the Sprint CDMA Network Will Not Serve the Public Interest

Another glaring omission of the Joint Opposition is its failure to adequately address the serious concern lodged by C Spire and others⁴⁵ that the Proposed Transaction will accelerate the dismantling of the Sprint CDMA network, which is an essential roaming resource for many competitive carriers. The C Spire Petition pointed out that “[w]ith Verizon having announced its plans to shut down its CDMA network by the end of 2019, Sprint will have the only remaining nationwide CDMA network in the United States.” C Spire also noted that “Sprint has not announced a CDMA shutdown timeframe” and that “since Sprint has not yet moved to VoLTE,

⁴³ See Petition at 25.

⁴⁴ See generally, ULS File No. 0008224209, T-Mobile US, Inc. and Sprint Corporation Seek FCC Consent to the Transfer of the Licenses, Authorizations, and Spectrum Leases Held by Sprint Corporation and its Subsidiaries to T-Mobile US, Inc., and the Pro Forma Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held by T-Mobile US, Inc. and its Subsidiaries, Public Notice, DA 18-740 (rel. July 18, 2018) (“Public Interest Statement”).

⁴⁵ See, e.g., Petition of Union et al. at 2.

it would likely maintain its CDMA network for the foreseeable future but for the Proposed Transaction.” The Joint Opposition and the responses the Applicants have filed to the Commission’s information requests, do not contest these assertions. Rather, the Applicants yet again make vague assertions that are supposed to be comforting, while opposing any condition that would bind New T-Mobile in any way.

Specifically, the Applicants state that termination of the CDMA network “will vary by geography, but is not *expected to commence* until January 1, 2021.”⁴⁶ This language appears to have been carefully crafted to create the impression that the CDMA network will be available to roaming partners in many areas for a considerable period of time. But, as is often the case with this Proposed Transaction, T-Mobile sends a different message when speaking to investors. Rather than focusing on when the dismantling of the CDMA network is “expected to commence,” in T-Mobile’s analysts call on April 29, 2018, it focused on how quickly the transition will be completed, touting the fact that two-thirds of the Sprint CDMA sites (an estimated 35,000 sites) would be decommissioned by the end of 2021.⁴⁷ Given T-Mobile’s legal obligation not to provide its investors with misleading information, this public announcement to Wall Street of the intention of New T-Mobile to rapidly decommission CDMA sites means that the harm C Spire has identified is real and imminent.

New T-Mobile claims it will implement a seamless transition plan to migrate Sprint’s CDMA customers “*most likely* through the availability of VoLTE service” and that it will “work

⁴⁶ Joint Opposition at 98 (emphasis added).

⁴⁷ See Kelly Hill, *Key Takeaways from the Sprint/T-Mobile US Merger Call*, RCRWireless News, April 29, 2018, <https://www.rcrwireless.com/20180429/carriers/sprint-t-mobile-us-to-merge-tag6>.

with rural carriers as part of that process.”⁴⁸ For a variety of reasons, these representations do not adequately address the serious concerns that have been raised about the loss of access to the Sprint CDMA network.

First and foremost, C Spire has requested a condition that would require T-Mobile to keep the CDMA network in service for a minimum of five years after the closing.⁴⁹ A transition period of this duration is necessary in order to enable C Spire and other competitive carriers to effect a seamless transition of their own networks away from CDMA and to allow time for its customers to replace handsets so that they are capable of roaming on the New T-Mobile network. As the Commission knows, network upgrades are expensive and require time. It is both necessary and appropriate for carriers who operate in smaller markets and with smaller customer bases to make major infrastructure investments slightly later in time than the major carriers. Indeed, C Spire’s timetable for upgrading its network and migrating its customer base to new devices has been based in part on the reasonable expectation that its customers would be able to continue to roam on the Sprint CDMA network for a considerable period of time. The five-year transition period identified by C Spire is reasonable.⁵⁰

⁴⁸ *Id.* (emphasis added).

⁴⁹ Petition at 24.

