



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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October 31, 2018

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St SW  
Washington, DC 20554

**Re: Comments in Opposition to the Merger of Applicants T-Mobile US, Inc.  
and Sprint Corp., WT Docket No. 18-197.**

Dear Ms. Dortch,

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I appreciate the opportunity to comment on the Federal Communications Commission (the "FCC" or the "Commission") review of the merger application of T-Mobile US, Inc. ("T-Mobile") and Sprint Corp. ("Sprint"). The AFL-CIO is the umbrella federation of U.S. labor unions, with 55 unions representing 12.5 million working people, including those employed in the relevant markets, as well their families who rely on affordable and reliable wireless service. The AFL-CIO strongly opposes the merger as currently structured of these two competitors in the mobile telephony/broadband services and prepaid wireless retail services markets.

The proposed merger between T-Mobile and Sprint raises serious concerns about further market concentration in a market in which the four leading incumbents—T-Mobile, Sprint, Verizon, and AT&T—account for around 98 percent of mobile wireless service revenues in the United States.<sup>1</sup> Post-merger, the New T-Mobile would hold more than one-third of available spectrum in counties comprising 92 percent of the U.S. population according to analysis conducted by the Communications Workers of America. Estimates of market concentration in both the mobile telephony and prepaid wireless markets show that both are already "highly concentrated" per the Department of Justice 2010 Horizontal Merger Guidelines. The proposed merger triggers a presumption under those Guidelines

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<sup>1</sup> 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, 32 FCC Rcd 8968 ¶ 32 (rel. Sept. 27, 2017).

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that this transaction is “likely to enhance market power” for the three remaining national facilities-based wireless providers.<sup>2</sup>

With such clear anticompetitive threats inherent to this transaction, the applicants bear a significant burden to show that the transaction will benefit the public in such a way as to overcome the harms caused by the loss of market competition. Yet the applicants offer scant, if any, evidence of their broad and grandiose claims of public benefits arising from the loss of a major competitive force in the wireless market. Nor do they offer any evidence that their firms will not be able to continue to compete with Verizon and AT&T if the FCC blocks the merger.

**I. A merger of T-Mobile and Sprint will be harmful to U.S. workers.**

The applicants bear the burden of showing by a preponderance of the evidence that their proposed merger would be in the public interest and create benefits that outweigh the anticompetitive harms caused by their merger. In the case of employment, they have failed to meet this burden.

In their application to merge, T-Mobile and Sprint make no credible commitments to create new jobs. The applicants’ claimed job creation benefits are not specific to the merger, and the number of jobs is neither verifiable nor adequately quantifiable based on the data provided. In reality, substantial job losses are likely to be the result if the Commission approves the merger. For these reasons, the Commission should not give any weight to the applicants’ purported job creation benefits for the purpose of the Commission’s public interest review of the application.

Both T-Mobile and Sprint have publicly committed to building out 5G wireless networks on their own, with significant capital allocated to support those efforts. The applicants’ claims of job creation by the merger appear to combine the number of jobs that each firm would create if they continue their existing plans to each build a national network independently. Should the firms be permitted to merge, the surviving firm would only need to build one national 5G network, requiring far fewer workers and materials than two firms building two separate networks.

For this reason, the Commission must consider the very real potential of job losses from the merger of these competitors. Job losses are clearly not in the public interest. Estimates by the Communications Workers of America, New Street Research, and MoffettNathanson Research predict that the transaction would result in anywhere from 20,000 to nearly 30,000 workers losing their jobs should the FCC permit the merger.

The elimination of overlapping retail locations would result in the gross majority of these lost jobs. T-Mobile CEO John Legere has already confirmed that the requested merger would result

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<sup>2</sup> 2010 Merger Guidelines § 5.3.

in the closure of retail prepaid and postpaid wireless stores.<sup>3</sup> Much of the savings the firms would realize from the merger comes from the closure of these locations and the subsequent layoff of 15,000 to 24,400 retail workers. An additional 4,500 to 5,000 jobs would be lost from the elimination of corporate headquarters jobs made redundant by the merger.<sup>4</sup>

In addition to this loss of jobs, the merger of two major competitors in the highly concentrated wireless market would also put downward pressure on wages, benefits, and conditions for workers in the relevant job markets. Such concern is especially relevant in the instant case as both T-Mobile and Sprint have a history of violating federal labor and employment laws, as discussed in the Communications Workers of America Comments. The applicants provide no assurances that the employment practices of the New T-Mobile would be better. Indeed, with fewer employers to compete against for employees and absent collective bargaining, there would be no incentive nor mechanism for workers to improve their compensation and working conditions at the New T-Mobile.

If the FCC allows the proposed transaction, it must do so contingent on enforceable commitments by the applicants to ensure that the merger will not result in any current T-Mobile or Sprint employee losing their job, or in any overall reduction in U.S. employment. Additionally, the FCC should require the applicants to return offshore call center jobs to the U.S., and to commit to a neutrality agreement to guarantee that New T-Mobile employees can join together in a union to negotiate a fair return on their work without interference.

To justify the transaction in the face of its clear anticompetitive outcomes, the applicants must show public benefits that outweigh the harm. Massive job losses are not in the public interest. With respect to the U.S. workforce, and their own current workers, the applicants have failed to do so, and the application should be rejected.

## **II. A merger of T-Mobile and Sprint will be harmful to U.S. consumers.**

The loss of the head-to-head business rivalry between T-Mobile and Sprint will constrain the disciplining force on consumer prices for wireless services: the discipline of market competition. The applicants must show that the transaction will result in public benefits that outweigh the harms consumers will face from this loss of competition, yet offer no evidence that consumers will benefit more than they will be harmed.

