

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Application of |) | MB Docket No. 18-197 |
| |) | |
| T-Mobile and Sprint Corporation |) | |
| |) | |
| For Consent to Transfer Control of |) | |
| Licenses and Authorizations |) | |
| |) | |

**REPLY TO OPPOSITION OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits this reply to the Joint Opposition of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (together, the “Applicants”) to the petitions to deny the merger of the Applicants.² As described further herein, Applicants offered an inadequate response to NTCA’s concerns about the public interest harms arising out of the proposed transaction, including most notably the negative impacts upon consumers in rural areas. The transaction should therefore be denied.

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

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

II. APPLICANTS FAILED TO ADDRESS COMPETITIVE CONCERNS ASSOCIATED WITH LOSING SPRINT AS A PARTNER FOR THE BENEFIT OF CONSUMERS IN RURAL AMERICA

In its Petition to Deny, NTCA pointed out that small, community-based rural wireless providers rely on roaming and spectrum leasing partnerships with larger providers to offer rural consumers a competitive mobile product and a seamless consumer experience. Specifically, NTCA discussed the mutually beneficial relationship many members have with Sprint and how its loss as a partner as a result of this transaction could have a devastating impact on rural providers and the communities they serve. NTCA's members report that they currently have reciprocal roaming agreements with Sprint according to commercially reasonable terms and rates and spectrum leasing agreements which afford rural providers the opportunity to offer wireless service where they lack spectrum. As the smallest of the large providers, Sprint and rural providers have worked well together to establish mutually beneficially relationships.³

In response to NTCA's concerns about the loss of focus on rural partnerships, Applicants pledge that New T-Mobile will have a roaming program that offers carriers with existing roaming agreements with either T-Mobile or Sprint "to determine which rates will govern their relationship with New T-Mobile."⁴ However, Applicants offer no assurances that New T-Mobile will honor terms beyond rates or that agreements will be renewed upon expiration. In other words, Applicants' only response is to promise that they will adhere to existing contracts to which they are otherwise bound in any event – hardly, a proactive program for promoting partnerships and greater coverage in rural America.

³ Marina Lopes and Alina Selyukh, Sprint Grabs Lifeline With Rural U.S. Roaming Deals, Reuters.com (Aug. 29, 2014) (discussing 12 "mutual" roaming agreements with rural and regional carriers and stating "Sprint's...CEO Marcelo Claure said that the networks of rural carriers 'are really important in places where we haven't and don't intend to build our network.'"), *See also*, Rural Wireless Association Petition to Deny the Application of T-Mobile and Sprint Corporation, MB Docket No. 18-197 (August 27, 2018).

⁴ *Joint Opposition*, pp. 98-99.

Rural wireless providers who currently enjoy agreements with Sprint, but who are unable to successfully negotiate comparable outbound voice and data roaming agreements with New T-Mobile or the other large nationwide carriers, will lose their ability to offer a competitive product. All consumers, including those residing in rural areas, expect their mobile products to work outside of their home markets. Without that ability (or without the ability to offer the service at a competitive price), small providers will lose customers. Unlike Sprint, New T-Mobile (and the other larger nationwide providers) have little incentive to work cooperatively with small providers who are likely to be viewed as potential competitors rather than partners; instead, they have every incentive to extract one-sided roaming agreements to the detriment of rural providers and consumers.

Applicants do not deny that current T-Mobile denies its customers the ability to roam on other carriers' networks, pointing out that there is no requirement that a facilities-based carrier negotiate roaming agreements for its customers to roam on another carrier's network.⁵ It argues that such agreements are unnecessary where it has built out its own network. However, the Applicants also admit that "T-Mobile's and Sprint's networks do not cover many small towns and rural areas of the country,"⁶ and "neither T-Mobile nor Sprint has much of a presence today" in "rural areas and small towns."⁷ It is particularly telling that Applicants fail to explain why T-Mobile denies its customers the ability to roam even where its own network is substandard or completely absent. To provide a likely answer where Applicants fail to provide any, there is a cost associated with roaming and a reason T-Mobile would prevent its subscribers from roaming is almost certainly to avoid paying the same roaming fees it demands from the small providers. Not only is this practice anti-consumer, but it provides T-Mobile a competitive

⁵ *Joint Opposition*, p. 100.

⁶ *Joint Opposition* at 94.