⁵⁰ In the prior instance when AT&T was acquiring and proposing to dismantle AllTel’s CDMA network, competitive carriers had other service options (e.g., Verizon and Sprint) to consider and a shorter commitment period for the buyer to maintain CDMA service was reasonable. *See In the Matter of Applications of AT&T Inc. and Atlantic Tele-Network Inc., Memorandum Opinion and Order*, 29 FCC Rcd 13670, ¶ 96 (2013) (obligating AT&T to continuing offering CDMA service for a period of at least 18 months subsequent to the closing of the transaction). Because the New T-Mobile CDMA network will be the last existing nationwide CDMA network for competitive carriers to access, the five-year period requested by C Spire is appropriate.

Second, as is the case with every assurance that the Applicants offer to the Commission and to the competitive carriers, the representations with respect to the CDMA network transition are exceedingly vague. For example, the Applicants indicate that the dismantling of the CDMA network is “not expected to commence until January 1, 2021.”⁵¹ This is not a commitment, but an estimate which can easily change (and likely will, considering New T-Mobile’s stated intention to eliminate the CDMA network “as soon as possible” and its representation to analysts that two-thirds of the CDMA network will be decommissioned by the end of 2021).

Accordingly, competitive carriers – and their customers – cannot rely on this estimate. This is particularly true in rural areas, where services such as emergency access may be critically impaired if the Sprint CDMA network is eliminated before customers are able to access other options. T-Mobile indicates elsewhere in the Joint Opposition that the transition of the Sprint network away from CDMA “will be similar and utilize the expertise gained from the MetroPCS transition.”⁵² And, the Applicants point out that certain aspects of the MetroPCS transition took place “ahead of schedule.”⁵³ Since New T-Mobile is unwilling to give the Commission or the competitive carriers any firm time frame during which it will commit to maintain CDMA infrastructure, there is a serious risk that rural consumers across the country will suffer a devastating loss of roaming capabilities if the Proposed Transaction is approved without conditions.

Third, the Applicants ignore the troubling and uncontested fact that, because competitive carriers face the imminent loss of the Verizon CDMA network as a roaming option, the Proposed

⁵¹ Joint Opposition at 98.

⁵² *Id.* at 52.

⁵³ *Id.*

Transaction will give New T-Mobile a monopoly on the provision of nationwide CDMA roaming options after 2019 and a free hand to harm those competitive carriers with which it competes by shutting down Sprint's CDMA network whenever it chooses. The Applicants claim in the Joint Opposition that the increased network capacity and lower costs associated with the merger will give New T-Mobile the economic incentive to reduce wholesale prices and enter into favorable roaming and MVNO arrangements with competitive carriers in order to load its network.⁵⁴ Again, however, this representation is at odds with assurances made to analysts that New T-Mobile is committed to paying down the debt it is taking on to do the deal.⁵⁵ Since New T-Mobile will be competing for retail customers in the markets served by C Spire and other competitive carriers, New T-Mobile will have a powerful economic incentive to leverage its power against C Spire and other competitive carriers. Indeed, it is more likely that New T-Mobile will increase its market share by taking customers away from competitive carriers than from either AT&T or Verizon. If the Commission fails to provide the reasonable wholesale protections C Spire is seeking in its Petition, the Commission will have given New T-Mobile the means (and incentives) to take actions that will further reduce competition in the wireless market.

C Spire understands and appreciates the fact that the Commission welcomes advanced technologies and wants to encourage the proliferation of 5G services. So does C Spire. But, the Commission also must determine whether the Proposed Transaction will serve the public

⁵⁴ Joint Opposition at 4; *see also* Public Interest Statement, Appx. C, Declaration of G. Michael Sievert, President and Chief Operating Officer, T-Mobile US, Inc., at ¶ 21.

