

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re Application of)	
)	
T-Mobile US, Inc. and Sprint Corporation)	WT Docket No. 18-197
)	
For Consent to Transfer Control of)	ULS File No. 0008224209, et al.
Licenses and Authorizations)	

**REPLY OF SPOTLIGHT MEDIA CORPORATION AND
BUFFALO-LAKE ERIE WIRELESS SYSTEMS CO., LLC d/b/a BLUE WIRELESS**

Carl W. Northrop
E. Ashton Johnston
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W.
Suite 1011
Washington, DC 20036
Tel: (202) 789-3120
cnorthrop@telecomlawpros.com
ajohnston@telecomlawpros.com

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EXECUTIVE SUMMARY

The Proposed Transaction seeks Commission approval of a horizontal merger that, if allowed, would (a) eliminate one of four nationwide wireless service providers, (b) accelerate the dismantling of the only remaining nationwide CDMA network that serves as a critical roaming resource for rural and regional carriers; (c) remove the low cost provider of retail and wholesale services from the marketplace; and (d) create a wireless oligopoly in which the merged Sprint/T-Mobile entity, “New T-Mobile,” has the scale, scope, and economic incentive to engage in collusive behavior with the other two dominant nationwide service providers. The transaction poses all of the serious threats to the wholesale roaming market that both Sprint and T-Mobile railed against in the past when they urged the Commission to place meaningful restrictions on AT&T and Verizon once they were allowed to assemble “must-have” networks that were an essential input for smaller competitive carriers.

The record clearly shows that T-Mobile and Sprint have failed to satisfy their burden of proving by a preponderance of the evidence that the Proposed Transaction will serve the public interest, convenience, and necessity. The Applicants well understand the importance of roaming, and there can be no doubt that harms to consumers and competition, in both the retail and wholesale mobile wireless communications markets, would be direct and substantial following further consolidation resulting in the removal of Sprint from the marketplace. Yet the Applicants make only vague, unsupported, and now hotly contested claims, with promised benefits that have been shown to be unverifiable and, ultimately, illusory.

Ultimately, the Applicants fail to overcome compelling evidence that the competitive marketplace for mobile voice and data service in the United States would be permanently and adversely altered by a grant of the Proposed Transaction.

Spotlight Media Corporation and Buffalo-Lake Erie Wireless Systems Co., LLC (collectively, “Blue Wireless”), a competitive facilities-based provider of mobile voice and data services that has a reciprocal roaming with Sprint, urge the Commission, should it approve the Proposed Transaction, to do so in a manner that protects and promotes the public interest by adopting reasonable conditions, consistent with the Commission’s prior approval of proposed transactions and with T-Mobile’s own unequivocal views, to protect and promote competition. Specifically, the Commission must condition any approval upon the following commitments by New T-Mobile:

First, as T-Mobile itself has advocated in the past, reasonable, objective benchmarks are needed to ascertain whether a carrier is indeed offering commercially reasonable roaming arrangements.

Second, New T-Mobile must keep the Sprint CDMA network in service for at least five years following consummation of the Proposed Transaction, ensuring that consumers are not at risk of losing access to critical wireless services.

Third, upon New T-Mobile’s shut down of the Sprint CDMA network, if there is no roaming agreement in place between New T-Mobile and any third party with whom Sprint had a roaming agreement as of June 15, 2018, New T-Mobile must provide such third party the option of entering into a roaming agreement containing terms and conditions identical to those in its roaming agreement with Sprint, or

containing terms and conditions equivalent to or better than those then in place between New T-Mobile and AT&T for 4G LTE and 5G traffic, pending the negotiation of an agreement pursuant to the four benchmarks.

Fourth, New T-Mobile must maintain all existing roaming agreements with every competitive carrier with which Sprint has such an agreement, and require that any such arrangement apply to all traffic exchanged with New T-Mobile on any network over which it provides service.

Fifth, New T-Mobile must forgo exercising any change of control or termination for convenience rights in a roaming agreement that would enable it to alter any rate, term, or condition in, or to accelerate the termination of, any such agreement.

Finally, New T-Mobile must commit to negotiate in good faith, at rates no higher than currently offered by either Sprint or T-Mobile to an existing roaming entity or MVNO as of the closing date of the Proposed Transaction, and consistent with the four benchmarks, existing and new technology wholesale arrangements with requesting carriers for roaming and MVNO arrangements (including 4G, 4G VoLTE, IoT (including NB-IoT and 5G), in order to allow requesting carriers the ability to offer nationwide 4G and 5G services.

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Spotlight Media Corporation and Buffalo-Lake Erie Wireless Systems Co., LLC d/b/a Blue Wireless (collectively, “Blue Wireless”), by their attorneys and pursuant to Section 1.939(f) of the rules of the Federal Communications Commission (“Commission”) and the Commission’s Public Notice, DA 18-240 (rel. July 28, 2019), hereby submits Blue Wireless’s reply to the Joint Opposition of T-Mobile US, Inc. and Sprint Corporation (the “Joint Opposition”) requesting Commission consent to a proposed transfer of control of the licenses, authorizations, and spectrum leases (the “Proposed Transaction”) held by Sprint Corporation and its subsidiaries (collectively, “Sprint”) to T-Mobile US, Inc. (“T-Mobile,” and collectively with Sprint, the “Applicants”). The following is respectfully shown:

I. INTRODUCTION

The Proposed Transaction seeks Commission approval of a horizontal merger that, if allowed, would (a) eliminate one of four nationwide wireless service providers, (b) accelerate the dismantling of the only remaining nationwide CDMA network that serves as a critical roaming resource for rural and regional carriers

(collectively, “competitive carriers”); (c) remove the low cost provider of retail and wholesale services from the marketplace; and (d) create a wireless oligopoly in which the merged Sprint/T-Mobile entity – which the Applicants refer to as New T-Mobile – has the scale, scope, and economic incentive to engage in collusive behavior with the other two dominant nationwide service providers: AT&T and Verizon. The transaction poses all of the serious threats to the wholesale roaming market that both Sprint and T-Mobile railed against in the past when they urged the Commission to place meaningful restrictions on AT&T and Verizon once they were allowed to assemble “must-have” networks that were an essential input for smaller competitive carriers.

The standard of review applicable to the Commission’s consideration of the Application is whether the Proposed Transaction will serve the public interest, convenience, and necessity.¹ If the Proposed Transaction presents both positive and negative potential outcomes, the Commission must employ “a balancing test weighing” the harms against the benefits.² In particular, the Commission must balance “whether the [Proposed Transaction] is likely to generate verifiable, transaction-specific public interest benefits” against whether it “could result in public interest harms by substantially frustrating or impairing the objectives and implementation of the . . . Act or related statutes.”³ Ultimately, the Applicants “bear

¹ 47 U.S.C. §§ 214(a), 310(d). *See, e.g., Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorization and Modify a Spectrum Leasing Arrangement*, 25 FCC Rcd 8704, ¶22 (2010) (“AT&T/Verizon MO&O”).

² *See AT&T/Verizon MO&O* at ¶ 22 (and cases cited therein).

