

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications of T-Mobile US, Inc.)
) WT Docket No. 18-197
and)
)
Sprint Corporation)
)
Consolidated Applications for Consent To)
Transfer Control of Licenses and Authorizations)

**REPLY OF LIBERTY CABLEVISION OF PUERTO RICO LLC TO OPPOSITION OF
T-MOBILE US, INC. AND SPRINT CORPORATION TO PETITION TO DENY**

Liberty Cablevision of Puerto Rico LLC (“LCPR”) replies to the Opposition¹ of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, “Applicants”) to LCPR’s Petition to Deny² the Applicants’ proposed merger (“Transaction”). The Applicants identified their enhanced ability to compete with Verizon in providing wireless service as the principal benefit of the Transaction. Although the Transaction fails each of the FCC’s spectrum screens in Puerto Rico and the Applicants’ principal public interest benefit is non-existent in Puerto Rico, they provide no substantive response in their Joint Opposition to LCPR’s Petition to Deny.

Instead of demonstrating through empirical data that the public interest benefits of the Transaction clearly outweigh its public interest harms in Puerto Rico, the Applicants simply

¹ *Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, Applications of T-Mobile US, Inc. and Sprint Corporation, For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197 (filed Sept. 17, 2018) (“Joint Opposition”).

² *Petition to Deny of Liberty Cablevision of Puerto Rico LLC, Applications of T-Mobile US, Inc. and Sprint Corporation, Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197 (filed Aug. 27, 2018) (“LCPR Petition to Deny”).

ignore those harms. The totality of their response is an irrelevant attack on LCPR and an assertion, without more, that Puerto Rico Telephone Company (“PRTC”) is a “strong competitor” whose presence will ameliorate any competitive concerns arising from the Applicants’ combined spectrum holdings. Clearly, the widespread devastation to PRTC’s wireless and other communications networks from Hurricanes Irma and Maria in 2017 has left PRTC a weakened competitor to New T-Mobile in the near and medium term. In any event, the Applicants make no showing of any public interest benefit to justify their excessive spectrum holdings in Puerto Rico. At the very least, the Commission should adopt conditions to address the anti-competitive effects of the Transaction in Puerto Rico, the sole market in which the Applicants have not identified any public interest benefit from the Transaction.

A. The Applicants Have Not Demonstrated Any Public Interest Benefits in Puerto Rico to Address the Public Interest Harms from Their Excessive Spectrum Holdings.

It is undisputed that the Applicants’ spectrum holdings from the Transaction will far exceed the FCC’s spectrum screens in Puerto Rico. *See* LCPR Petition to Deny at 7-10. The Applicants acknowledge they will hold more than one-third of the relevant spectrum post-Transaction in Puerto Rico. *See Description of Transaction, Public Interest Statement, and Related Demonstrations* (filed June 18, 2018) (“Application”), at 105-111. The Applicants seek to minimize the fundamental competitive concerns associated with their excessive spectrum holdings by simply asserting that exceeding the spectrum screens in a local market “merely means that the Applicants do not qualify for a streamlined process exempting that local market from competitive review.” *See* Joint Opposition at 25. The Applicants’ assertion is without support and is directly contrary to the FCC’s established analytical framework for reviewing

mergers of wireless service providers -- a framework that requires a rigorous competitive analysis.

An applicant seeking to acquire one-third or more of the available mobile broadband spectrum below 1 GHz in a particular market must provide a “detailed demonstration regarding why the public interest benefits outweigh harms” in the particular market. *See Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd. 6133 (2014) (“*Mobile Spectrum Report and Order*”), at ¶¶13, 286-288. Where an entity that already holds more than one-third of the spectrum below 1 GHz proposes to acquire additional spectrum below 1 GHz, “the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.” *See Applications of AT&T Mobility Puerto Rico, Inc. and Worldcall Inc.*, 30 FCC Rcd. 9763 (WTB 2015), at ¶9 n.35.

