MARK VAN BERGH, ESQ.*
1625 S. Nelson St.
Arlington, VA 22204

Telephone: (703) 671-7335
Mobile:(703) 298-4870
mvanbergh@comcast.net

*Admitted only in District of Columbia

April 2, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Ex Parte* Presentation**
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:

The North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon,[1] by counsel, write to follow up on their joint *ex parte* presentation with Voqal to the FCC transaction team on November 7, 2018.[2] Below, NACEPF and Mobile Beacon expand on the comments the parties made in that discussion and urge the Commission to consider the following three points:

> *First*, the proposed merger would worsen competitive conditions in markets for 2.5 GHz spectrum, harming broadband consumers as well as EBS licensees and the vulnerable populations they serve;
>
> *Second,* the Commission should evaluate the proposed merger against the backdrop of the pending rulemaking on the 2.5 GHz band, which threatens to compound the competitive harms posed by the merger; and

[1] The North American Catholic Educational Programming Foundation, Inc. (NACEPF) is a Rhode Island-based 501(c)(3) nonprofit organization and the second largest Educational Broadband Service (EBS) licensee in the United States. See more at www.nacepf.net. Mobile Beacon is a wholly-owned subsidiary of NACEPF and the service provider that makes NACEPF's broadband service available to the educational and nonprofit sectors. Mobile Beacon's broadband service is relied on by more than 850 schools, 920 libraries, and 4,660 nonprofits throughout the United States. See more at www.mobilebeacon.org.
[2] Notice of *Ex Parte* Presentation, WT Docket No. 18-197 (Nov. 7, 2018).

Third, the Commission can and should address these harms by conditioning approval of the merger on Sprint's divesting large, contiguous blocks of 2.5 GHz spectrum throughout its nationwide spectrum holdings, as proposed by Voqal in its March 4 ex parte filing.[3]

I. Transaction-Specific Harms to Competition

NACEPF and Mobile Beacon agree with Voqal and others that the proposed merger would harm broadband consumers by consolidating virtually all of the key mid-band spectrum for deploying 5G in the hands of one company—New T-Mobile. Sprint and T-Mobile make no secret of this. In their Joint Opposition, they systematically reject *any* spectrum besides the combination of Sprint's 2.5 GHz holdings and T-Mobile's 600 MHz holdings as an adequate input for 5G.[4] By their own admission, the proposed merger would simultaneously confer on New T-Mobile the mid-band spectrum it needs to deploy 5G and deny that spectrum to all other wireless carriers, including 100% of the 2.5 GHz spectrum in some of the nation's largest markets.[5] As a result, other entities will have to spend more to deploy a 5G network, which will harm the consumers that would otherwise benefit from 5G competition.

The merger as currently proposed would also harm EBS licensees. The already depressed competitive conditions in the 2.5 GHz band would *worsen* if the proposed merger were approved. Although the EBS leasing model under current rules has produced significant educational benefits, Sprint already provides less robust lease terms to EBS licensees than Clearwire did when multiple operators were competing for 2.5 GHz spectrum.[6] New T-Mobile would have even *less* incentive than Sprint to offer even existing levels of benefits to EBS licensees as their leases end due to its even stronger bargaining position.

New T-Mobile's extensive nationwide 2.5 GHz holdings would make it nearly impossible for other carriers to identify contiguous blocks of 2.5 GHz spectrum large enough to be useful for deploying 5G, limiting potential competition for leasing 2.5 GHz spectrum.[7] Further, the combined spectrum resources available to New T-Mobile would make it less reliant

[3] Petition to Deny the Above-Captioned Applications as Currently Proposed of Voqal at 3, 18, WT Docket No. 18-197 (Aug. 27, 2018) ("Voqal Petition"); Reply of Voqal to Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at 3, WT Docket No. 18-197 (Oct. 31, 2018) ("Voqal Reply"). Written *Ex Parte* Presentation, WT Docket No. 18-197 (Mar. 4, 2019) ("Voqal Ex Parte").

