

April 10, 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; Transforming the 2.5 GHz Band – WT Docket No. 18-120

Dear Ms. Dortch:

T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (together, “Applicants”) hereby oppose the divestiture condition proposed in Tech Knowledge’s March 2019 “White Paper” on the future of Educational Broadband Service (“EBS”) spectrum at 2.5 GHz (2596-2690 MHz).¹

Tech Knowledge seeks a merger condition that would require New T-Mobile to divest spectrum by voluntarily terminating its spectrum lease rights with respect to the sale of EBS licenses to third parties.² Tech Knowledge claims that this condition would help to preserve competition while promoting other policy goals,³ and alleges that the elimination of Sprint’s leasehold interests would increase the value of EBS spectrum and encourage incentive auction participation.⁴ Tech Knowledge devotes the rest of its filing to arguments supporting the use of EBS incentive auctions in the Commission’s pending EBS “white spaces” rulemaking.⁵

¹ See Letter from Fred Campbell, Director, Tech Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 18-120, 18-197 (Mar. 27, 2019) (attaching *Roadmap for a Voluntary Incentive Auction of Educational Spectrum in the 2.5 GHz Band*, Tech Knowledge (Mar. 2019) (“Tech Knowledge White Paper”).

² Tech Knowledge White Paper at 31-32.

³ *Id.* at 31.

⁴ *Id.* at 32.

⁵ Tech Knowledge also submitted its White Paper in the Commission’s pending EBS rulemaking proceeding (WT Docket No. 18-120). See *Amendment of Parts 1, 21, 73, 74, and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband*

As described below, the Commission should reject Tech Knowledge's defective proposed condition. Tech Knowledge's premise is that the Commission will find that the merger has anticompetitive effects and require New T-Mobile to divest spectrum. This is a flawed assumption. The Applicants have demonstrated that the transaction will affirmatively stimulate competition in local markets, not harm it, and neither Tech Knowledge nor any other party has provided valid evidence of anticompetitive effects. Lacking any connection to competition, Tech Knowledge's EBS divestiture condition would serve only to promote the use of incentive auctions in EBS spectrum, an issue that is irrelevant to and outside the scope of this merger proceeding.

There are No Anticompetitive Effects to Address Through Divestiture

In its perfunctory divestiture discussion, Tech Knowledge assumes that, based on "the FCC's spectrum screen and merger precedent," the Commission will condition any merger grant on New T-Mobile's divestiture of substantial amounts of spectrum.⁶ Tech Knowledge apparently misunderstands the spectrum screen, the record in this merger proceeding, or both. As the Commission has described, the spectrum screen is simply a tool to "identify those local markets in which no competitive harm clearly arises from the transaction."⁷ Further, local markets where the screen is triggered are not markets where the proposed aggregation is presumptively anticompetitive, but rather markets where case-by-case review is warranted. As indicated above, the Applicants have shown that the merger will affirmatively *promote* competition in local markets. Meanwhile, merger opponents have failed to demonstrate anticompetitive harm in any local market. Indeed, *no* facially supportable local competition

Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Transforming the 2.5 GHz Band, Notice of Proposed Rulemaking, 33 FCC Rcd 4687 (2018).

⁶ Tech Knowledge White Paper at 31.

⁷ *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 ¶ 34 (2009) ("AT&T-Centennial Order"). 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 ¶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 ¶ 32 (2010).

analyses have previously been entered in the record, and Tech Knowledge provides no such analysis.⁸

In addition, given that Tech Knowledge's proposed divestiture remedy is 2.5 GHz-specific, it implicitly assumes that there are competition issues relating to spectrum aggregation specifically in the 2.5 GHz band. However, those concerns are by definition not merger-specific, as the Applicants have repeatedly explained.⁹ T-Mobile holds no BRS or EBS licenses or leases in the 2.5 GHz band and, after closing, New T-Mobile would therefore have the same spectrum holdings in this band as Sprint has today.¹⁰ It is well established that merger review is limited to "considerations of merger-specific effects,"¹¹ and that the

⁸ *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 26-28 (filed Sept. 17, 2018) ("Joint Opposition").

⁹ Joint Opposition at 123; Letter from Regina M. Keeney, counsel to Sprint Corp., and Nancy J. Victory, counsel to T-Mobile US, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197, at 2 (Mar. 29, 2019) (responding to Voqal's proposed merger divestiture condition).

¹⁰ 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); *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); *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).

¹¹ *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 ¶ 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 ¶ 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").