³ *Id.*

the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”⁴

The Applicants have failed to satisfy their burden. The record, considered in its totality, makes plain that harms to consumers and competition, in both the retail and wholesale mobile wireless communications markets, would be direct and substantial. In contrast, the promised benefits have been shown by multiple commenters to be unverifiable and, ultimately, illusory. The relevant marketplace for mobile voice and data service in the United States would be permanently and adversely altered by a grant of the Proposed Transaction, which would result in unprecedented industry consolidation.

With the elimination of Sprint, the four current nationwide carriers would become three; the two current nationwide carriers offering CDMA-based services (Verizon and Sprint) would become one (and, soon, none), and the last independent, nationwide 4G LTE carrier – which has been shown to be the low cost provider of wholesale roaming services – would be eliminated. The record clearly shows that Sprint’s roaming partners, and their customers who roam on Sprint’s network, would be directly and adversely harmed by any grant of the Proposed Transaction that fails to address and rectify the substantial concerns raised in this proceeding – concerns which the Applicants entirely disregard in their Joint Opposition, in contradiction of their own prior expert declarations. As T-Mobile has stated in verified pleadings to the Commission, “mobile wireless consumers have come to expect to be able to use their devices for mobile data service wherever they might

⁴ *Id.*

be, a trend that will only continue as more mobile consumers adopt smartphones and increasingly rely on mobile data in their everyday business and personal lives.”⁵ Should the Commission approve the Proposed Transaction, it must do so in a manner that protects and promotes the public interest by conditioning any such approval with enforceable commitments by New T-Mobile.

II. BLUE WIRELESS IS AN INTERESTED PARTY

Blue Wireless has a legitimate, cognizable interest in this proceeding because it will suffer harm of a direct and tangible nature if the Proposed Transaction is approved without the imposition of the protective, transaction-specific conditions that Blue Wireless and other competitive carriers are seeking.

Blue Wireless is a competitive facilities-based provider of mobile voice and data services in markets in western Pennsylvania and New York.⁶ Blue Wireless competes directly with Verizon, AT&T, T-Mobile, and Sprint for retail customers within its service areas, substantial portions of which are rural. As the Commission has properly recognized in the past – and as both Sprint and T-Mobile have

⁵ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc. (filed May 27, 2014) (“T-Mobile Roaming Petition”), at 7.

⁶ Spotlight Media Corporation (“Spotlight”) holds broadband PCS licenses covering markets in Pennsylvania and New York (Call Signs KNLG725, KNLG727, KNLG728, KNLG731, KNLG735, WQCS395, WQCS396, WQCS397, WQCS398, WQHG455, and WQHG456), in addition to fixed point-to-point microwave licenses for numerous locations throughout the United States and 600 MHz Band licenses granted in 2017. Spotlight has entered into spectrum leasing and management arrangements with its commonly owned affiliate Buffalo-Lake Erie Wireless Systems Co., LLC d/b/a Blue Wireless to operate its network.

acknowledged⁷ – wireless customers need and expect wide-area or nationwide coverage.⁸ As a result, Blue Wireless absolutely depends upon roaming arrangements with one or more of the nationwide carriers in order to survive as a facilities-based regional, local, and rural market competitor. Because Blue Wireless has operated as a CDMA carrier, it initially found it necessary to reach roaming agreements with the nationwide CDMA carriers: Verizon and Sprint. Now that Blue Wireless is making a transition to LTE and, ultimately, 5G services, it also briefly explored potential roaming arrangements with T-Mobile.

Like numerous other parties in this proceeding,⁹ Blue Wireless has found it increasingly difficult to enter into fair and reasonable roaming agreements with the

⁷ See T-Mobile Roaming Petition at 3-4 (competitive carriers have no choice but to enter into roaming agreements with nationwide carriers in order to “provide consumers with the nationwide coverage they demand.”). See *id.* at 2 (“data roaming is (and will remain for the foreseeable future) essential to the provision of nationwide mobile data services”). See also WT Docket No. 05-265, Reply Comments of Sprint Corporation (filed August 20, 2014) (“Sprint Roaming Reply”), at 2 (agreeing with T-Mobile that competitive carriers must enter into roaming agreements with nationwide carriers “to provide consumers with the nationwide coverage they demand”).

⁸ See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Declaratory Ruling, 29 FCC Rcd 15483, ¶ 2 (WTB 2014) (“*Roaming Declaratory Ruling*”) (citing *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 15 (2011) (“*Data Roaming Order*”) (“As data services increasingly become the focus of the mobile wireless services, consumers increasingly expect their providers to offer competitive broadband data services, and the availability of data roaming arrangements can be critical to providers remaining competitive in the mobile services marketplace.”).

⁹ See, e.g., WT Docket No. 18-197, Union Telephone Company, Cellular Network Partnership, Nex-Tech Wireless, L.L.C., Si Wireless LLC Petition to Deny (filed Aug. 27, 2018) (“*Union et al. Petition*”), at 39; Rural Wireless Association, Inc. Petition to Deny (filed Aug. 27, 2018) (“*RWA Petition*”), at 8; NTCA-The Rural Broadband Association Petition to Deny (filed Aug. 27, 2018) (“*NTCA Petition*”), at 9. See also *Union et al. Petition* at 40 (“The most powerful competitive lever held by large

major carriers as their coverage has become near-nationwide. Prior to the mega-consolidation of carriers that created today's national must-have networks, competitive carriers provided wireless coverage in a number of areas not served by the major carriers, and reciprocal roaming arrangements functioned because each party needed access to the other's network in order to complete its national coverage and provide service to customers. This tended to balance out the bargaining leverage of the parties and promoted mutually beneficial roaming agreements throughout the wireless marketplace. The dynamic shifted as the major carriers expanded the depth and breadth of their coverage with the aid of Commission spectrum licensing policies that favored nationwide carriers, and the Commission's approval of major merger transactions. Sprint has succinctly described the problem:

Through the purchase of smaller carriers, AT&T and Verizon have effectively eliminated alternative roaming partners and further strengthened their overwhelming competitive advantage in the wireless marketplace. Their tremendous resources place them in a superior bargaining position, which enables them to demand wholesale data roaming rates that significantly exceed competitive levels.¹⁰

Now, Sprint and T-Mobile seek to imitate AT&T and Verizon, combining their resources and thereby exacerbating the competitive imbalance in the marketplace.

carriers over small ones is the roaming relationship.... [W]ithout access to a nationwide roaming agreement on reasonable terms, and without a commitment not to restrict customers from roaming, there is no viable business for small rural carriers.”).

¹⁰ See Sprint Roaming Reply, *supra* n.7, at 2.

So, here is where Blue Wireless stands today. Like other competitive carriers who have commented in this proceeding,¹¹ Blue Wireless has found Sprint to be the market leader in terms of providing roaming service to Blue Wireless customers and, thus, Sprint has become Blue Wireless's preferred roaming partner. This is not to say that Sprint's rates are commercially reasonable. For example, while roaming rates generally have been declining in the marketplace as a result of the declining costs associated with the provision of data service,¹² Sprint has failed to honor Blue Wireless's request that rates in the current agreement (established in 2014) be reduced. At present, the Sprint/Blue Wireless roaming agreement covers both voice and data services. However, the agreement is beyond its initial term and, as a result, is cancellable by either party without cause and with only a brief notice period.