The Applicants simply ignore the requirement of such “detailed demonstration” in their Application and Joint Opposition. Instead, they criticize LCPR for “emerg[ing] to complain about threats to wireless competition.” Joint Opposition at 28. The Applicants concede that their discussion of the claimed “extensive data” in their Application addressing competitive review factors is “the national market,” and simply assert such data and analysis “are equally compelling with respect to local market review.” *Id.*

The Applicants’ national-to-local market comparison plainly is inapplicable to Puerto Rico. The Applicants’ *only* response to the competitive issues arising from their excessive spectrum holdings “is the presence of PRTC as a strong wireless competitor.” *Id.* at 31. Surely, that simple assertion cannot satisfy the requirement of a “detailed demonstration” of the public interest benefits of the Transaction in Puerto Rico. In its Application to combine with

PRWireless, Inc. d/b/a Open Mobile (“Open Mobile”) in 2017, Sprint/Open Mobile pointed to competition from AT&T, PRTC, and T-Mobile to justify excessive spectrum holdings. *See* LCPR’s Petition to Deny at 7-8. Of course, the Transaction would eliminate T-Mobile as a competitor. Moreover, as discussed below, the devastating hurricanes in Puerto Rico have rendered PRTC a weakened competitor to New T-Mobile.

B. The Hurricanes Have Weakened PRTC’s Ability to Provide “Strong” Competition to New T-Mobile.

In comments filed in January 2018 in the FCC’s Hurricane Response proceeding, PRTC confirmed that it “experienced catastrophic damage to its telecommunications infrastructure,” including its wireless infrastructure:

The majority of PRTC’s central offices, remote central offices and cell sites located throughout the island became non-operational due to structural or network damage and/or loss of power. As of December 31, 2017 (116 days since Hurricane Irma and 103 days since Hurricane Maria), a considerable amount of PRTC’s cell sites remained down due to structural or network damage from the hurricanes. More than a dozen of PRTC’s cell sites are unable to operate due to disabled transport backbone services. Of PRTC’s nearly 800 cell sites that are currently operational, more than 60 percent of them rely exclusively on backup generator power to sustain operations which has created additional challenges.

See Comments of Puerto Rico Telephone Company, Inc., in the Matter of Hurricane Response, PS Docket No. 17-344 (filed Jan. 22, 2018), at 5. PRTC also reported that its “wireline network suffered extensive damage as well.” *Id.*

PRTC cited the “extensive damage to its...wireless networks” in its comments in the *Uniendo a Puerto Rico Fund* proceeding and: (1) “significant damage” to its fiber ring in southeast and northeast Puerto Rico; (2) near complete destruction of certain facilities used to provide broadband services to unserved areas; and (3) “substantial[] wipe[] out” of its “investment in broadband expansion in the island.” *See Comments of Puerto Rico Telephone*

Company, Inc., Uniendo a Puerto Rico Fund and the Connect USVI Fund, WC Docket No. 18-143 (filed July 26, 2018) (“Uniendo a Puerto Rico Fund Comments”), at 7.

The FCC’s assessment of the Hurricanes’ effect on communications in Puerto Rico stated that, “at its worst, 95.6 percent of the cell sites were out of service in Puerto Rico,” and concluded that the Hurricanes “almost completely destroyed” Puerto Rico’s communications infrastructure. *See 2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations*, Public Safety Docket No. 17-344 (rel. Aug. 24, 2018), at ¶¶11, 25.

PRTC’s recommendations regarding the Stage 2 funding to be allocated to telecommunications providers through the Uniendo a Puerto Rico Fund reflect the “uniqueness of the scope of devastation to telecommunications networks in Puerto Rico....” *See Uniendo a Puerto Rico Fund Comments* at 6. Because of the extent of the devastation in Puerto Rico, PRTC urged the FCC to increase its proposed support of telecommunications providers in Puerto Rico and, specifically, PRTC by over 400%. *Id.* at 4, 15.

PRTC’s parent company has reported to the U.S. Securities and Exchange Commission that it largely has restored its wireless network and that the network is “practically operating under normal conditions.” *See America Movil, S.A.B. DE C.V.*, Form 6-K (filed July 19, 2018). However, the widespread damage to its infrastructure for wireless and other telecommunications services weakens PRTC’s ability to provide the “strong” competition to New T-Mobile in Puerto Rico asserted by the Applicants.

C. FCC Should Adopt Conditions to Protect and Enhance Competition in Puerto Rico.

The FCC’s authority to adopt transaction-specific approval conditions in transfer of control proceedings is well-established. *See* 47 U.S.C. §303(r) (FCC may impose “conditions” to remedy specific harms likely to arise from a transaction). Although it is undisputed that the

Applicants' combined spectrum holdings after the Transaction will far exceed the applicable spectrum screens in Puerto Rico, the Applicants have made no showing of public interest benefits in Puerto Rico resulting from the Transaction. The Applicants' generalized assertions of a "myriad" of "clear convincing" benefits "with respect to wholesale services" nationally do not apply to Puerto Rico and are grossly inadequate. *See* Joint Opposition at 25-6.