Commission will “not impose conditions to remedy *pre-existing* harm or harms that are unrelated to the transaction.”¹²

Given the absence of anticompetitive harm in any local market, Tech Knowledge’s proposed EBS leasehold divestiture condition would not serve any legitimate competitive purpose.¹³ Rather, this condition would threaten to undercut the benefits of the proposed merger. The Applicants have demonstrated the crucial role Sprint’s 2.5 GHz holdings will play in New T-Mobile’s network, providing extensive modeling and economic showings that establish 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.¹⁴ If the Commission were to adopt Tech Knowledge’s proposed condition and require New T-Mobile to “voluntarily” terminate its spectrum lease rights with respect to the sale of EBS licenses to third parties, the resulting loss of EBS spectrum could degrade New T-Mobile’s 2.5 GHz network and services, harming millions of consumers and other 2.5 GHz users. In this way, Tech Knowledge’s divestiture proposal could jeopardize New T-Mobile’s continued provision of long-enjoyed benefits to educational institutions and the students they serve around the United States.¹⁵

¹² 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 17444 ¶ 9 (2008); *Verizon Communications Inc. and MCI, Inc. Merger*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 ¶ 19 (2005) (to be a proper subject of consideration on review of a transaction, an alleged harm must directly “arise from the transaction”).

¹³ Under Tech Knowledge’s proposal, New T-Mobile’s divestiture of lease interests would occur even in markets where the Applicants do not reach the Commission’s spectrum screen. Because the spectrum screen was intended to remedy *local* competitive issues, a nationwide “remedy” disconnected from any localized conditions is entirely contrary to Commission precedent. *AT&T-Centennial Order* ¶ 34.

¹⁴ See, e.g., Joint Opposition at 29-30.

¹⁵ Sprint today 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. Many EBS organizations and licensees have supported the proposed merger due to the expanded benefits that will be delivered by New T-Mobile. See 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); Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket No. 18-197 (Oct. 25, 2018).

Tech Knowledge’s Incentive Auction Proposals Should be Addressed in the Commission’s Pending EBS Rulemaking, Not in This Merger Proceeding

Considering the merger’s lack of anticompetitive effects, the only possible rationale for adopting Tech Knowledge’s proposal would be to facilitate consideration of incentive auctions in the Commission’s ongoing EBS rulemaking. The Commission should reject Tech Knowledge’s effort to use the proposed merger as a vehicle for furthering that goal, which is outside the scope of this proceeding. The Commission has made clear that merger reviews are an improper forum for making “those legal determinations [that] would have *industry-wide application*, as well as legal and practical implications that extend far beyond the contours of [the] particular merger.”¹⁶ Rulemaking proceedings are “generally ‘better, fairer, and more effective’” for the purposes of “implementing a new industry-wide policy” than are the “uneven application of conditions in isolated” adjudicatory decisions.¹⁷ Certainly, the Commission should not impose a divestiture requirement on the instant merger in order to advance Tech Knowledge’s preferred policy outcome in an unrelated rulemaking.¹⁸ If Tech

¹⁶ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 ¶ 126 (2000) (explaining that the Commission’s merger review process “does not provide an appropriate forum for a determination of the legal status of cable broadband Internet access services”). *See also Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246 ¶ 30 (2002) (to the “extent commenters raise concerns regarding an industry-wide trend..., we conclude that the appropriate forum to consider such issues is a rulemaking of general applicability”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from S. New England Telecomm. Corp. to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292 ¶ 29 (1998).

¹⁷ *Cnty. Television of So. California v. Gottfried*, 459 U.S. 498, 511 (1983).

¹⁸ While some revision of EBS licensing is of course necessary, the current regulatory framework at 2.5 GHz has yielded positive results and does not warrant the radical overhaul – including incentive auctions – sought by Tech Knowledge. *See, e.g.*, Comments of Sprint Corporation, WT Docket No. 18-120, at 13-14 (Aug. 8, 2018); Comments of T-Mobile USA, Inc., WT Docket No. 18-120, at 2-4 (Aug. 8, 2018); Joint Comments of National EBS Association and Catholic Technology Network, WT Docket No. 18-120, at 15-16 (Aug. 8, 2018); Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket No. 18-120, at 2 (Aug. 8, 2018); Comments of the Wireless Communications Association International, WT Docket No. 18-120, 32-35 (Aug. 8, 2018); Reply Comments of Educators and Broadband Providers for American Rural Communities, WT Docket No. 18-120, at 4 (Sep. 7, 2018). Today, Sprint is successfully using its licensed and leased 2.5 GHz spectrum to provide high-speed, high-capacity data services through a variety of macro- and

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Knowledge's incentive auction proposals warrant further consideration, that should occur only in the Commission's pending EBS proceeding.

Please direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

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micro-facilities, and its 3G/4G LTE Network currently covers 302 million POPs and serves over 54 million customers. Sprint Comments at 2. EBS spectrum is being used to connect thousands of schools, libraries, and other anchor institutions and, through them, millions of students and families that would not otherwise be reached by comparable commercial broadband offerings. *See, e.g.*, Reply Comments of North American Catholic Educational Programming Foundation and Mobile Beacon, WT Docket No. 18-120, at 1 (Sep. 8, 2018).