

May 2, 2019

**EX PARTE PRESENTATION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the 4Competition Coalition<sup>1</sup> submits this letter summarizing the following meetings:

- A meeting on April 30, 2019 with Commissioner Geoffrey Starks and Bill Davenport, Chief of Staff & Senior Legal Advisor for Wireless and International for Commissioner Starks. Present on behalf of the Coalition<sup>2</sup> were: Debbie Goldman, Communications Workers of America; George Slover, Consumer Reports; Jeff Blum, DISH; Hadass Kogan, DISH; Leo Fitzpatrick, Free Press; Gaurav Laroia, Free Press; Angie Kronenberg, INCOMPAS; Becky Chao, New America's Open Technology Institute; Amir Nasr, New America's Open Technology Institute; Cat Blake, Next Century Cities; Phillip Berenbroick, Public Knowledge; and Mike Forsey, Writers Guild of America West.
- A meeting on May 2, 2019 with Nick Degani, Senior Counsel for Chairman Ajit Pai, Aaron Goldberger, Acting Wireless & International Advisor for Chairman Pai, and David Lawrence, Director of the Sprint/T-Mobile Task Force. Present on behalf of the

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<sup>1</sup> The 4Competition Coalition membership includes a diverse array of concerned companies, consumer organizations, labor unions, and industry associations that have come together to tell policymakers that the proposed Sprint/T-Mobile merger must be blocked. The coalition's current membership of 24 is composed of: AFL-CIO, Blue Wireless, Common Cause, Communications Workers of America, Demand Progress Education Fund, DISH Network, Fight For The Future, The Greenlining Institute, Indigo Wireless, Institute for Local Self-Reliance, INCOMPAS, Mobile Beacon, New America's Open Technology Institute, Next Century Cities, North American Catholic Educational Programming Foundation, NTCA-The Rural Broadband Association, Open Markets Institute, Pine Belt Cellular, Public Knowledge, Rural Wireless Association, Telsasoft, United Wireless Communications, Wireless Internet Service Providers Association, and Writers Guild of America West.

<sup>2</sup> Free Press and Consumer Reports participated in the meetings but are not members of the 4Competition Coalition. In addition, certain parties distributed materials (attached) on behalf of their own organizations. These materials do not reflect the views of all meeting participants.

Coalition were: Debbie Goldman, Communications Workers of America; George Slover, Consumer Reports; Jeff Blum, DISH; Hadass Kogan, DISH; Chip Pickering, INCOMPAS; Jill Canfield, NTCA; Josh Stager, New America’s Open Technology Institute; Phillip Berenbroick, Public Knowledge; and John Nelson, counsel to the Rural Wireless Association.

- A meeting on May 2, 2019 with Commissioner Brendan Carr and Jamie Susskind, Chief of Staff to Commissioner Carr. Present on behalf of the Coalition were: Debbie Goldman, Communications Workers of America; George Slover, Consumer Reports; Jeff Blum, DISH; Hadass Kogan, DISH; Chip Pickering, INCOMPAS; Jill Canfield, NTCA; Josh Stager, New America’s Open Technology Institute; Phillip Berenbroick, Public Knowledge; and John Nelson, counsel to the Rural Wireless Association.
- A meeting on May 2, 2019 with Commissioner Michael O’Rielly and Erin McGrath, Legal Advisor, Wireless, Public Safety and International for Commissioner O’Rielly. Present on behalf of the Coalition were: George Slover, Consumer Reports; Jeff Blum, DISH; Hadass Kogan, DISH; Chip Pickering, INCOMPAS; Jill Canfield, NTCA; Josh Stager, New America’s Open Technology Institute; Phillip Berenbroick, Public Knowledge; and John Nelson, counsel to the Rural Wireless Association.

During the meetings, the Coalition reiterated its opposition to the proposed merger of T-Mobile, Inc. (“T-Mobile) and Sprint Corporation (“Sprint”) (together, the “Applicants”) consistent with previous filings submitted by Coalition members.<sup>3</sup>

If allowed to proceed, this merger would consolidate the nation’s wireless market from four to just three carriers, lead to price increases for virtually all wireless customers, substantially raise wholesale rates, and cause significant job losses – all while failing to deliver the promised benefits of accelerated 5G deployment or expanded rural coverage. The parties have had more than a year to make a convincing argument that their deal is in the public interest and that it will not harm competition. They have failed to make this case.