Consequently, even if New T-Mobile were to abide by its non-binding promise to

¹¹ See RWA Petition at 7; NTCA Petition at 9; Cellular South, Inc. d/b/a C Spire Petition to Condition, or in the Alternative, Deny Any Grant of the Sprint/T-Mobile Application (filed Aug. 27, 2018) ("C Spire Petition"), at 4; Union *et al.* Petition at 39; Altice USA, Inc. Petition to Condition or Deny (filed Aug. 27, 2018) ("Altice Petition"), at 5-9; Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge & Writers Guild of America, West, Inc. Petition to Deny (filed Aug. 27, 2018) ("Common Cause *et al.* Petition"), at 9.

¹² See T-Mobile Roaming Petition, Exhibit 1, Declaration of Dirk Masa, Senior Vice President, Corporate Development and Roaming, T-Mobile USA, Inc., at 4 ("The actual cost to provide a megabyte of data to roaming partners mirrors the cost to provide a megabyte for one's own customers, and T-Mobile's internal (and very likely AT&T's internal) cost is only a small fraction of the roaming rates charged by AT&T. Costs to produce a megabyte continue to decline, with 4G/LTE being more efficient than its predecessor technologies 2G GSM and 3G UMTS/HSPA. Consequently, commercially reasonable rates should also decline over time due to the lower costs associated with the new technologies, such as 4G/LTE."). See also WT Docket No. 05-265, Letter from Andrew W. Levin, Senior Vice President, T-Mobile USA, Inc., to Marlene H. Dortch, FCC (filed Nov. 21, 2014), at 4 (reiterating T-Mobile's expert Declaration that "decreasing [rates] over time does not imply that the level of rates at any point in time, or with any particular carrier, is commercially reasonable").

honor Sprint's roaming agreements, Blue Wireless faces the prospect of losing its preferred roaming arrangement with Sprint in the relatively near term.

With respect to Verizon, Blue Wireless has been unable to secure a roaming agreement on terms that make the arrangement economically viable. Because Verizon's voice roaming charges far exceed those charged by Sprint, Blue Wireless has had no choice but to limit the ability of its customers to roam on Verizon's network by establishing Verizon as a non-preferred roaming partner and implementing roaming restrictions on certain categories of Blue Wireless customers, in order to manage the Verizon-imposed charges. And, because Blue Wireless has been unable to secure a data roaming proposal from Verizon that it can afford to offer to its customers, its customers do no data roaming on the Verizon system.

In the Joint Opposition, the Applicants claim that both "T-Mobile and Sprint have a long history of partnering with other carriers to further wireless deployment in rural areas."¹³ They claim that New T-Mobile will offer "long-term roaming access to the robust New T-Mobile network on industry leading terms" and "cooperate with rural partners on their 5G roll-out, including technical assistance and advice on 5G deployment."¹⁴ However, Blue Wireless's dealings with T-Mobile have given it no reason to credit these vague assurances. As LTE technology came to the market and the barrier of CDMA carriers roaming with GSM carriers could have been overcome by roaming on an LTE-only basis, Blue Wireless unsuccessfully reached out to T-Mobile to explore the prospect of a roaming agreement covering

¹³ Joint Opposition at 98.

¹⁴ *Id.* at 98, 99.

LTE services. To Blue Wireless's knowledge, T-Mobile has never offered any competitive carrier, including Blue Wireless, an attractive LTE roaming arrangement, let alone one that would expand to cover 5G services. To the contrary, it is Blue Wireless's understanding that T-Mobile resisted offering LTE roaming to Blue Wireless or any other CDMA carrier because such providers were not able to offer customers a GSM network fallback. Blue Wireless thus shares the concern expressed by other competitive carriers that approving the Proposed Transaction will materially reduce rather than increase New T-Mobile's incentive to offer fair and reasonable roaming arrangements.¹⁵

Based on the foregoing, Blue Wireless has standing in this proceeding as an interested party. A recurring theme of T-Mobile before the Commission has been that both Verizon and AT&T stopped treating potential roaming partners fairly when the Commission allowed them to assemble what T-Mobile referred to as "must-have" networks resulting in "unequal bargaining that enables the 'must-have' carriers to dictate commercially unreasonable roaming rates on terms highly unfavorable to the requesting provider."¹⁶ Now, T-Mobile itself is seeking to assemble an essential "must-have network." Throughout the Joint Opposition, the

¹⁵ See, e.g., NTCA Petition at 1-2 ("If this transaction is approved, to the extent that New T-Mobile would be willing to work with additional rural providers, it would have the ability and incentive to use its market power to extract unfavorable agreements to the detriment of rural consumers."); RWA Petition at 13 ("New T-Mobile has zero incentive to provide commercially reasonable roaming rates, terms, and conditions to RWA members.").

¹⁶ See T-Mobile Roaming Petition, *supra* n.5, at 3-4. See also WT Docket No. 05-265, Reply Comments of T-Mobile USA, Inc. (filed Aug. 20, 2014), at 2 ("With little incentive to enter into commercially reasonable arrangements, AT&T and Verizon 'can and do charge whatever they want because there are no practical alternatives for most carriers in many areas.'") (quoting Comments of Cellular South, Inc., WT Docket No. 15-265, at 3-5 (filed July 10, 2014)) [citation omitted].

Applicants claim that the proposed merger will result in a robust, nationwide 5G network with sufficient capacity and speed to enable New T-Mobile to compete effectively with AT&T and Verizon, while they ignore the verifiable harms described by petitioners. They describe the combined network as being of “similar scale”¹⁷ to the Verizon and AT&T networks, and as enabling them to go “toe-to-toe with Verizon and AT&T.”¹⁸ In short, the Applicants ask the Commission to approve a combination that will create a network of sufficient scale, size, and scope to give T-Mobile both the ability and the incentive to disadvantage competitive carriers just as AT&T and Verizon have done in the past. Notably, both Sprint and T-Mobile previously objected to merger transactions much less consequential than the Proposed Transaction.¹⁹

Interestingly, the Applicants decry the fact that “Sprint must rely on costly roaming arrangements to provide services to its customers when they travel outside of its network footprint” and that these arrangements relegate Sprint customers to “an inferior user experience.”²⁰ What they fail to admit is that the Proposed Transaction will put competitive carriers in the same unfavorable position vis-à-vis New T-Mobile that Sprint found itself in when it was trying to deal with Verizon.

¹⁷ Joint Opposition at Section IV.A.

¹⁸ *Id.* at Section IV.B.

¹⁹ See, e.g., *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership*, WT Docket No. 14-144, T-Mobile USA, Inc. Petition for Conditions (filed Oct. 17, 2014), at 9; see also *In the Matter of Qwest Communications International, Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended*, WC Docket No. 10-110, Comments of Sprint Nextel Corporation (filed July 12, 2010) at 2.

²⁰ Application, ULS File No. 0008224209 *et al.*, Public Interest Statement (“PIS”), at 95.