[4] *See* Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at 54-59, WT Docket No. 18-197 (Sep. 17, 2018) ("Joint Opposition") (rejecting millimeter, 3.5 GHz, 3700-4200 MHz, currently-unused EBS spectrum, and 3450-3550 MHz as either inadequate substitutes or speculatively available).

[5] *See* Voqal Petition at 11-12 ("Sprint controls 100% of the allocated EBS and BRS channels in such Cellular Market Areas . . . as Chicago, Washington DC, Pittsburgh, Miami, Baltimore, Minneapolis-St. Paul, Denver, and Phoenix").

[6] *See* Voqal Petition at 13-15 (explaining that EBS lease terms "became much less favorable for lessors" after Sprint and Clearwire combined their holdings).

[7] *See* Voqal Reply at 4 ("if New T-Mobile is allowed to retain vast 2.5 GHz holdings post-merger, its overwhelming position will preclude other capable carriers from competing for new 2.5 GHz allocations because the high level of concentration will foreclose them from obtaining an adequate nationwide 2.5 GHz portfolio").

than a standalone Sprint on the EBS spectrum held by individual licensees. This inequality in bargaining power between New T-Mobile and EBS licensees would likely lead to even more unfavorable lease terms than EBS licensees are currently able to obtain from Sprint, which would ultimately lead to less affordable and robust broadband options available to the anchor institutions, students, low-income families, and rural Americans who currently rely on such service from EBS licensees.

The proposed merger would also create particular problems for rural customers, who already face limited access to affordable and robust wireless services. Many rural communities are served by EBS licensees and tribal entities—some of whom report that Sprint and other commercial providers already refuse to partner with them to help them deploy broadband to the hard-to-reach communities they seek to serve.[8] As described further below, this problem will grow if the merger is approved.

While the proposed merger would undoubtedly expand New T-Mobile's spectrum resources, giving it more flexibility in allocating spectrum resources, this increased capacity will not improve rural service because Sprint's current lack of rural coverage is not due to a spectrum shortage. Mid-band spectrum, like the kind of airwaves Sprint holds, has trouble carrying data long distances—a must-have for rural mobile broadband networks. In fact, the 600 MHz spectrum T-Mobile already holds is more suitable for rural mobile broadband deployment than the frequencies it would gain access to by merging with Sprint. Given that T-Mobile has failed to expand rural coverage despite holding ample low-band spectrum suitable for that purpose for over 20 years,[9] there is no reason to expect that New T-Mobile would use Sprint's mid-band 2.5 GHz spectrum to expand rural coverage.

There is no plausible rationale offered in the Application to support the claim that increased rural deployment will be a transaction benefit. To the contrary, there is ample evidence in the record that merger-specific harm for rural Americans will result from this transaction. Many rural and regional mobile carriers currently have mutually-beneficial agreements with Sprint that allow their customers to access the Sprint voice and data networks when roaming. But T-Mobile has repeatedly declined to commit to upholding those deals if it takes over Sprint, which means rural consumers could pay higher prices or lose coverage

[8] Reply Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 10, WT Docket No. 18-120 (filed Sep. 7, 2018) ("NACEPF and Mobile Beacon 2.5 Reply Comments"); Initial Comments by the Imperial County Office of Education/California K-12 High Speed Network at 10 WT Docket No. 18-120 (filed Aug. 7, 2018) ("K12HSN 2.5 Comments") ("[A]ttempts to partner with Sprint for LTE access on the underutilized EBS spectrum in our area have proven to be unsuccessful."); Comments of the Bad River Band of the Lake Superior Tribe of Chippewa Indians at 3, WT Docket No. 18-120 (filed Aug. 8, 2018) ("Bad River Band 2.5 Comments") ("[T]here are no commercial broadband providers that offer service or are economically motivated to serve the reservation and its residents at satisfactory levels.").

[9] Informal Request for Commission Action by Rural Wireless Association, WT Docket No. 18-197 (filed Dec. 26, 2018) (requesting that the FCC investigate T-Mobile's 4G LTE coverage claims as part of the one-time data collection for the Mobility Fund Phase II reverse auction and alleging that T-Mobile misrepresented in its data submission rural areas to which it provided 5 Mbps download speeds and areas that were built out).

altogether.[10] The real path to improved rural wireless broadband service depends on precisely the kind of competition that drives these types of partnerships. This merger threatens to eliminate that competition.