⁵⁵ *See, e.g.*, Nina Trentmann and Ezequiel Minaya, *Deutsche Telekom Expects Debt Repayment if T-Mobile Buys Sprint*, The Wall Street Journal, May 1, 2018, <https://blogs.wsj.com/cfo/2018/05/01/deutsche-telekom-expects-debt-repayment-if-t-mobile-buys-sprint/>.

interest. Under the above-noted circumstances, the Commission cannot make the requisite public interest finding that a grant of the Application would serve the public interest absent concrete assurances that the Sprint CDMA network will be maintained for a sufficient period of time to protect the customers of Sprint's roaming partners. The condition proposed by C Spire is reasonable, necessary, and appropriate.

In sum, the Applicants consistently minimize, intentionally mischaracterize, or simply disregard well-articulated concerns expressed by C Spire and others regarding the significant adverse impact that the Proposed Transaction will have on the ability of competitive carriers to access essential roaming services for their customers.⁵⁶ The record shows a clear consensus among Petitioners similarly situated to C Spire that, if the Proposed Transaction is approved without appropriate protections, commercially reasonable roaming rates and existing roaming agreements are at risk. As has been the Commission's – and competitive carriers - painful experience with AT&T and Verizon, the increased market power of a New T-Mobile will threaten smaller carriers' and customers' access to wholesale services once the wireless marketplace is consolidated from four to three national providers.⁵⁷

⁵⁶ The Applicants completely mischaracterize a brief tweet by Eric Graham, an officer of C Spire, when the transaction was announced. *See* Joint Opposition, at 99, n.372. Mr. Graham noted, as C Spire does in its Petition, that Sprint has been “an ally of mid-sized and smaller carriers” and noted the possibility that a combined T-Mobile and Sprint “*might* benefit . . . customers of other competitive wireless carriers.” However, Mr. Graham expressly reserved judgment pending “learning more about the proposed transaction.” *See* <https://twitter.com/EricBGraham/status/991006614432960512> (emphasis added). What he has learned is that T-Mobile persists in its previously demonstrated unwillingness to offer any meaningful assurances to demonstrate that New T-Mobile also will be an ally of competitive carriers, and, accordingly, consumers. It is now clear that consumer benefits will only occur with the adoption of C Spire's proposed conditions. Hence, the C Spire Petition.

⁵⁷ Union et al. Petition at 40 (“The most powerful competitive lever held by large carriers over small ones is the roaming relationship.... [W]ithout access to a nationwide roaming agreement

These concerns are compounded with the removal of Sprint from the market as a roaming partner and the lack of any enforceable commitment on the part of the Applicants to honor existing roaming agreements.⁵⁸ The record echoes the shared experience of various rural roaming partners that Sprint is the only nationwide carrier that has offered acceptable roaming rates.⁵⁹ Additionally, many competitive carriers elaborate that T-Mobile not only fails to offer commercially reasonable rates, but refuses to enter into reciprocal roaming agreements altogether.⁶⁰ As it stands, the record viewed as a whole provides no evidence that the Proposed Transaction will promote reasonable roaming agreements or protect the customers who benefit from them. Accordingly, the conditions sought by C Spire are required to protect the public interest.

C. The Joint Petition Fails to Establish that the Proposed Transaction will Benefit, Rather than Harm, MVNOs

The response of the Applicants to the claim that the Proposed Transaction will adversely affect the MVNO market suffers from the same shortcomings as their roaming response.

on reasonable terms, and a without a commitment not to restrict customers from roaming, there is no viable business for small rural carriers.”)

⁵⁸ See, e.g., Union et al. Petition at 25 (discussing that the Application makes no binding commitments to offset any anticompetitive effects that would preserve existing roaming agreements or the ability to enter into future roaming commitments).

⁵⁹ See, e.g., NTCA Petition at 8-9 (“The largest providers control the roaming market and specific to this transaction, the loss of Sprint as a roaming competitor would prove devastating in rural markets.”); RWA Petition at 11, (“T-Mobile refuses to enter into reciprocal roaming agreements with RWA members...the only nationwide carrier willing to offer such rates on commercially reasonable terms is Sprint”); see also Union et al. Petition at 39 (“Sprint has been a much better roaming partner than other carriers, and its willingness to support MVNOs has had salutary effects on competition and consumer choice.”).