III. THE RECORD DEMONSTRATES THAT THE PROPOSED TRANSACTION WOULD RESULT IN SPECIFIC HARMS TO CONSUMERS AND COMPETITION

The Rural Wireless Association (“RWA”) asserts that Sprint provides mobile wireless service competitors access to Sprint’s nationwide network through “reciprocal, strategic roaming agreements [offered] at commercially reasonable rates.”²¹ Blue Wireless’s experience leads it to concur with petitioners in this proceeding who emphasize that Sprint is the *only* nationwide carrier from whom rural and other small competitive wireless carriers can obtain acceptable agreements (though it is not convinced that the rates are as favorable as they should be to meet the “commercially reasonable” standard).²² Nevertheless, the record is clear that Sprint’s practices vis-à-vis smaller competitors, including its willingness to make its network available through roaming arrangements on more favorable terms than the other nationwide carriers, have benefited consumers and competition, including facilities-based competition.²³ Unfortunately, a broad cross-section of petitioners indicate, in no uncertain terms, that T-Mobile has not matched Sprint’s willingness to offer creative affordable roaming offerings to Blue Wireless and other competitive carriers.²⁴

A. THE NEAR TERM LOSS OF CDMA ROAMING WILL NOT SERVE THE PUBLIC INTEREST

The immediate effect of the Proposed Transaction would be to remove Sprint and its network from the marketplace, harming smaller providers with whom Sprint

²¹ RWA Petition at 7.

²² *See id.* *See also* NTCA Petition at 7-8 (demonstrating T-Mobile’s history of emphasizing urban over rural consumers and markets).

²³ *See, e.g.*, NTCA Petition at 9; C Spire Petition at 4; RWA Petition at 6; Union *et al.* Petition at 39; Altice Petition at 6-9; Common Cause *et al.* Petition at 9.

²⁴ *See, e.g.*, RWA Petition at 12-16.

has roaming agreements, and their customers. Of particular concern is the impact of the Proposed Transaction on the availability of the Sprint CDMA network as a roaming resource for CDMA carriers for a sufficient time to allow for an orderly transition. Sprint has not indicated publicly, or in any private discussions with Blue Wireless, an intention to shut down its CDMA network, either in the near term or by any specific future date. Thus, but for the Proposed Transaction, Blue Wireless could reasonably expect to have roaming access to the Sprint CDMA network for the foreseeable future. The Proposed Transaction threatens to change all of that. The Applicants state that New T-Mobile plans to dismantle the Sprint CDMA network “as soon as possible”²⁵ and T-Mobile has publicly stated to analysts that it expects to work aggressively to decommission Sprint’s CDMA network and migrate Sprint customers to T-Mobile’s existing GSM network.²⁶ The Applicants also note that New T-Mobile intends to rely upon the experience T-Mobile gained when it dismantled the MetroPCS network and transitioned MetroPCS customers to T-Mobile’s system, a transition they boast took place “ahead of schedule.”²⁷ In the absence of a specific, enforceable condition that will provide competitive carriers with a sufficient transition period, there is nothing to prevent New T-Mobile from also dismantling

²⁵ Joint Opposition at 3; *see also* PIS at 38. *But see* Joint Opposition at 98 (asserting that “concern about a rapid termination of the CDMA network is misplaced,” and that “[t]ermination of the CDMA network will vary by geography, but is not expected to commence prior to January 1, 2021.”). These conflicting statements provide no assurances as to how long the Sprint CDMA network will remain available under existing roaming arrangements.

²⁶ *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> (detailing T-Mobile’s analysts’ call on April 28, 2018 announcing plans to decommission two-thirds of Sprint’s CDMA sites by the end of 2021).

²⁷ Joint Opposition at 52.

the Sprint CDMA system “ahead of schedule” and thereby stranding the roaming customers of Blue Wireless and other competitive carriers.

Notably, Verizon has announced plans to shut down its own CDMA network by late 2019. When that occurs, if the Proposed Transaction is approved New T-Mobile will have considerably greater market power and will control the only nationwide CDMA network. It will have the power to shut down the network at any time and thereby deny roaming access to competitive carriers. Thus, the proposed merger “will have the practical effect of stranding millions of customers – mostly in rural areas – who rely on that network,”²⁸ and causing “particular harm to American consumers [including Blue Wireless’s customers] who travel to, work in, or reside within rural markets,”²⁹ and who no longer would be able to obtain critical roaming services, including voice, 9-1-1, emergency, and Lifeline services.³⁰

Once again, the Commission need look no further than the Applicants’ own prior statements to evaluate the seriousness of this problem. T-Mobile has cited the Commission’s willingness to allow AT&T to acquire (and remove from the market) smaller GSM service providers as a major source of T-Mobile’s own roaming difficulties because of the loss of technically compatible roaming partners.³¹ And Sprint has observed, correctly, that any carrier that operates “the only technologically compatible facilities-based network in a given geographic area

²⁸ C Spire Petition at 16.

²⁹ RWA Petition at 7.

³⁰ As Greenlining notes, the “Applicants have not provided sufficient evidence of the transaction’s effects on the availability of lifeline to low-income consumers.” WT Docket No. 18-197, The Greenlining Institute Petition to Deny (filed Aug. 27, 2018) (“Greenlining Petition”), at 3.

³¹ See T-Mobile Roaming Petition, *supra* n.5, at 4.

wields market power in that area”³² and thus is able to treat roaming partners unfairly. The Applicants are asking the Commission to endorse a transaction that poses the exact harm they have identified in the past.

The Applicants effectively acknowledge the potentially disruptive effect that dismantling the Sprint CDMA system would have on existing subscribers with CDMA handsets by making assurances to the Commission that they will offer Sprint customers a “carefully managed transition” including “regular handset upgrades” and “dedicated handset promotions” for “Sprint customers without compatible devices.”³³ These assurances offer no comfort to the customers of competitive carriers who have CDMA handsets as they will not be parties to the managed transition. And, because the competitive carriers whose customers roam on the CDMA system have no knowledge of or control over the actual timetable on which the CDMA system will be decommissioned in any particular area, they are not in a position to adopt a carefully managed transition plan of their own.³⁴

To be clear, Blue Wireless understands and supports the fact that a transition is underway in the wireless industry that ultimately will supplant CDMA service and other legacy technologies. Blue Wireless itself is in the midst of upgrades as the market evolves to LTE and, ultimately, 5G services. Transitions of this nature

³² See Sprint Roaming Reply, *supra* n.7, at 5-6 (quoting T-Mobile Roaming Petition, Exhibit 2, Declaration of Joseph Farrell, D.Phil., in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., at ¶¶ 34-35).

³³ Joint Opposition at 47.

³⁴ Because competitive carriers do not generally purchase handsets in the same high volume as the national carriers, they may not qualify for the same quantity discounts as are received by Sprint and T-Mobile (and as would be received by New T-Mobile). Consequently, competitive carriers such as Blue Wireless are not in as good a position to offer customers handset promotions to effect a transition from CDMA service.

necessarily take longer in smaller markets where the investment costs are supported by a smaller base of subscribers. The simple truth is that the Proposed Transaction presents a material changed circumstance in the transition timetable upon which many competitive carriers were reasonably relying. Under these circumstances, the Commission should, as it has done in the past, condition any grant of the Proposed Transaction in a manner that provides a reasonable transition period for competitive carriers to plan for the reduction and then the complete loss of CDMA roaming options.