⁷ *Joint Opposition* at 95.

advantage over small providers who are reliant on larger providers for a competitive product. If this transaction is approved, New T-Mobile will have the ability and incentive to leverage its size and extract higher roaming fees from small providers, while withholding roaming fees it might pay on behalf of its own customers. To suggest that potential roaming issues are not merger-specific harms that offer “no basis to impose roaming conditions”⁸ ignores the fact that Sprint actually relies on small providers as part of its business plan and currently does have mutually beneficial reciprocal roaming agreements with many small providers.⁹

Finally, Applicants devote only a footnote to NTCA’s spectrum leasing concerns, stating that New T-Mobile will honor agreements in effect at the time the transaction closes and will continue spectrum sales and leases, but only “where economically justified.”¹⁰ The spectrum leases that NTCA’s members currently have with Sprint are essential components of the services they offer. The loss of that relationship and those leases may result in the discontinuance of service. In effect, New T-Mobile could be able to shutter current competitors in rural areas by refusing to continue spectrum leases under the guise that they are no longer “economically justified.”

III. APPLICANTS FAIL TO ADDRESS OTHER PATTERNS OF BEHAVIOR CONTRARY TO THE PUBLIC INTEREST

T-Mobile has previously engaged in behavior that is contrary to the public interest. This transaction would not only afford New T-Mobile more power to engage in such practices, but would also increase its market share, the amount of traffic its network carries, and the resultant harm such practices could inflict on other providers and the public. Earlier this year T-Mobile admitted to violating FCC rules by inserting “false ring tones” into calls placed by T-Mobile

⁸ *Joint Opposition* at 102.

⁹ *See*, Marina Lopes and Alina Selyukh, Sprint Grabs Lifeline with Rural U.S. Roaming Deals, Reuters.com (Aug. 29, 2014).

¹⁰ *Joint Opposition*, fn 379.

customers,¹¹ directly and negatively impacting personal relationships, public safety, small businesses and rural providers.

To approve this transaction, the Commission must determine that it is in the public interest, convenience and necessity.¹² The Commission previously determined that rural call completion problems “have significant and immediate public interest ramifications,” and that the “public interest would be served by adopting the Consent Decree.”¹³ To dismiss concerns about how this transaction could negatively impact such a clear public interest concern is indicative of the parties’ failure to take the matter, and the public interest, seriously.

Applicants argue that NTCA and others “provide no basis for concluding such [rural call completion] incidents would occur in the future or that the merger would in any way contribute to their re-occurrence.”¹⁴ To the contrary, T-Mobile previously demonstrated and admitted a propensity to disregard FCC rules intended to ensure that calls complete as intended. Applicants provide no basis for expecting that such incidents would NOT occur in the future or that the merger would NOT contribute to their re-occurrence.

T-Mobile’s Consent Decree established a baseline of conduct going forward. However, it is unclear, and Applicants offer no information about, whether and to what degree Sprint’s current traffic would be subject to the same practices or what practices the New T-Mobile might use to ensure call completion and mitigate ongoing concerns with respect to calls failing to reach rural consumers. The public interest warrants such clarity.

¹¹ *In the Matter of T-Mobile*, Order & Consent Decree, File No.: EB-IHD-16-00023247 Acct. No. 201832989993 FRN 0004121760, DA 18-373 (April 16, 2018) (“*T-Mobile Consent Decree*”).

¹² 47 U.S.C. § 310(d).

¹³ *T-Mobile Consent Decree*.

¹⁴ *Joint Opposition*, pp. 121-122.

IV. APPLICANTS' RURAL BUILD OUT PROMISES ARE NOT SUPPORTED BY THE RECORD

The Applicants tout the public interest benefits of this transaction, asserting that “New T-Mobile will bring broadband and advanced 5G services to millions of rural Americans.”¹⁵ However, as NTCA and other parties in this proceeding have highlighted, a combined Sprint and T-Mobile will do little, if anything, to improve broadband options in rural America when compared to what a standalone T-Mobile could accomplish.¹⁶ Even in a best-case scenario of New T-Mobile fulfilling all the promises laid out in its Transaction Description, total low-band coverage will be relatively constant regardless of whether the merger happens and mid-band coverage improves only marginally over the next several years.¹⁷

Further, despite the Applicants' rhetoric about this transaction being good especially for rural America, nothing about this merger would enable the New T-Mobile to overcome the unique challenges of serving rural areas. As noted in a recent CNET article, “[t]he reason rural areas may miss out on 5G . . . is a combination of technology, geography and finances. The key spectrum needed for 5G only covers short distances, runs into problems when there's even a tree in the way and requires lots of expensive towers installed close to each other.”¹⁸ As Steven Berry, CEO of the Competitive Carriers Association, which includes among its members both T-Mobile and Sprint, is quoted as saying about the future of 5G, “If we were talking about a

¹⁵ *Joint Opposition*, p. 93.