⁶⁰ RWA Petition at 12 (“T-Mobile has been slow or unwilling to adopt VoLTE roaming agreements with small, rural carriers.”).

The Applicants claim that “New T-Mobile’s additional network capacity and lower per unit costs will create an incentive for the combined company to lower wholesale prices to MVNOs in order to ensure that the new network capacity is not wasted by sitting idle.”⁶¹ In essence, they are asking the Commission to rely upon “basic economic principles of supply and demand” rather than on enforceable merger conditions to guard against anti-competitive effects of the merger on the MVNO market. This despite the fact that T-Mobile has specifically noted that it is actually not open to reaching MVNO agreements with certain providers.⁶²

The problem for the Applicants is two-fold. First, the ability of the Applicants to achieve the synergies they claim, and the promised speed, capacity and cost gains, is hotly contested.⁶³ Second, the verbal concessions New T-Mobile offers to protect MVNOs – like those offered to roaming partners – are vague and unenforceable.⁶⁴ Interested parties with knowledge of the MVNO market seriously question (1) the ability of MVNOs to successfully mitigate the anti-competitive effects of the merger⁶⁵ and (2) the uncertainty of current and future MVNO

⁶¹ Joint Opposition at 88.

⁶² Charter Communications, Inc. Response to General Information and Document Request at 4, WT Docket No. 18-197, filed October 19, 2018.

⁶³ DISH Petition, *passim*.

⁶⁴ *Id.* at 48 (“The Applicants also do not explain what it would take to migrate MVNO and prepaid customers from T-Mobile to the New T-Mobile network, as they have proposed for the twenty million plus MVNO customers on Sprint’s network.”); Altice Petition at 16 (“T-Mobile and the New T-Mobile have made no tangible commitments regarding meaningful support for current MVNO partners.... the concerns of Altice are magnified in view of T-Mobile’s hostile statements against MVNOs... “Without actual commitments from the new T-Mobile to provide its MVNO partners with access to...the New T-Mobile, and durable wholesale terms, including long-term renewals, the competitive impact of these MVNO partners will not exist and cannot be considered by the Commission.”); Petition to Deny of Console Enterprises, at 4, filed Aug. 27, 2018 (WT Docket No. 18-197).

⁶⁵ *See, e.g.*, Common Cause et al. Petition at 12-17.

agreements with a New T-Mobile.⁶⁶ The Applicants also ignore the obvious fact that New T-Mobile will have a powerful economic incentive to gain as much customer share from MVNOs as possible. This is of particular concern because Sprint and T-Mobile are the most significant competitors in the prepaid market, which is a popular market for MVNOs. The likely pressure on New T-Mobile to gain market share will drive New T-Mobile to take customers away from MVNOs, which will be easier than taking market share from either AT&T or Verizon. The simplest way for New T-Mobile to take customers from MVNOs will be to eliminate the agreements that allow MVNOs to operate on New T-Mobile's network. This incentive weighs against New T-Mobile's hollow assurances regarding its treatment of MVNOs going forward.

The Applicants have managed to attract limited words of support from a small number of MVNOs which the Applicants claim "expressly confirms" the benefits of the merger.⁶⁷ They repeatedly cite the support of TracFone to which they give great weight since it is the largest MVNO. But, there is less to the TracFone support than the Applicants contend.⁶⁸ While TracFone expressly opposes any requirement that the Applicants be obligated to divest spectrum as a condition of the merger, TracFone indicates that it "does not have a strong view" with respect to the other MVNO-related conditions that have been requested by opponents of the transaction.⁶⁹ Put another way, TracFone has raised no objection to the MVNO conditions requested by C Spire.

⁶⁶ See Altice Petition at 8-9 ("Altice has serious concerns about whether New T-Mobile will, over time, offer the same collaborative partnership with Altice as Sprint has offered.").

⁶⁷ See Joint Opposition at 92.

⁶⁸ See *id.*

⁶⁹ See Comments of TracFone Wireless Inc., at 2, filed Sept. 13, 2018 (WT Docket 18-197).