B. ROAMING WITH THE ADVENT OF ADVANCED SERVICES IS AT GREAT RISK

Another aspect of the Proposed Transaction that is of particular concern to Blue Wireless is the prospect for competitive carriers to be offered fair and reasonable roaming arrangements that provide access to nationwide 4G and 5G networks so that competitive carriers can offer their customers the rapidly evolving array of advanced wireless services, including LTE and VoLTE. The Applicants devote much of their defense of the Proposed Transaction to the potential benefits of a “world-leading nationwide 5G network” that will deliver “unprecedented services” and “disrupt the wireless industry.”³⁵ The problem for competitive carriers is that, as a general rule, these cutting edge advanced services are not covered by any existing roaming agreement. Thus, even if New T-Mobile ends up honoring all of the Sprint roaming agreements – which in the absence of a specific, enforceable condition it will not be legally obligated to do – competitive carriers will

³⁵ PIS at i.

have no options when it comes to advanced 5G services. In effect, the Applicants are offering competitive carriers the sleeves of New T-Mobile's 5G roaming vest.

Blue Wireless's concern on this point is exacerbated by its experience to date with T-Mobile. As earlier noted, its efforts to enter into a suitable roaming agreement with T-Mobile covering LTE services were unsuccessful. The difficulties would only be magnified if and when New T-Mobile possessed the additional bargaining power that would come with the elimination of Sprint as a competing wholesale service supplier, and the increased scale and scope New T-Mobile would enjoy, if the Proposed Transaction is approved without appropriate and reasonable protections for competition and consumers.

The Applicants have reported that they entered into a roaming agreement that became effective on the date the Proposed Transaction was announced, but that "the agreement does not include . . . 5G data."³⁶ What prospect does Blue Wireless have of negotiating a reasonable, long-term 5G roaming agreement with New T-Mobile if Sprint was unable to do so in the context of its mega-deal with T-Mobile? One clearly identifiable risk of the Proposed Transaction is that competitive carriers will be denied the essential input of roaming access to nationwide networks as the 4G and 5G transitions proceed.

At least one thing is certain based upon the history of the evolution of wireless technology: change will continue at an accelerating pace. Consequently, it is important for the Commission to give particular weight to any risks posed by the

³⁶ WT Docket No. 18-197, Response of Sprint Corporation to General Information and Document Request, Response to Request 38, at 46 (filed Oct. 29, 2018) ("Sprint Response to Request").

Proposed Transaction to the competitiveness of advanced wireless services.

Preserving the ability of competitive carriers to secure fair and reasonable roaming arrangements governing such services is essential for the survival of smaller facilities-based competitive carriers, allowing the benefits of nationwide service offerings flow through to their customers.

IV. THE APPLICANTS HAVE FAILED TO MEET THEIR BURDEN OF PROOF

The foregoing discussion reveals that there are substantial identifiable harms to the wholesale roaming market posed by the Proposed Transaction. Sprint and T-Mobile are in no position to deny these harms since their own prior statements to the Commission resoundingly affirm that transactions of this nature have a profound negative impact on competitive carriers.

The Applicants also cannot deny that protecting the wholesale roaming market is a critical public interest priority. The Commission has determined that the “availability of both voice and data roaming arrangements is critical to promoting seamless consumer access to mobile services nationwide, to promoting innovation and investment, and to promoting facilities-based competition among multiple service providers.”³⁷ The Applicants appear to agree that roaming has public interest benefits,³⁸ while also conceding the challenges of entering into fair

³⁷*Data Roaming Order, supra* n.8, at ¶ 1.

³⁸ See Joint Opposition at 98-102 (claiming, *inter alia*, that the Proposed Transaction will “increase” “attractive roaming options for rural carriers”) *Id.* at 100. Blue Wireless questions the Applicants’ emphasis on New T-Mobile’s massive “capacity” as a the primary benefit of the Proposed Transaction. Capacity is the input that New T-Mobile will control to the exclusion of other competitors; it is a feature of New T-Mobile’s market power, not a benefit to consumers. As such, the fact that New T-Mobile would control an inordinate amount of capacity, in the form of exclusive use of licensed spectrum (the current non-use of which goes unexplained by the

roaming agreements with nationwide providers.³⁹ This concession is consistent with the Commission’s acknowledgement that the “difficulties of rural providers in obtaining data roaming presents a serious concern,”⁴⁰ as well as the fact – of particular significance here – that “[c]onsolidation in the mobile wireless industry has reduced the number of potential roaming partners for some of the smaller, regional and rural providers.”⁴¹ Indeed, T-Mobile itself has agreed that the elimination of potential roaming partners has led to a “dysfunction[al] roaming marketplace,” and that further consolidation of a critical input – spectrum capacity, the “benefit” most emphasized by the Applicants – by a nationwide provider acts as a disincentive for that provider “to provide the roaming capability necessary for competitors with less than national footprints.”⁴² Furthermore, the Commission already has identified a specific potential harm posed by the further consolidation that now is presented by the Proposed Transaction, *i.e.*, that “consolidation in the

Applicants), can only be troubling for consumers, for competition, and for the Commission as the neutral steward of the nation’s commercial spectrum resources.
³⁹ See PIS at 95. See also *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 16-137, Comments of T-Mobile USA, Inc. (filed May 31, 2016), at 24-25 (complaining about the roaming practices of AT&T and Verizon). And, even the agreement between Sprint and T-Mobile entered into concurrent with the Proposed Transaction apparently is limited to 4G LTE data. See WT Docket No. 18-197, General Information and Document Request for Sprint, Request 38, at 10 (Aug. 15, 2018) and Sprint Response to Request 38, at 46.

⁴⁰ *Data Roaming Order*, *supra* n.8, at ¶ 64.

⁴¹ *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, Order, 31 FCC Rcd 7165, ¶ 3 (EB 2016). As DISH notes, roaming is “an essential input for a potential entrant’s ability to compete in the mobile voice/broadband market” and is “particularly important for consumers in rural areas - where mobile data services may be solely available from small rural providers.” WT Docket No. 18-197, DISH Network Corporation Petition to Deny (filed Aug. 27, 2018) (“DISH Petition”), at 57.

⁴² WT Docket No. 05-265, Reply Comments of T-Mobile USA, Inc. (filed Aug. 20, 2014), at 4.

mobile wireless marketplace may reduce the incentives of the largest providers to enter into agreements with other providers because of their reduced need for reciprocal roaming.”⁴³

In sum, the loss of access to the Sprint network and of Sprint as a roaming partner would be devastating to competitive providers such as Blue Wireless who, while serving small and rural markets, must rely on access to the facilities of roaming partners in order to provide their customers regional and nationwide calling plans. Likewise, under the reciprocal Sprint/Blue Wireless roaming agreement, Sprint’s customers stand to lose access to Blue Wireless’s network and markets. The elimination of Sprint from the marketplace thus will have a direct, adverse effect on competition and customers.

