

March 29, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations; WT Docket No. 18-197

Dear Ms. Dortch:

T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”)¹ (collectively, “Applicants”) hereby oppose the Voqal merger divestiture condition proposed in Voqal’s March 4, 2019 *ex parte* filing.² Without any legal or factual support, Voqal seeks a merger condition that would require New T-Mobile to divest the upper 94 megahertz of 2.5 GHz spectrum (2596-2690 MHz), which consists primarily of Broadband Radio Service (“BRS”) channels.³ While Voqal calls this a “refinement” of its proposed condition last fall seeking extensive divestitures of New T-Mobile’s 2.5 GHz spectrum,⁴ this revised approach is just as flawed as its predecessor.

As discussed below, Voqal’s proposed divestiture has nothing to do with ameliorating any alleged merger harm—indeed, Voqal does not even bother making a cogent case that a competitive problem exists. Instead, this is a self-interested attempt by Voqal to compel a divestiture of all of Sprint’s licensed BRS spectrum and obtain the right to unilaterally and immediately exit lease arrangements with Sprint in 2.5 GHz “Top Half” Educational Broadband Service (“EBS”) spectrum, while leaving EBS spectrum leased to Sprint in the 2.5 GHz “Bottom Half” undisturbed (and presumably more valuable at renewal time). For these reasons, as set forth in further detail below, the Commission should reject Voqal’s proposal.

¹ For convenience and solely for purposes of this letter, “Sprint” as used herein includes all entities within the Sprint corporate family.

² Voqal, Written *Ex Parte* Presentation, WT Docket No. 18-197 (Mar. 4, 2019) (“Voqal Divestiture Proposal”).

³ Voqal Divestiture Proposal at 2. Voqal refers to this proposal as its “Top Half” divestiture, which it refers to as its “primary recommendation.” Voqal also lays out an alternative, but equally objectionable, “Bottom Half” divestiture proposal that would require New T-Mobile to divest the lower 100 MHz of the 2.5 GHz band (2496-2596 MHz). Voqal notes the “Bottom Half” divestiture proposal is not its primary recommendation due to a more complicated implementation process. *Id.*

⁴ See Petition to Deny of Voqal, WT Docket No. 18-197, at 19-20 (filed Aug. 27, 2018).

Voqal has provided no legitimate rationale for its proposed divestiture.

As the Applicants have previously explained, the 2.5 GHz issues raised by Voqal are not merger-specific.⁵ They are thus irrelevant to the Commission’s review of the proposed transaction. Voqal characterizes its divestiture proposal as necessary to address “competitive concerns raised by New T-Mobile’s proposed accumulation of spectrum generally, and in the 2.5 GHz band specifically,”⁶ yet T-Mobile holds no BRS or EBS licenses or leases in the 2.5 GHz band. After closing then, New T-Mobile would have the exact same spectrum holdings in this band as Sprint has today.⁷ It is well established that merger review is limited to “considerations of merger-specific effects,”⁸ and that the Commission will “not impose conditions to remedy *pre-existing* harm or harms that are unrelated to the transaction.”⁹ Voqal’s proposal clearly involves issues that pre-date, and arose independent of, the merger, and it should therefore be rejected.

⁵ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at 123 (filed Sept. 17, 2018) (“Joint Opposition”).

⁶ Voqal Divestiture Proposal at 5.

⁷ Notably, Sprint’s 2.5 GHz holdings fully comply with the Commission’s spectrum aggregation rules and policies, and are the result of Commission approval of prior transactions. *See Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 5666 (2005) (“*Sprint-Nextel Order*”); *Applications of SoftBank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, ¶ 74 (2013) (“*SoftBank-Sprint Order*”); *Sprint Nextel Corporation and Clearwire Corporation Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008).

⁸ *See Applications for Consent to the Transfer of Control of Licenses from Comcast*

Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70, Order, 17 FCC Rcd 22633, 22637 ¶11 (2002); *see also Joint Applications of Global Crossing Ltd. and Citizens Communications Co. for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations*, File Nos. ITC-T/C-20000282-00530, et al., Memorandum Opinion and Order, 16 FCC Rcd 8507, 8511 ¶10 (2001) (rejecting suggested conditions because commenters “failed to show that the harms they allege are sufficiently merger-specific or come within the scope of harms [the Commission] consider[s] in dealing with license transfer applications”).

⁹ *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order, 23 FCC Rcd 1744, 17463 ¶9 (2008); *Verizon Communications Inc. and MCI, Inc. Merger*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18446 ¶19 (2005) (to be a proper subject of consideration on review of a transaction, an alleged harm must directly “arise from the transaction”).

Voqal also fails to explain what harms will result from the merger or what problems would be solved through its proposed divestitures. Indeed, as the Applicants noted in their Joint Opposition, *no* facially supportable local competition analyses have been entered in the record.¹⁰ Nonetheless, under Voqal's seemingly unconditional proposal, the divestiture would apparently be required even in markets where the Applicants do not reach the spectrum screen. Because the spectrum screen was intended to remedy *local* competitive issues, a nationwide "remedy" unmoored from any localized conditions is utterly contrary to the Commission's prior precedents. In any event, the Commission has been clear that the spectrum screen is simply a tool to "identify those local markets in which no competitive harm clearly arises from the transaction."¹¹ As noted above, Voqal has made no showing of competitive harm.

Voqal ignores the negative impact its proposed divestitures will have on New T-Mobile, the EBS community, and the public interest.