C Spire also notes that the comments of all four of the “supporting” MVNOs were filed after the initial August 27 date for interested parties to comment on the Proposed Transaction. This raises the possibility that some or all of these MVNOs were negotiating with the Applicants and seeking some concessions or assurances in exchange for their support. There is nothing wrong with such agreements *per se*, but in seeking to evaluate the weight to be given to these supporting statements, the Commission should ascertain whether any consideration, direct or indirect, has been promised or received by these commenters in connection with their statements of support. To this end, the Commission should request and review all communications among and between Sprint, T-Mobile and these MVNOs between the date when the merger was announced to the public (on or about April 29, 2018) and the present. This also will enlighten the Commission, and other interested parties, as to the kinds of agreements, commitments and concessions the Applicants are willing to enter into with MVNOs.

III. IN THE ABSENCE OF STRUCTURAL SAFEGUARDS, THE PROPOSED TRANSACTION MUST BE DENIED

The Applicants launch a “battle of the experts” in which they seek to address and rebut the competitive analyses that have been filed by opponents of the Proposed Transaction.⁷⁰ For the most part, these analyses start with the assumption that New T-Mobile will, in fact, invest the money it claims it will invest (\$40 billion), undertake the 5G transition it promises, and build out in the places and on the timeframe that it mentions.⁷¹ And, the Applicants proudly state that

⁷⁰ See Joint Opposition at Sections F, G.

⁷¹ *Id.* at ii.

“[n]o petitioner seriously challenges that the proposed New T-Mobile network will deliver transformative increases in capacity, speed, and coverage to the public.”⁷²

The Applicants’ boast misses the point. What if, after the merger, T-Mobile decides not to invest \$40 billion in a proposed 5G network? What if the merger-specific synergies the Applicant’s claim – many of which are based on as yet unproven 5G technology – don’t materialize? What if New T-Mobile decides to continue focusing on providing service in major population centers and continues to ignore buildouts in rural areas, effectively ceding high-cost, less-populated areas to AT&T and Verizon? What if it decides to raise retail prices since the low-cost service provider, Sprint, is no longer putting downward pressure on subscriber and wholesale prices? What if New T-Mobile seeks to increase its market share by withholding reasonable wholesale agreements from competitive carriers and MVNOs as a strategy to force them out of business and acquire their customers? The unconditional grant the Applicants are seeking would allow New T-Mobile to do any or all of these things.

The Commission cannot disregard these risks. The post-merger market that the Applicants seek will have only three dominant players of roughly equal size competing for customers in a mature market where the demand for the product is inelastic.⁷³ In these circumstances, economic theory indicates that the best profit-maximizing strategy is to act in parallel with other members of the oligopoly by increasing prices in a coordinated fashion rather

⁷² See Joint Opposition at i. Though, this comment ignores the fact that while a merger of AT&T and Verizon would also ‘deliver transformative increases in capacity, speed and coverage to the public,’ it does not necessarily make such a merger a good idea.

⁷³ Petition at 5.

than seeking to increase market share by competing on price.⁷⁴ Faced with credible evidence from experiences in other countries clearly demonstrating that increased industry concentration reduces innovation and competition in the wireless sector, the Applicant’s demur, finding “little point in belaboring or rebutting the examples offered by petitioners.”⁷⁵ In the final analysis, despite what the Applicants claim, it stretches the bounds of reality to truly believe an economic analysis which claims that there is no greater risk of collusion, and no adverse impact on competition, when the number of nationwide wireless carriers falls from four to three.

Properly viewed, the record establishes that New T-Mobile’s clearest path to financial success in a post-transaction market with it, AT&T, and Verizon, is through parallel pricing, not price competition. The synergies of the Proposed Transaction and alleged capabilities of New T-Mobile are overstated. And, the Applicants cannot credibly claim that they will spend the money and build the network they promise if they truly believe that AT&T and Verizon will lower prices and accelerate and intensify their 5G deployments to remain competitive.⁷⁶ Nor, should the Commission believe that “large traditional broadband providers are likely to respond to New T-Mobile’s market entry by lowering their prices and improving their services to meet this new competitive threat.”⁷⁷ In a three-player market, price collusion is the expected outcome – not price competition. The result: while recasting their “Trust us!” argument for lower prices in the future, the Applicants actually reveal how New T-Mobile will make more profit by mirroring competitors’ pricing structures.