In stark contrast to these identifiable, verifiable public harms from the Proposed Transaction, the Applicants make only vague, unsupported, and now hotly contested claims. For example:

- The Applicants claim that consumers will get more data on average at much lower prices.⁴⁴ In response, petitioners have provided expert economic analyses that contest and rebut these claims.⁴⁵ As a result, the Applicants have failed to demonstrate this alleged benefit by a preponderance of the evidence.
- The Applicants claim that the merger will not increase the risk of coordination and collusive pricing among and between the Big Three nationwide carriers that would remain if the Proposed Transaction is approved. In response, multiple parties have demonstrated that the post-merger market – which will be dominated by three carriers of roughly equal size and scope who are competing for customers in a mature retail

⁴³ *Roaming Declaratory Ruling*, *supra* n.8, at ¶ 2.

⁴⁴ Joint Opposition at Section I.A.

⁴⁵ DISH Petition at 74-81.

market where demand is largely inelastic – is likely to promote coordinated action.⁴⁶

- The Applicants contend that Sprint as a standalone entity faces substantial competitive challenges that the Proposed Transaction would solve.⁴⁷ Careful review indicates that these competitive problems largely derive from Sprint’s failure to adequately invest in the construction and operation of a network on par with those of AT&T and Verizon. The fact remains, though, that Sprint is controlled by a large, successful, financially secure and experienced international wireless carrier – Softbank – which has the financial, technical, and spectrum resources to transform the Sprint network into a state-of-the-art advanced wireless platform.⁴⁸ Indeed, the intention of Softbank to do just that was a major basis of the public interest showing it made when it sought Commission approval to assume control of Sprint.⁴⁹
- The Applicants claim that new T-Mobile will continue to be a maverick with the intention to compete aggressively against and not simply mimic AT&T and Verizon. But petitioners have cited compelling economic evidence that the best way for New T-Mobile to maximize profit – which T-Mobile has admitted will be New T-Mobile’s objective – is to engage in collusive oligopoly pricing, not by seeking to increase market share by competing aggressively on price.⁵⁰

⁴⁶ C Spire Petition at 5; WT Docket No. 18-197, American Antitrust Institute Petition to Deny (filed Aug. 27, 2018) (“AAI Petition”), at 8-13.

⁴⁷ Joint Opposition at Section I.E.

⁴⁸ See *generally* Joint Application for Consent to Transfer International and Domestic Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended of Sprint Nextel Corporation, Transferor, and Softbank Corp. and Starburst II, Inc., Transferees, IB Docket No. 12-343 (filed Nov. 16, 2012), Exhibit 2: Public Interest Statement.

⁴⁹ *Id.*

⁵⁰ T-Mobile claims that AT&T, Verizon, and other broadband service providers would respond to an aggressive New T-Mobile build-out by accelerating their own rollout of advanced services and lowering consumer and wholesale prices. Joint Opposition at iv, 70. But serious questions have been raised as to whether the Applicants will achieve the synergies they claim, or invest the sums they have suggested, if the Proposed Transaction is approved unconditionally. Equally important, the Applicants’ claim – that competitors will respond aggressively to match any price reductions or network improvements – simply reinforces the point that New T-Mobile will profit more by joining the oligopoly club and raising prices rather than by seeking to increase its market share by competing aggressively on price. In fact, T-Mobile goes so far as to admit that, despite its aggressive marketing of itself as a maverick “uncarrier,” it has made only minimal gains against AT&T and

- Multiple petitioners point out that the transaction is anticompetitive because it results in an unprecedented concentration of spectrum and market share far in excess of the Commission’s spectrum screen and the DOJ’s HHI screens.⁵¹ The Applicants lamely respond that these screens are mere guidelines which justify detailed review, not caps which require disapproval, and seek to shift to petitioners the burden of proving competitive harm.⁵²

In sum, the Applicants have failed to demonstrate by a preponderance of the evidence that the public interest, convenience, and necessity will be served by an unconditional grant of the Proposed Transaction. Now, the Commission must balance alleged unproven contested benefits against verified uncontestable harms.

V. THE RECORD ONLY SUPPORTS GRANT WITH CONDITIONS

The Applicants have failed to make any concrete commitments to offer fair and reasonable roaming arrangements to competitive carriers that will protect and promote competition. To the contrary, they expediently contradict their own prior positions and assert that roaming conditions “are unnecessary and unjustified.”⁵³

As Greenlining pointedly observed of the Applicants’ Public Interest Statement, they “mak[e] no promises to use merger synergies to improve the quality, terms, or rates of roaming services that could ultimately benefit rural

Verizon. *See* PIS at 85-100. There is no reason to believe the result will be any different in the future.

⁵¹ *See, e.g.*, Altice Petition at 22-23; C Spire Petition at 13-14; DISH Petition at 68-76; NTCA Petition at 12; RWA Petition at 17-22; Union *et al* Petition at 26-31; AAI Petition at 11-13. *See also* WT Docket No. 18-197, Free Press Petition to Deny (filed Aug. 27, 2018), at 24-27; Liberty Cablevision of Puerto Rico Petition to Deny (filed Aug. 27, 2018), at 8-10; Rural South Carolina Operators Petition to Condition or Deny (filed Aug. 27, 2018), at 4-5; Voqal Petition to Deny the Above-Captioned Applications as Currently Proposed (filed Aug. 27, 2018), at 17-19.

⁵² Joint Opposition at Section I.G.4.

⁵³ *Id.* at 101.

customers.”⁵⁴ Likewise, the Applicants’ Joint Opposition does nothing to dispel concerns that New T-Mobile is more likely to use roaming agreements to harm competition than to enhance it. In addressing concerns about New T-Mobile’s roaming practices, the Applicants simply promise to make promises, with each promise wrapped in repetitive non-committal jargon: “New T-Mobile will offer to be the preferred roaming partner for rural carriers and to provide long-term roaming access to the robust New T-Mobile network on industry-leading terms.”⁵⁵ Of course, “offer,” “preferred,” “long-term,” “robust,” and “industry leading” have no precise meaning and T-Mobile makes no attempt to define them. As Union Telephone *et al.* note, “throughout over one thousand pages of various explanations, charts, graphs, and supporting economic analysis, T-Mobile cites not a single instance of where competition increased, prices were lowered, employment increased, and consumers were better served as a result of a horizontal merger reducing a marketplace from 4 to 3 competitors. Not one example. . . . Nor does it offer any commitments that might partially offset anticompetitive effects from shrinking from 4 to 3. . . .”⁵⁶

Similarly, Applicants offer no concrete commitments to attempt to alleviate concerns about potential harms that have been raised and comprehensively explained by petitioners regarding New T-Mobile’s roaming practices.

To address the potential harms posed by the Proposed Transaction, the Commission must exercise its authority to “impose and enforce narrowly tailored,

⁵⁴ Greenlining Petition at 8.

⁵⁵ *See, e.g.*, Joint Opposition at 98. *See id.* at 101 (repeating nearly verbatim the same language in arguing roaming conditions are unnecessary).

⁵⁶ Union Telephone *et al.* Petition at 6, 25.

transaction-specific conditions that address”⁵⁷ such harms. As is set forth in detail below, Blue Wireless supports many of the conditions proposed by competitive carriers that are reasonably tailored to mitigate specific harms related to the shut down of Sprint’s CDMA network and the difficulties of obtaining commercially reasonable access to the New T-Mobile network following the further consolidation of nationwide wireless providers. These conditions need to be strengthened, however, in one specific respect.