II. Adopting Certain Proposals in the Pending 2.5 GHz Rulemaking Would Exacerbate the Harms to EBS Licensees and Their Vulnerable Customers from the Proposed Merger

In addition to evaluating the harms described above, it is critical that the Commission consider the effects of this merger in the context of the pending *Transforming the 2.5 GHz Band* rulemaking proceeding,[11] which could greatly change the nature and use of the vast EBS spectrum holdings New T-Mobile seeks to control.

A. Eliminating Educational Eligibility Rules Would Allow New T-Mobile to Drive EBS Licensees Out of the Market, Depriving Low-Income Consumers of Access to Broadband

The Commission is currently seeking comments on its proposal to eliminate the requirement that EBS spectrum be licensed to eligible educational entities. If adopted, this proposal would seriously undermine the continued viability of EBS, leaving the many low-income and rural Americans who rely on broadband service from an EBS licensee with no viable alternative.

Many EBS licenses are currently subject to long-term lease agreements, with Sprint as the most common lessee.[12] NACEPF and Mobile Beacon—along with many others from the EBS community, education sector, and public interest groups—have warned the Commission that eliminating eligibility requirements would give commercial entities like Sprint the ability and incentive to offer highly unfavorable (or no) lease terms in an attempt to drive EBS licensees to sell.[13] If control over the EBS band shifts from educational to commercial licensees, the educational value and potential of this license would forever be lost to the educational community. Indeed, as Sprint explains, "EBS leases typically include provisions such as rights of first refusal on the sale of the license."[14] In a post-merger world, this would clearly put New T-Mobile—not the open market or even EBS licensees—in control of who would obtain (or retain) access to licensed EBS spectrum.

---

[10] *See* Reply of Cellular South, Inc. D/B/A C Spire to the Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at 9, WT Docket No. 18-197 (filed Dec. 26, 2018) (noting that "T-Mobile has refused to meet with C Spire and certain other competitive carriers" to discuss post-merger wholesale relationships" and that "based on past performance and current behavior, competitive carriers and the Commission cannot expect New T-Mobile to offer suitable roaming and MVNO arrangements").

[11] *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, FCC 18-59, WT Docket No. 18-120 (released May 10, 2018) ("*2.5 GHz NPRM*").

[12] *See* Voqal Petition at 11-12; Comments of Sprint Corporation, WT Docket No. 18-120 (filed Aug. 8, 2018) ("Sprint 2.5 Comments") at 2.

[13] Comments of North American Catholic Educational Programming Foundation and Mobile Beacon at 9, WT Docket No. 18-120 (filed Aug. 8, 2018) ("NACEPF and Mobile Beacon 2.5 Comments")

[14] Sprint 2.5 Comments at 14.

The risk that EBS control would be irreversibly transferred from educational to commercial entities would be greatly amplified if New T-Mobile held all of Sprint's 2.5 GHz spectrum. As a standalone company, Sprint is heavily dependent on the 2.5 GHz spectrum for its existing network operations, and also has significantly fewer financial resources than T-Mobile, which would limit its ability to buy licenses outright in the short-term. In contrast, New T-Mobile would be less reliant on 2.5 GHz spectrum as part of its overall spectrum portfolio and would have vastly increased leverage and buyer power than Sprint as a standalone company today. This would enable New T-Mobile to secure even more anticompetitive lease terms from existing EBS licensees or exert greater pressure on existing licensees to transfer ownership of their license to them.