Fewer competitors in the wireless market will mean that the incumbent firms will have more market power, resulting in harm to consumers in the forms of higher prices, reduced choice, and

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<sup>3</sup> U.S. Senate, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Hearing, "Game of Phones: Examining the Competitive Impact of the T-Mobile – Sprint Transaction".

<sup>4</sup> Comments of Communications Workers of America in the Matter of Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of the Licenses and Authorizations at 61-65, WT Docket No. 18-197 (Aug. 27, 2018).

ultimately lower quality service. With no verifiable public benefit to offset these harms, the Commission must deny the merger as currently structured.

Direct competition between the applicants has had a noticeably positive effect on the market for wireless services that has benefited consumers. The return of unlimited data plans for wireless consumers is directly attributable to competition between T-Mobile and Sprint. Indeed, T-Mobile and Sprint appear to be each other's closest competitor in prepaid and postpaid wireless service.

If the FCC approves the merger there will be only three national facilities-based providers in the wireless market, Verizon, AT&T, and the New T-Mobile. New market entrants will not be able to compete due to the extremely high barriers to entry in the wireless telephony market. The rest of the market is comprised of small regional carriers that are reliant on the national carriers to provide roaming services, and low-cost resellers that do not have their own networks but purchase wholesale wireless services from the facilities-based carriers. The argument that these firms can effectively compete with Verizon, AT&T, and the New T-Mobile is simply not credible.

If the FCC approves the merger, the loss of competition will have a disproportionate impact low income wireless customers, including users of the LifeLine program. The New T-Mobile will control around 60 percent of the prepaid wireless market, which disproportionately serves low-income customers. New T-Mobile also will control 45 percent of the market for selling spectrum to low-cost resellers. Moreover, 70 percent of LifeLine users receive service through a reseller, many of whom contract with the applicants for wireless spectrum. This degree of market concentration will raise prices for prepaid and reseller service. We also note that the applicants have not promised to maintain Sprint's current participation in the LifeLine program.

Finally, the applicants stress the benefits the transaction would bring to rural consumers, yet those claims do not hold up to scrutiny. The Communications Workers of America's analysis found that what little data the applicants provided clearly showed little to no benefit for rural consumers and a deepening of the digital divide. The Rural Wireless Association's petition to deny provides further information about T-Mobile's existing practices in rural markets and the likely price increases and loss of consumer choice for rural consumers.

The applicants have failed to meet their burden of showing that the transaction sought would create consumer benefits outweighing the anticompetitive harms of the merger. They have utterly failed to do so. The Commission should therefore deny the application.

### **III. A merger of T-Mobile and Sprint will compromise national security.**

The applicants must show that their merger would benefit the public interest, yet they do not address potential compromises of national security that could arise from the transaction.

The applicants' majority-owners have histories of using telecommunications equipment manufactured by Chinese firms that may contain security risks. Allowing the applicants to merge may increase the likelihood that equipment that could compromise national security may be used in U.S. telecommunications networks. The FCC should not allow this to happen.

The House Select Committee on Intelligence has warned about potential national security threats in using equipment made by Chinese firms, especially Huawei Telecommunications Company and ZTE Corp., in U.S. telecommunications networks.<sup>5</sup> T-Mobile's majority owner Deutsche Telekom has significant ties to Huawei, and both Sprint and its majority owner SoftBank have built networks using equipment from Huawei and ZTE, as described in the petitions to deny from the Communications Workers of America and the Rural Wireless Association.

Also of importance to the FCC's review of the proposed transaction is Sprint's history with Huawei. When SoftBank purchased Sprint and 100 percent of Sprint's subsidiary Clearwire in 2012, a National Security Agreement required all Huawei equipment be removed from the companies' networks. Three years later, Sprint admitted that the Clearwire network still contained Huawei equipment.<sup>6</sup>

The Committee on Foreign Investment in the United States ("CFIUS") is still reviewing the proposed merger for national security concerns. The Commission should not proceed with further review of the transaction until the CFIUS has completed its review, and should only allow the transaction if it can be entirely certain that the applicants will not use Huawei or ZTE equipment in its networks.

The applicants have not provided any enforceable assurances that the transaction would not harm national security, or that it would create benefits sufficient to outweigh such harms. The Commission therefore must not grant their application to merge.

#### **IV. Conclusion: The FCC should reject the merger of T-Mobile and Sprint.**

The proposed merger between T-Mobile and Sprint will be harmful to workers and consumers, and may compromise national security. The applicant firms have not met the burden of proof necessary to show that the merger would provide public benefits that outweigh the harms the transaction would create. Therefore, the proposed merger is not in the public interest and should be rejected by the Commission.

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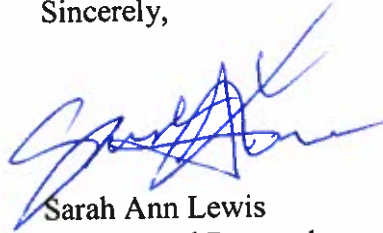
<sup>5</sup> Permanent Select Committee on Intelligence, U.S. House of Representatives Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE (Oct. 8, 2012).

<sup>6</sup> See Dan Jones, *Surprise! Sprint Still Has Huawei in Its Network*, Light Reading (Jan. 25, 2016), <https://www.lightreading.com/mobile/4g-lte/surprise!-sprint-still-has-huawei-in-its-network/d/d-id/720373>.

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Thank you for considering our concerns regarding the proposed merger. If the AFL-CIO can be of further assistance regarding our views, please contact Sarah Lewis at (202) 637-5213 or [slewis@aficio.org](mailto:slewis@aficio.org).

Sincerely,



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Corporations & Capital Markets  
AFL-CIO