¹⁶ *See, e.g.*, Comments of Communications Workers of America, WT Docket No. 18-197 (Aug. 27, 2018).

¹⁷ Comments of Communications Workers of America, pp. 47-48

¹⁸ Tibken, Shara, CNET “Why 5G is out of reach for more people than you think,” part of CNET’s Crossing the Broadband Divide series exploring the challenges of getting Internet access to everyone (October 25, 2018), available at <https://www.cnet.com/news/why-5gs-out-of-reach-for-more-people-than-you-think/>

digital divide before, now we're talking about a digital divide on steroids.”¹⁹ Six years post-merger, “most of New T-Mobile rural customers would be forced to settle for a service that has significant lower performance than the urban and suburban parts of the network.”²⁰ This causes the “digital divide,” including between New T-Mobile’s own customers, to worsen, not improve, post-merger. The Applicants’ vastly overstate the potential benefits of this transaction to rural consumers.

V. CONCLUSION

The Applicants’ claims about the rural benefits of the transaction at issue are specious and not supported by the record. However, the potential harms of losing Sprint as a competitor to the larger providers and as a partner to rural providers serving rural consumers are measurable and tangible. For the above stated reasons, the application of T-Mobile and Sprint to transfer control of licenses and authorizations should be denied.

Respectfully submitted,



By: /s/ Jill Canfield
Jill Canfield
Vice President, Legal & Industry
Assistant General Counsel
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
jcanfield@ntca.org
703-351-2000 (Tel)

¹⁹ *Id.*

²⁰ Comments of Communications Workers of America, p. 45.

CERTIFICATE OF SERVICE

I, Jill Canfield, do hereby certify that on this 31st day of October 2018, I caused a copy of the foregoing Opposition to be served upon the following individuals by United States Postal Service.

Regina M. Keeney*
A. Richard Metzger, Jr.
Emily J.H. Daniels
Lawler, Metzger, Keeney & Logan, LLC
1717 K Street, N.W., Suite 1075
Washington, D.C. 20006
gkeeney@lawlermetzger.com
Counsel to Sprint Corporation

Allen P. Grunes & Maurice E. Stucke*
Counsel to Communications Workers of
America
The Konkurrenz Group
5335 Wisconsin Avenue
Suite 440
Washington, D.C. 20015
allengrunes@konkurrenzgroup.com

R. Michael Senkowski*
Nancy J. Victory
Edward "Smitty" Smith
DLA Piper LLP (US)
500 8th Street, N.W.
Washington, D.C. 20004
202-799-4000
nancy.victory@dlapiper.com
Counsel to T-Mobile US, Inc.

Caressa D. Bennet, Daryl A. Zakov & Erin.
P. Fitzgerald*
Rural Wireless Association
5185 MacArthur Boulevard, NW
Suite 729
Washington, D.C. 20016
carri.bennet@wbd-us.com

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

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

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

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

Donald L. Herman, Clare Liedquist & Molly
O'Conner*
Counsel to Rural South Carolina Operators
Herman & Whiteaker, LLC
6720B Rockledge Drive, Suite 150
Bethesda, MD 20817
dee@hermanwhiteaker.com

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

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

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

Jennifer L. Richter & Shea Boyd*
Counsel to Altice
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, D.C. 20036
shea.boyd@akingump.com

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

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

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

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

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

Carl W. Northrop, E. Ashton Johnston &
Carolyn Mahoney*
Counsel to Cellular South d/b/a C Spire
Telecommunications Law Professionals
PLLC
1025 Connecticut Avenue, NW
Suite 1011
Washington, D.C. 20036
cmahoney@telecomlawpros.com

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

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

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

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

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

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

Atif Khan
Unlimited Arena
17411 Mountainview Circle
Sugarland, TX 77479

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

*Denotes service via electronic mail