If New T-Mobile succeeded in systematically driving EBS licensees out of the market, the results for low-income consumers would be disastrous. Today, EBS licensees connect tens of thousands of schools, libraries, and other anchor institutions and, through them, millions of students, families, and lifelong learners that would not otherwise be reached by comparable commercial broadband offerings.[15] The affordable and robust service EBS licensees currently offer on their lessee's network would not be adequately replaced by the underlying facilities-based provider's retail service.[16] More than 200 parties submitted comments in the EBS rulemaking proceeding telling the Commission to preserve EBS for education. Many went on to say that "without the broadband service they currently rely on from an EBS licensee, they would have no alternative means of connectivity, insufficient data to accomplish their educational missions, and have to either forgo broadband or cut existing programs and/or levels of service to pay for more expensive commercial service."[17]

The Commission has ample evidence that service from EBS licensees is currently offering more discounts, donations, and more generous data allotments than are obtainable from commercial alternatives,[18] even considering commercial carriers' private philanthropic programs or their limited participation in government-subsidized programs for low-income families (like Lifeline).[19] For example:

- Mobile Beacon's EBS program for schools provides unlimited broadband data plans for $10/month and device donation programs to subsidize the full cost of the mobile hotspot, enabling schools to acquire three times the number of devices with more robust data plans than could be obtained directly from the commercial

[15] NACEPF and Mobile Beacon 2.5 Reply Comments at 1.
[16] NACEPF and Mobile Beacon 2.5 Comments at 4 ("Even in the areas where our service overlaps with the service areas of commercial broadband providers, we have found that our service routinely reaches consumers who have never before had a home internet connection, let alone broadband speeds").
[17] NACEPF and Mobile Beacon 2.5 Reply Comments at page 27.
[18] *See generally* NACEPF and Mobile Beacon 2.5 Reply Comments at 13-19.
[19] T-Mobile only has approximately 4.4 million Lifeline customers, offering this service in only nine states and Puerto Rico. [Comments of TracFone Wireless Inc., page 11, in Lifeline docket 17-287]

sector.[20] In contrast, Sprint's *1Million Project* offered to schools to provide internet access to students without internet at home offers only 3 GB of data per month (which is 70% *less* than their *lowest level of retail service* to consumers).[21]

- Bridging the Gap, a digital inclusion program offered by nonprofit PCs for People, uses Mobile Beacon's mobile broadband service to help connect eligible individuals and families 200% below the poverty line. In 2017, a research study of 415 Bridging the Gap households found that 73% of respondents never had home internet access before Bridging the Gap. In other words, no "federal initiative, commercial offer, or digital inclusion program . . . had reached these families." Without Mobile Beacon's EBS-enabled program, it is unclear how they would be able to acquire home internet access.[22]

If Mobile Beacon and other EBS licensees were driven from the 2.5 GHz band, New T-Mobile would lack a motive to maintain these vital programs. Under the existing EBS framework, EBS licensees have strong incentives to identify commercial partners to provide an underlying network through which they can serve their customers. In exchange for providing spectrum to their commercial lessee, EBS licensees receive rights to provide broadband devices and service to their end users.[23] However, absent the existing EBS framework, commercial carriers simply lack a corresponding incentive to identify educational partners or provide their best retail service as part of their own educational or low-income programs. Thus far, all signs point to New T-Mobile acting in accordance with these incentives: T-Mobile has made *no public commitment* to preserving or supporting these EBS programs.[24] To the contrary, T-Mobile recently advocated that the FCC *eliminate* the educational use requirements that made these programs possible in the EBS rulemaking proceeding.[25]

---

[20] Mobile Beacon, *Hillsboro School District Uses Mobile Beacon Hotspot Donations for Students in Need*, https://www.mobilebeacon.org/hillsboro-school-district-uses-mobile-beacon-hotspot-donations-for-students-in-need/ (last visited Aug. 2, 2018) ("*Hillsboro School District Uses Mobile Beacon Hotspot Donations for Students in Need*").

[21] NACEPF and Mobile Beacon 2.5 Reply Comments at 17-18.

[22] NACEPF and Mobile Beacon 2.5 Reply Comments at 25-26.

[23] This is similar to the MVNO model where the EBS licensee provides broadband service on their commercial lessee's network; however, EBS licensees typically "trade" spectrum for these broadband accounts whereas MVNOs pay cash by the amount of tonnage used on the network. Accordingly, the documented merger-specific harms raised by MVNOs also apply to EBS licensees.