First, as T-Mobile itself has advocated in the past, reasonable, objective benchmarks are needed to ascertain whether a carrier is indeed offering commercially reasonable roaming arrangements. In seeking a Declaratory Ruling to clarify the data roaming obligations of carriers, T-Mobile’s economic expert proposed four benchmarks for assessing commercial reasonableness in the data roaming context:

- (1) whether a wholesale roaming rate offered to a retail competitor greatly exceeds a “suitable measure” of retail price. . . ;
- (2) whether a wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.;
- (3) whether a wholesale roaming rate substantially exceeds the price for wholesale data service that a seller charges to MVNO [mobile virtual network operator] customers (keeping in mind that MVNO customers may use the host carrier’s network in substantial different ways compared to a roaming customer of a facilities-based competitor); and
- (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates (understanding that some prevailing roaming rates may reflect the past exercise of market power or attempts to weaken retail rivals).⁵⁸

⁵⁷ *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, ¶ 9 (2017).

⁵⁸ See T-Mobile Roaming Petition, *supra* n.5, at 11.

The Commission endorsed these four benchmarks as “factors” to be taken into consideration when evaluating a roaming complaint.⁵⁹ Now, however, the Commission has been presented with a merger transaction of unprecedented scope by the very party that declared these benchmarks to be necessary. In the words of T-Mobile’s own expert, “a natural benchmark for wholesale mobile data pricing is retail mobile data pricing,” and T-Mobile has no basis to complain if it is obligated to offer competitive carriers wholesale mobile data pricing on terms no less favorable than its most favorable retail mobile rate. T-Mobile’s expert also declared there to be “no reason why the wholesale rates for minutes and megabytes charged to other carriers (i.e., roaming) should be so much higher than the wholesale rates for minutes and megabytes charged to MVNOs.”⁶⁰ Consequently, T-Mobile cannot plausibly protest an obligation to offer competitive carriers wholesale mobile data pricing on terms no less favorable than its most favorable MVNO rates. A condition of this nature will provide quantifiable protection to competitive carriers.

Second, Blue Wireless agrees that the Commission should require New T-Mobile to keep the Sprint CDMA network in service for at least five years following consummation of the Proposed Transaction, ensuring that consumers are not at risk of losing access to critical wireless services.⁶¹

Third, as proposed by Union *et al.*, upon New T-Mobile’s shut down of the Sprint CDMA network, if there is no roaming agreement in place between New T-Mobile and any third party with whom Sprint had a roaming agreement as of June

⁵⁹ See *Roaming Declaratory Ruling*, *supra* n.8, at ¶ 86.

⁶⁰ See T-Mobile Roaming Petition, *supra* n.5, at 15.

⁶¹ See C Spire Petition at 24-25.

15, 2018, New T-Mobile must provide such third party the option of entering into a roaming agreement containing terms and conditions identical to those in its roaming agreement with Sprint, or containing terms and conditions equivalent to or better than those then in place between New T-Mobile and AT&T for 4G LTE and 5G traffic, pending the negotiation of an agreement pursuant to the four benchmarks.⁶²

Fourth, New T-Mobile must maintain all existing roaming agreements with every competitive carrier with which Sprint has such an agreement, and require that any such arrangement apply to all traffic exchanged with New T-Mobile on any network over which it provides service. A carrier with agreements with both Sprint and T-Mobile must be able to elect to keep both agreements in place or to apply one agreement to all traffic exchanged with New T-Mobile on Sprint's legacy CDMA network, the T-Mobile legacy network, the combined Sprint/T-Mobile network, and/or any future New T-Mobile network. At a minimum, an existing agreement, or the selected agreement, must be allowed to remain in place for the longer of (i) the remaining term of the agreement or (ii) four years after consummation of the Proposed Transaction.⁶³

Fifth, as multiple petitioners urge, New T-Mobile must forgo exercising any change of control or termination for convenience rights in a roaming agreement that would enable it to alter any rate, term, or condition in, or to accelerate the termination of, any such agreement.⁶⁴

⁶² See Union *et al.* Petition at 44.

⁶³ See C Spire Petition at 22-23; Union *et al.* Petition at 43.

⁶⁴ See Union *et al.* Petition at 43-44; C Spire Petition at 23.

Finally, New T-Mobile must commit to negotiate in good faith, at rates no higher than currently offered by either Sprint or T-Mobile to an existing roaming entity or MVNO as of the closing date of the Proposed Transaction, and consistent with the four benchmarks, existing and new technology wholesale arrangements with requesting carriers for roaming and MVNO arrangements (including 4G, 4G VoLTE, IoT (including NB-IoT and 5G), in order to allow requesting carriers the ability to offer nationwide 4G and 5G services.⁶⁵

Each of the above conditions is reasonable and necessary within the context of the Proposed Transaction to protect smaller carriers and their customers and will serve to protect and promote competition. These safeguards are consistent with the Commission's prior approval of proposed transactions,⁶⁶ and with T-Mobile's own unequivocal views that "the ability to negotiate reasonable data roaming terms is essential to competition and the provision of next-generation services"⁶⁷ and requiring that the Commission protect roaming partners from harm in the context of a transaction.⁶⁸

⁶⁵ See C Spire Petition at 25.

⁶⁶ See, e.g., *Applications of AT&T Inc. and Atlantic Tele-Network Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 13670, ¶ 96 (2013); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 178 (2009).

⁶⁷ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 16-137, Comments of T-Mobile USA, Inc. (filed May 31, 2016), at 24.

⁶⁸ See WT Docket No. 14-144, Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, to Marlene H. Dortch, FCC (filed April 22, 2014).

VI. CONCLUSION

For the foregoing reasons, the Commission should approve the Proposed Transaction only upon the imposition of the conditions set forth herein.

Respectfully submitted,

**Spotlight Media Corp. and
Buffalo-Lake Erie Wireless Systems
Co., LLC d/b/a Blue Wireless**

By: /s E. Ashton Johnston
Carl W. Northrop
E. Ashton Johnston
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W.
Suite 1011
Washington, DC 20036
Tel: (202) 789-3120
cnorthrop@telecomlawpros.com
ajohnston@telecomlawpros.com

Their Counsel

October 31, 2018

DECLARATION OF BRIAN GELFAND

I, Brian Gelfand, declare under penalty of perjury that the following is true and correct.

1. This Declaration is provided in connection with the Reply ("Reply") of Spotlight Media Corporation ("Spotlight") and Buffalo-Lake Erie Wireless Systems Co., LLC d/b/a Blue Wireless ("Buffalo-Lake Erie Wireless" and together with Spotlight, "Blue Wireless") to the Joint Opposition filed by T-Mobile USA, Inc. and Sprint Corporation in WT Docket No. 18-197 and ULS File No. 0008224209 *et al.*
2. I am the Secretary of Spotlight and the General Manager of Buffalo-Lake Erie Wireless. Spotlight and Buffalo-Lake Erie Wireless have common controlling ownership.
3. I have read the Reply, and all 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.