⁷⁴ *Id.*

⁷⁵ Joint Petition at 22-23.

⁷⁶ Joint Opposition at iv, 7.

⁷⁷ *Id.* at 70.

C Spire demonstrated in its Petition that both T-Mobile and Sprint have been willing in the past to make statements in order to position themselves in the most favorable light (particularly in front of Wall Street).⁷⁸ That is exactly what Applicants are doing in this proceeding in an effort to gain quick approval of the Proposed Transaction. However, the Commission must bear in mind that it will not have the opportunity to unwind the largest wireless transaction in its history – once Sprint and T-Mobile are combined, there will be a three-entity oligopoly. To that end, the best course for the Commission is not to trust the self-interested claims and “promises” made by Applicants – but to make sure such claims and promises have teeth through the adoption of binding commitments to ensure the Applicants abide by them in the future. Competitive carriers and their consumers cannot be left to the whims of New T-Mobile, which will have the incentive and ability to act in an anti-competitive fashion.

Indeed, since Applicants do not retract their earlier admission that the goal of New T-Mobile in the long run is to maximize its profits and increase shareholder value,⁷⁹ the Commission must guard against the risk of New T-Mobile consummating the transaction but failing to deliver the benefits it promises. Either the Commission should deny the transaction, or it must adopt meaningful, enforceable conditions that will serve the public interest. The structural conditions asked for by C Spire would do exactly that.

IV. CONCLUSION

For the foregoing reasons, at a minimum, the Commission must impose appropriate conditions on any grant of the Proposed Transaction as it has done in past merger transactions which raise concerns of this nature. Specifically, C Spire seeks the following conditions to

⁷⁸ Petition at 5-11.

⁷⁹ Petition at 4.

mitigate the anti-competitive harms that would result from the Proposed Transaction: (1) New T-Mobile must commit to maintain any and all existing roaming and MVNO agreements with every competitive carrier with which it has such an arrangement (and to apply that agreement to all traffic exchanged with the New T-Mobile on any network that New T-Mobile provides services over) through the term of the agreement, or four years after the close of the Proposed Transaction, whichever is later; (2) New T-Mobile must commit to maintain and operate Sprint's CDMA network, in substantially the same manner in which it now operates, for a minimum of five years after consummation of the Proposed Transaction; and (3) New T-Mobile must commit to enable requesting carriers to roam or resell on the combined Sprint/T-Mobile network using new technologies.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In re Applications of)	
)	
T-Mobile US, Inc. and Sprint Corporation)	WT Docket No. 18-197
)	
)	ULS File No. 0008224209
)	
)	
_____)	

**DECLARATION OF ERIC GRAHAM
IN SUPPORT OF THE REPLY OF CELLULAR SOUTH, INC. D/B/A C SPIRE
TO THE JOINT OPPOSITION OF
T-MOBILE US, INC. AND SPRINT CORPORATION**

I, Eric Graham, declare under penalty of perjury the following is true and correct:

1. I am the Senior Vice President, Strategic Relations at Cellular South, Inc. d/b/a/ C Spire.
2. I am familiar with the exact contents of the foregoing “Reply of Cellular South, Inc. D/B/A C Spire to the Joint Opposition of T-Mobile US, Inc. and Sprint Corporation.”
3. Any facts stated therein of which the Federal Communications Commission may not take official notice are true and correct to the best of my knowledge, information, and belief.

Executed on October 31, 2018



CERTIFICATE OF SERVICE

I, Carolyn Mahoney, hereby certify that on the 31st day of October, 2018, I caused a true and correct courtesy copy of the foregoing Reply to be sent via electronic mail or first class mail to the following:

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