LCPR respectfully submits that, if the FCC determines that the Transaction should be approved, it should impose conditions to address the anti-competitive impact of the Transaction on telecommunications services in Puerto Rico.

MVNO Agreements

The Applicants cite the nascent competition from cable operators in the provision of wireless service as a factor mitigating the potential anti-competitive effects of the Transaction. *See* Application at 105-111. The Applicants then claim that the Transaction will benefit MVNOs and their subscribers "by creating a new, nationwide 5G network with massive capacity and lower operational costs that will allow New T-Mobile to lower wholesale prices." *See* Joint Opposition at 85. Such "increased competition" in "wholesale services will spur Verizon and AT&T...to lower prices to maintain MVNO relationships and further invest in their networks to keep pace with New T-Mobile." *Id.* According to the Applicants' economic expert, "most MVNOs acquire some or all of their wholesale services from AT&T and Verizon," and the Applicants refer to AT&T and Verizon as "currently the predominant wholesale providers for MVNOs." *Id.* at 85-86.

Verizon, of course, does not operate in Puerto Rico, thus precluding LCPR from acquiring wholesale MVNO services from a predominant provider of such services. Consequently, if the FCC determines to approve the Transaction, it should impose a condition,

requiring New T-Mobile to enter into MVNO agreements with telecommunications providers in Puerto Rico on reasonable terms and conditions at its most favorable rates, with the presumption of long-term renewal.

Spectrum Divestment

As noted in LCPR's Petition to Deny, the FCC's approval of Sprint's joint venture with Open Mobile in 2017 consolidated the fourth (Open Mobile) and fifth (Sprint) largest wireless providers in Puerto Rico, and caused the joint venture to exceed the applicable spectrum screen in two of twelve cellular market areas in Puerto Rico. *See* LCPR Petition to Deny at 7-8. The Applicants would substantially exceed the spectrum screens in all 12 cellular market areas in Puerto Rico if their application was unconditionally granted. *Id.* Given the further substantial consolidation of wireless spectrum in Puerto Rico that will result from the Transaction, the FCC should impose a condition requiring the divestiture of sufficient spectrum and facilities to maintain an effective and efficient fourth competitive wireless provider in Puerto Rico. This condition must ensure that the required divestment of spectrum and facilities is sufficient to create not simply a viable, but a vibrant, mobile competitor. Such divestment would at least maintain the level of competition after the Sprint/Open Mobile transaction in 2017.

Conclusion

The FCC repeatedly has recognized the unique characteristics of Puerto Rico telecommunications markets. The Applicants concede that their spectrum holdings in Puerto Rico will substantially exceed the FCC's spectrum screens and that Puerto Rico is the only market in which Verizon has no presence and cannot compete with New T-Mobile. Nonetheless, the Applicants make no effort to demonstrate the public interest benefits of the Transaction in Puerto Rico to justify their excessive spectrum holdings and the reduced competition resulting

from the Transaction. If the FCC determines that the Transaction should be approved, LCPR respectfully requests that the FCC condition any approval upon the availability of favorable MVNO terms and conditions in Puerto Rico and the divestment of sufficient spectrum and facilities for an effective and efficient fourth wireless competitor in Puerto Rico.

October 31, 2018

Respectfully submitted,

Liberty Cablevision of Puerto Rico LLC

/s/ John Conrad Rodriguez

John Conrad Rodriguez, Esquire

Vice President, Legal & Human Resources

Liberty Cablevision of Puerto Rico LLC

279 Ponce de Leon Avenue

San Juan, PR 00918

CERTIFICATE OF SERVICE

I, John F. Conrad, hereby certify that on this 31st day of October, 2018, I have caused a copy of the foregoing Petition to Deny of Liberty Cablevision of Puerto Rico LLC to be served by email on the parties below:

Kathy Harris
Mobility Division
Wireless Telecommunications Bureau
kathy.harris@fcc.gov

Linda Ray
Broadband Division
Wireless Telecommunications Bureau
linda.ray@fcc.gov

Kate Matraves
Competition and Infrastructure Policy
Division
Wireless Telecommunications Bureau
catherine.matraves@fcc.gov

Jim Bird
Office of General Counsel
TransactionTeam@fcc.gov

David Krech
Telecommunications and Analysis Division
International Bureau
david.krech@fcc.gov

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

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

/s/ John F. Conrad
John F. Conrad