Brian Gelfand

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:

Nancy J. Victory
DLA Piper LLP
500 Eighth Street, NW
Washington, DC 20004
Nancy.victory@dlapiper.com
Counsel for T-Mobile US, Inc.

Regina M. Keeney
Lawler, Metzger, Keeney, & Logan,
LLC
1717 K Street, NW
Suite 1075
Washington, DC 20006
gkeeney@lawlermetzger.com
Counsel for Sprint Corporation

Matthew F. Wood
Free Press
1025 Connecticut Avenue, NW
Suite 1110
Washington, DC 20036
mwood@freepress.net
Policy Director for Free Press

Caressa D. Bennet
Womble Bond Dickinson LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036
Carri.bennet@wbd-us.com
*Counsel for Rural Wireless
Association*

Andrew Golodny
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
agolodny@steptoe.com
Counsel for DISH Network LLC

Debbie Goldman
Communications Workers of
America
501 Third Street, NW
Washington, DC 20001
dgoldman@cwa-union.org
*Telecommunications Policy Director
for Communications Workers of
America*

Jill Canfield
NTCA – The Rural Broadband
Association
4121 Wilson Boulevard
Suite 1000
Arlington, VA 22203
jcanfield@ntca.org
*Assistant General Counsel for NTCA –
The Rural Broadband Association*

Joanne S. Hovis
President
CTC Technology and Energy
10613 Concord Street
Kensington, MD 20895
jhovis@ctcnet.us
*Consultant for Communications
Workers of America*

Allen P. Grunes
The Konkurrenz Group
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015
allengrunes@konkurrenzgroup.com
*Counsel for Communications Workers
of America*

Johanna R. Thomas
Communications, Internet &
Technology
Jenner & Block
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
jthomas@jenner.com
Counsel for SoftBank Group Corp.

David Krech*
Telecommunications and Analysis
Division
International Bureau
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554
David.krech@fcc.gov

Kathy Harris*
Mobility Division
Wireless Telecommunications
Bureau
Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554
Kathy.harris@fcc.gov

Linda Ray*
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Linda.ray@fcc.gov

Jim Bird*
Office of General Counsel
Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554
transactionteam@fcc.gov

Kate Matraves*
Competition and Infrastructure Policy
Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC
Catherine.matraves@fcc.gov

Jennifer L. Richter
Akin Gump Strauss Hauer & Feld
LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
jrichter@akingump.com
Counsel to Altice, USA, Inc.

Frank DiRico
NE Colorado Cellular, Inc., d/b/a
Viaero Wireless
1224 West Platte
Fort Morgan, CO 80701

T-Mobile US, Inc.
ATTN FCC Regulatory Compliance
12920 SE 38th Street
Bellevue, WA 98006

Paul Goodman
The Greenlining Institute
360 14th Street
Oakland, CA, 94612
paulg@greenlining.org

David A. LaFuria & Robert S. Koppel
Lukas, LaFuria, Gutierrez & Sachs,
LLP
8300 Greensboro Drive, Suite 1200
Tysons, VA 22102
dlafuria@fcclaw.com
*Counsel to Broadcast Data Corp. and
Union Telephone et al.*

Sprint Spectrum Realty Company, LLC
ATTN Government Affairs
12502 Sunrise Valley Drive
M/S: VARESA0209
Reston, VA 20196

Donald L. Herman, Clare Liedquist &
Molly O'Connor
Herman & Whitaker, LLC
6702B Rockledge Drive, Suite 150
Bethesda, MD 20817
dee@hermanwhiteaker.com
*Counsel to Rural South Carolina
Operators*

Lauren J. Coppola
Robins Kaplan LLP
800 Boylston Street, Suite 2500
Boston, MA 02199
lcoppola@robinskaplan.com
*Counsel to CarrierX d/b/a Free
Conferencing*

Yosef Getachew
805 15th Street, NW, Suite 800
Washington, DC 20005
ygetachew@commoncause.org
Common Cause

Diana Moss
American Antitrust Institute
1025 Connecticut Avenue, NW
Suite 1000
Washington, D.C. 20036
dmoss@antitrustinstitute.org

Pantelis Michalopoulos, Christopher
Bjornson & Andrew M. Golodny
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, D.C. 20036
agolodny@steptoe.com
*Counsel to DISH Network
Corporation*

Maureen R. Jeffreys & Scott Feira
Arnold & Porter
601 Massachusetts Avenue, NW
Washington, D.C. 20001
Maureen.jeffreys@apks.com
Counsel to AT&T

Catherine Wang
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Catherine.wang@morganlewis.com
*Counsel to Charter Communications,
Inc.*

Enrique Gallardo
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Enrique.gallardo@cpuc.ca.gov

Elliot Noss
Tucows Inc.
96 Mowat Avenue
Toronto, Ontario, Canada M6K 3M1

John Schwartz
Voqal
P.O. Box 6060
Boulder, CO 80306

Debra Berlyn
Consumer Policy Solutions
7207 Summit Avenue
Chevy Chase, MD 20815

Dennis L. Puckett & Amanda A. James
Sullivan and Ward, P.C.
6601 Westown Parkway
Suite 200
Des Moines, IA 50266
dpuckett@sullivan-ward.com
Counsel to Aureon

AJ Burton
Frontier Communications
Corporation
1800 M Street, NW
Suite 850S
Washington, D.C. 20036
Aj.burton@ftr.com

O'Neil Pryce & Matthew Wood
Free Press
1025 Connecticut Avenue, NW
Suite 1110
Washington, D.C. 20036
mwood@freepress.net

John Conrad Rodriguez & Alexandra
Verdiales Costa
Liberty Cablevision of Puerto Rico
LLC
279 Ponce de Leon Avenue
San Juan, PR 00918

Atif Khan
Unlimited Arena
17411 Mountainview Circle
Sugarland, TX 77479

Thomas Whitehead
Windstream Services, LLC
1101 17th Street, NW
Suite 802
Washington, D.C. 20036

Christopher Price
Console Enterprises
564 Rio Lindo Avenue
Suite 203
Chico, CA 95926

Kim Keenan
P.O. Box 3911
Washington, D.C. 20027

Eric Graham
Benjamin M. Moncrief
Cellular South Inc. d/b/a C Spire
1018 Highland Colony Pkwy
Suite 300
Ridgeland, MS 39157

Anne S. Cruz
Tucker Ellis LLP
515 S. Flower St., 42nd Floor
Los Angeles, CA 90071
Counsel to TracFone Wireless

Jonathan Guerra
Hispanic Information and
Telecommunications Network, Inc.
63 Flushing Avenue, Unit 281
Brooklyn, NY 11205

José Antonio Tijerino
Hispanic Heritage Foundation
1001 Pennsylvania Ave, NW Suite
7111
Washington, DC 20004

Berin Szóka
James E. Dunstan
Graham Owens
Alvaro Maranon
TechFreedom
110 Maryland Ave NE
Suite 409
Washington, DC 20002

Randolph J. May
President
Seth L. Cooper
Senior Fellow
Free State Foundation
P.O. Box 60680
Potomac, MD 20859

* via electronic mail

/s/ Carolyn Mahoney