[24] It should not be assumed that an acquiring entity will voluntarily uphold existing EBS leases. In 2015, NACEPF and five other EBS licensees had to win a preliminary injunction in order to ensure that (1) all of their existing subscribers would be allowed to transition to Sprint's LTE network after Sprint shut down Clearwire's WiMAX network, and (2) existing levels of service were not drastically reduced. *See North American Catholic Educational Programming Foundation, Inc. et al., v. Clearwire Spectrum Holdings II LLC, et al.*, No. 15-3118 BLS2, 2015 WL 11121688 (Mass. Super. Nov. 9, 2015) (allowing motion for preliminary injunction preventing shutdown of existing network).

[25] Comments of T-Mobile at 2, WT Docket No. 18-120 (filed Aug. 8, 2018). T-Mobile alleges eliminating such requirements will not prevent entities from continuing to meet their educational needs "since they can continue to use their spectrum as they see fit." *Id.* Such claims have facial appeal but ignore market realities. First, EBS licensees that lease their excess capacity to a commercial lessee cannot continue to use their spectrum as they see fit

B. New T-Mobile Would Dominate Any Auction for Unused EBS Spectrum

Another prominent proposal in the 2.5 GHz rulemaking proceeding involves opening up EBS "white space" for wireless allocation. However, as NACEPF and Mobile Beacon noted in their comments in the rulemaking proceeding, if this fallow spectrum were merely made available without taking additional steps such as requiring Sprint to divest, then the "structural advantages" New T-Mobile would enjoy over any other prospective bidder for the newly-available spectrum would remain unaddressed for two reasons.

First, the value of licenses to new rural 2.5 GHz spectrum would depend significantly on the willingness and ability of existing EBS licensees holding urban 2.5 GHz spectrum to sell their licenses. Currently no national carrier besides Sprint has invested in this band due to the lack of available nationwide contiguous 2.5 GHz spectrum, over which Sprint has overwhelming control. This makes even the new EBS spectrum less commercially viable for all operators but one. New T-Mobile, which would hold 1,600 EBS leases, would hold a singular advantage as it would be uniquely positioned to assess the likely availability of complementary urban spectrum and tailor their bids accordingly.[26]

Second, New T-Mobile would value this new spectrum more highly than other bidders because of its economies of scale, and the spectrum's importance to New T-Mobile's planned 5G deployment.[27] These same factors influenced the outcome of the 2009 BRS spectrum auction, in which Clearwire (now Sprint) "acquired the large majority of BRS licenses made available at auction" at artificially low prices.[28] An EBS auction would similarly create structural advantages in favor of a single bidder, leaving New T-Mobile as the only relevant buyer of 2.5 spectrum.

Third, as explained above, T-Mobile already lacks the incentive to enter into spectrum-sharing agreements and MVNO agreements with smaller, regional carriers and has expressed no public interest or commitment in continuing the EBS programs that exist today.[29] If T-Mobile were to acquire even more dominant control of the 2.5 GHz band by acquiring remaining white

because they have entered into long term leases that give the lessee *de facto* control over the spectrum except for the current educational reservation. *See* NACEPF and Mobile Beacon 2.5 Reply Comments at 24 n. 93. Additionally, eliminating such requirements does not give EBS licensees "greater flexibility"—it gives them no leg to stand on. Eliminating the incentive that created these public-private partnerships would result in the elimination of these programs altogether. Thus, it is not surprising that current EBS licensees, the educational community at large, and public interest groups have resoundingly voiced their opposition to such a proposal.

[26] NACEPF and Mobile Beacon 2.5 Reply Comments at 37.

[27] *Id.*

[28] *Id.* at 38.

[29] The Commission has recognized the importance of spectrum sharing as a potentially important way to maximize spectrum utilization, develop a variety of new uses and foster competition. *See e.g.*, *Report to Congress Pursuant to Section 1008 of the Spectrum Pipeline Act of 2015, As amended by the Ray Baum's Act of 2018*, General Docket No. 14-177, DA 18-1128 (Wireless Telecommunications Bureau and Office of Engineering and Technology, released November 2, 2018).

space in an auction, it would not enter into the same types of deals with regional operators or EBS licensees that standalone Sprint does today.