Voqal's divestiture proposal would impair the benefits of the proposed transaction. The Applicants have thoroughly demonstrated the crucial role Sprint's 2.5 GHz holdings will play in New T-Mobile's network. Specifically, the Applicants have provided extensive modeling and economic showings demonstrating the massive consumer benefits that will arise from the combination of Sprint's 2.5 GHz mid-band spectrum assets with T-Mobile's 600 MHz spectrum and network.¹² As the Applicants have also previously demonstrated, substantial divestitures of 2.5 GHz spectrum would disrupt the broadband wireless data services that Sprint currently provides to millions of customers.¹³ Voqal's preferred "Top Half" divestiture proposal would also have the effect of significantly degrading New T-Mobile's 2.5 GHz network and services, harming consumers and other 2.5 GHz users, including educational institutions. Further, under this preferred divestiture proposal, New T-Mobile would only have access to leased EBS spectrum in the lower half of the 2.5 GHz band. Even Voqal acknowledges that, due to the legacy licensing environment at 2.5 GHz, Sprint's operations in the EBS spectrum include numerous geographic holes and coverage gaps, far more than in the geographically contiguous BRS spectrum in the upper portion of the band.¹⁴ Nevertheless, Voqal does not seem to fully

¹⁰ Joint Opposition at 26-28.

¹¹ *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13931 ¶34 (2009). *See also Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, Files No. 000165065, Memorandum Opinion and Order, WT Docket No. 04-70, 19 FCC Rcd. 21522, 21568 ¶108 (2004); *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720-21 ¶32 (2010).

¹² *See, e.g.*, Joint Opposition at 29-30.

¹³ Joint Opposition at 124 n.459.

¹⁴ *See generally* Voqal Divestiture Proposal.

grasp the ramifications of its proposal, or the detrimental impact it would have on existing service and the public interest generally.

In contrast to Voqal, many EBS organizations and licensees have supported the merger, recognizing the benefits New T-Mobile will bring, including specific benefits unique to the 2.5 GHz band. In fact, leading EBS organizations such as the National EBS Association and the Catholic Technology Network have filed submissions at the Commission both backing the merger and directly opposing Voqal's divestiture proposal.¹⁵ Other prominent 2.5 GHz EBS licensees, such as the Hispanic Information and Telecommunications Network, also appreciate the benefits New T-Mobile will bring to EBS licensees and support the merger.¹⁶

Voqal's proposal would harm, rather than help, these parties and other educational entities from whom Sprint leases EBS spectrum—the very community Voqal purports to represent in its filing. Sprint helps meet the educational use obligations associated with EBS licenses by supplying local schools and other educational partners with mobile broadband devices and working cooperatively with local educational programming committees. Even if New T-Mobile could divest just Sprint's 2.5 GHz BRS spectrum assets, such divestiture would significantly degrade the high-capacity network that Sprint has deployed in the upper half (the BRS side) of the 2.5 GHz band. This detrimental impact would jeopardize the benefits that Sprint has long provided to the educational community, including the very users that Voqal claims to support in its current arrangements with Sprint.

Voqal's divestiture proposal is a transparent attempt to abrogate a long-term lease arrangement and gain new rights that it does not have under its current arrangement.

Voqal's divestiture proposal is nothing more than an attempt to involve the Commission in a long-running contractual dispute with Sprint. Through it, Voqal seeks to abrogate not only its own contract with Sprint, but also, in effect, the contracts of hundreds of other G Block licensees who would otherwise be leasing their 2.5 GHz spectrum to New T-Mobile following the merger.¹⁷ Through its affiliated licensees, Voqal today has a long-term *de facto* spectrum lease

¹⁵ Joint Reply Comments of the National EBS Association and Catholic Technology Network, WT Docket No. 18-197 (Oct. 31, 2018); NESBA and CTN, Notice of *Ex Parte* Presentation, WT Docket No. 18-197 (Nov. 27, 2018).

¹⁶ Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket No. 18-197 (Oct. 25, 2018).

¹⁷ Today Sprint has over 1500 leases in the 2.5 GHz band, covering over 1500 licenses. Under the "Top Half" divestiture proposal, New T-Mobile would be required to divest not only its entire BRS portfolio, but also its 2.5 GHz EBS lease interests for the G Block. Incredibly, Voqal recommends that all G Block lessors (including Voqal itself) be given the opportunity to unilaterally and immediately end their existing contractual relationships with Sprint, thereby becoming EBS lessor "free agents." Voqal and other EBS licensees would be able to strike new arrangements with the single, post-divestiture BRS licensee entity. As part of the same proposal, meanwhile, New T-Mobile would be obligated to abide by the existing

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in place with Clearwire, a subsidiary of Sprint, and has been engaged in a variety of public contractual disputes with Sprint. The Commission has consistently refused to address such private disputes in merger reviews, deeming them irrelevant and inappropriate to its public interest analysis, and better resolved elsewhere.¹⁸ It should do so here as well.

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Voqal's proposed condition requiring divestiture of portions of New T-Mobile's 2.5 GHz spectrum is not merger-specific and would eliminate key benefits of the proposed transaction, all while harming EBS and other 2.5 GHz licensees. Voqal's proposal should be recognized for what it is: a self-serving attempt to extract additional concessions from Sprint. For all these reasons, the Commission should reject Voqal's 2.5 GHz divestiture proposals.

Please direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

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leasing arrangements until Voqal (and other lessors) chose to switch to a new lessee carrier. With its divestiture proposal, Voqal is attempting to use the merger review process to obtain important rights that it does not have under its existing arrangement with Sprint.

¹⁸ *Applications Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14033-34 ¶¶180-81 (2005); see also *Verizon/Alltel Order*, 23 FCC Rcd at 17538 ¶214 (refusing to consider the question of whether the transaction would violate existing reseller agreements because that constituted a private contractual dispute).