Should the Commission decide to auction new EBS white space, in a post-merger world, New T-Mobile would not only have the incentive to acquire this spectrum to pursue its 5G deployment (which it asserts hinges on key mid-band 2.5 spectrum),[30] but it would also have the financial resources (which Sprint lacks) to obtain it in greater quantities than Sprint alone could. In contrast, requiring Sprint to divest a substantial portion of its 2.5 GHz spectrum as a condition of the merger would revitalize competition in the band while still leaving New T-Mobile with enough 2.5 GHz spectrum to pursue its 5G plans.[31]

III. Divestiture of Sprint's 2.5 GHz Holdings is Both Necessary and Practical

The proposed merger would cause New T-Mobile to exceed—and often eclipse—the spectrum screen in major markets across the United States.[32] This already requires close scrutiny to determine if divestiture is needed to ensure sufficient competition in the mobile broadband space. In addition to New T-Mobile being far above the spectrum screen, this merger would also eliminate a competitor from an already highly-concentrated market. Post-merger, New T-Mobile, Verizon, and AT&T would control 99% of the U.S. market for wireless services.[33] For these reasons, a number of interested parties have asked the Commission to require divestiture as a condition of permitting the merger.[34] The 2.5 GHz band is the best candidate for such a divestiture remedy. 2.5 GHz spectrum is prized by carriers because it is uniquely well-suited for 5G deployment,[35] and New T-Mobile would hold an overwhelming position in the 2.5 GHz band in markets across the country. Requiring Sprint to divest a substantial portion of its 2.5 GHz spectrum holdings in large, contiguous blocks would address the harms to EBS licensees, consumers, and other wireless carriers that would flow from the merger.

---

[30] *See* Joint Opposition at 53 ("There Are No Viable Near-Term Spectrum Alternatives Available" to 2.5 GHz spectrum); *see also* Voqal Reply at 2-3.
[31] *See* Voqal *Ex Parte* at 5.
[32] Voqal Petition at 3, 17-18.
[33] Petition to Deny of the American Antitrust Institute at 6-8, WT Docket No. 18-197 (Aug. 27, 2018) ("AAI Petition"); *see also* Voqal Petition at 17; DISH Petition at 58-68.
[34] *See e.g.* Voqal Petition at 19-20; Voqal Reply at 8-9; Voqal Ex Parte at 1; Petition to Condition or Deny of Altice USA, Inc. at 25, WT Docket No. 18-197 (filed Aug. 27, 2018); Comments of Frontier Communications and Windstream Services, LLC at 1, 6, WT Docket No. 18-197 (filed Aug. 27, 2018); Petition to Deny of Union Telephone Company *et al.* at 33-46, WT Docket No. 18-197 (filed Aug. 27, 2018).
[35] Voqal Petition at 4-10; Voqal Reply at 6; Joint Opposition at 53-59.

The Transaction Team, as well as Sprint and T-Mobile[36] and several third-party commenters,[37] have raised concerns about the practicality of a divestiture remedy. In particular, NEBSA and CTN, who represent the interests of certain EBS licensees, worry that a divestiture would leave EBS licensees in limbo as to the identity of their ultimate lease partner and could result in loss of service for a period of time.[38] They also raise the possibility that EBS licensees with channels spanning more than one group could end up with different carriers holding leases to their channels, creating inefficiency by requiring coordination of devices and services on two different networks.[39]

NACEPF and Mobile Beacon take these concerns seriously and urge the Transaction Team to do so as well. These types of concerns are not novel. They can and should be addressed through a carefully thought out divestiture plan. Divestiture remedies typically look to ensure that customers and trading partners will not be disadvantaged, and the same principle should be applied here.[40] The Commission has successfully navigated similar challenges in the past.[41]

In this context, and like many NEBSA and CTN members, NACEPF depends on "unique public-private partnerships" with commercial carriers in order to remain in operation and continue fulfilling its educational mission.[42] With careful consideration and dialogue, the Commission can craft an effective divestiture remedy that lowers the 5G deployment costs for other entities and restores competition in the band, with minimal disruption to current EBS licensees. Of course, as NACEPF and Voqal emphasized in the November 7 meeting, any divestiture should ensure that EBS licensees can continue to rely on a stable, national network to provide services to their educational users (such as WiFi on school buses or community hotspot lending programs that depend on a large, continuous coverage footprint). In particular, efforts should be made to ensure a smooth transition from New T-Mobile to the carrier that acquires the

---

[36] Joint Opposition at 124 n. 459 ("divestitures of 2.5 GHz spectrum would disrupt the broadband wireless data services that Sprint is currently providing to millions of customers, including the educational entities from whom Sprint leases EBS spectrum").
[37] National EBS Association ("NEBSA") and Catholic Technology Network ("CTN"), Notice of *Ex Parte* Presentation, WT Docket No. 18-197 (Nov. 28, 2018) ("NEBSA/CTN *Ex Parte*") (expressing concern that "forced divesture would be disruptive to affected EBS licensees").
[38] *Id*.
[39] *Id*.
[40] *The FTC's Merger Remedies 2006-2012: A Report of the Bureaus of Competition and Economics* at 5, 14-15 (January 2017), https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf (Commission is "concerned about the success of a remedy in restoring or maintaining competition . . . to protect customers and ultimately end consumers. If a divestiture remedy fails, customers and consumers would likely be harmed" and measures success of remedy by whether customers and competitors "revealed concerns about the Commission's remedy practices").
[41] For instance, in 2006, the Commission initiated a Notice of Proposed Rulemaking to consider (among other things) reallocating for public safety use certain 700 and 800 MHz band spectrum previously held by Nextel. In the Matter of Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, *Notice of Propose Rulemaking* (2006). The Commission reminded commenters to consider the "need to avoid the disruption of the planning, funding and deployment of public safety systems within the 700 MHz public safety band." *Id.* at ¶ 17.
[42] NEBSA/CTN *Ex Parte*.

divested 2.5 GHz spectrum, and any remedy should ensure continuing service from Sprint until the acquiring carrier can effectuate its EBS deployment.

In a recent ex parte filing (and follow-up meeting with the Commission), Voqal proposed a divestiture remedy designed to accommodate these disparate stakeholders' concerns and interests.[43] In particular, Voqal recommends that the Commission require New T-Mobile to divest "the highest 94 MHz of frequencies between 2596 and 2690 MHz . . . consist[ing] primarily of Broadband Radio Service (BRS) channels."[44] Because Sprint holds directly rather than leases most of its BRS spectrum, the Commission could effectuate this divestiture without undue complications via a "a grant of the merger application [conditioned] on New T-Mobile divesting (selling) its licensed Top Half BRS spectrum within one year of closing the Sprint acquisition."[45] Requiring divestiture along these lines would spark competition in the 2.5 GHz band while still leaving New T-Mobile "ample 2.5GHz spectrum for 5G purposes."[46]

NACEPF and Mobile Beacon hope the Commission will give serious and careful consideration to Voqal's divestiture proposal, and that it will continue to engage with NACEPF, Mobile Beacon, Voqal, and other interested parties in order to arrive at a solution that serves the interests of EBS licensees, wireless carriers, and consumers.[47]

Respectfully submitted,

By: <u>*/s/ Mark Van Bergh*</u>
Mark Van Bergh
1625 S. Nelson St.
Arlington, VA 22204
(703) 671-7335
Counsel to NACEPF and
Mobile Beacon

cc: David Lawrence
Kathy Harris
Linda Ray
Catherine Matraves
Jim Bird
David Krech

---

[43] *See* Voqal *Ex Parte*.
[44] *Id.* at 1.
[45] *Id.* at 3.
[46] *Id.* at 5.
[47] *See* Voqal Reply at 9 (encouraging the Commission to "ascertain the needs and concerns of EBS licensees in order to tailor a divestiture plan that serves their needs, protects them from undue disruption during implementation of the divestiture plan, and serves the public interest in promoting competition").