The Applicants attempt to justify their market-consolidating merger on the notion that only their combination can create a company successful enough to challenge AT&T and Verizon. But, just last week T-Mobile announced its “Best Ever Q1 Financial Results” with “Customer Net Additions of 1.7M and Record-Low Postpaid Phone Churn of 0.88%; Record Service Revenue of \$8.3B, Record Q1 Net Income of \$908M and Record Adjusted EBITDA of

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<sup>3</sup> See Petition to Deny of Common Cause, Consumers Union, New America’s Open Technology Institute, Public Knowledge & Writers Guild of America West, Inc., WT Docket No. 18-197 (Aug. 27, 2018) (“*Common Cause et al. Petition*”); Comments of Communications Workers of America, WT Docket No. 18-197 (Aug. 27, 2018) (“*CWA Comments*”); Petition to Deny of DISH Network Corporation, WT Docket No. 18-197 (Aug. 27, 2018) (“*DISH Petition*”); Petition to Deny of the Greenlining Institute, WT Docket No. 18-197 (Aug. 27, 2018); Petition to Deny of NTCA – the Rural Broadband Association, WT Docket No. 18-197 (Aug. 27, 2018) (“*NTCA Petition*”); Petition to Deny of the Rural Wireless Association, WT Docket No. 18-197 (Aug. 27, 2018) (“*RWA Petition*”).

\$3.3B.”<sup>4</sup> This is hardly the picture of a company that struggles to compete against AT&T and Verizon.

Similarly, the Applicants have attempted to portray Sprint as an ailing firm with an uncertain future. But, Sprint has also told a very different story to investors.<sup>5</sup> Just this week Sprint’s CEO boasted that “@Sprint’s network is better than ever – here’s another @speedtest showing awesome speeds in #Philadelphia!”<sup>6</sup> And, critically, Sprint’s Chief Commercial Officer, Brandon Dow Draper, testified under oath to the California Public Utilities Commission that:

- “Sprint will be here to compete whether we merge with T-Mobile or not.”
- “Sprint will be able to borrow money... there is a certain amount of borrowing we will be able to do against our spectrum.”
- “[W]e are a stable company. Sprint is not going bankrupt. We are not a failing firm.”<sup>7</sup>

A consolidation of these two disruptive wireless competitors will cause substantial harms to consumers across the country. Economic analysis in the public record demonstrates that this transaction would result in price increases of more than 15 percent in many cases.<sup>8</sup> Moreover, the combined company would control more than 50 percent of the pre-paid wireless market.<sup>9</sup> This concentration means that pre-paid wireless consumers, who are primarily lower income Americans, would likely see even greater price increases.

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<sup>4</sup> Press Release, *T-Mobile Reports Accelerated Customer Growth, All-Time Record-Low Churn, and Best Ever Q1 Financial Results* (Apr. 25, 2019), <https://investor.t-mobile.com/news-and-events/t-mobile-us-press-releases/press-release-details/2019/T-Mobile-Reports-Accelerated-Customer-Growth-All-Time-Record-Low-Churn-and-Best-Ever-Q1-Financial-Results/default.aspx> (“*T-Mobile Q1 2019 Press Release*”).

<sup>5</sup> See Press Release, *Sprint Reports Continued Year-Over-Year Growth In Wireless Service Revenue With Fiscal Year 2018 Third Quarter Results* (Jan. 31, 2019), <https://investors.sprint.com/news-and-events/press-releases/press-release-details/2019/Sprint-Reports-Continued-Year-Over-Year-Growth-In-Wireless-Service-Revenue-With-Fiscal-Year-2018-Third-Quarter-Results/default.aspx>. See also Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 8, 2019).

<sup>6</sup> Marcelo Claire (@MarceloClaire), Twitter (Apr. 30, 2019 3:29 PM), <https://twitter.com/marceloclaire/status/1123308289683599360>.

<sup>7</sup> Opening Brief of the Public Advocates Office, A.18-07-011 and A.18-07-012, at 50-51 (Apr. 26, 2019) citing Testimony of Brandon Dow Draper, Chief Commercial Officer for Sprint, February 6, 2019, at 659: 17-18; 649: 18-19, 23-25; 635: 15-17 (emphasis added).

<sup>8</sup> See *DISH Petition* at 76-86; Reply of DISH Network Corporation, WT Docket No. 18-197, at 11-33 (Oct. 31, 2018) (“*DISH Reply*”); Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (May 1, 2019).

<sup>9</sup> See *Common Cause et al. Petition* at 27.

As nine United States Senators recently explained in a letter urging Chairman Pai to reject the deal, “this merger will weaken competitive pressures that otherwise discipline price increases” and thus it “is no surprise that it is likely to lead to higher monthly bills for consumers.”<sup>10</sup> Indeed, a new study published by Rewheel Research found that “[g]igabyte prices in 4-MNO markets continue to fall faster than in 3-MNO markets” and noted that by “April 2019 the gap between the median gigabyte price of 4G smartphone plans in 3-MNO versus 4-MNO markets widened further to 113%.”<sup>11</sup> Moreover, price studies conducted by European regulators or the EU are unanimous on one thing: prices are higher in three-carrier markets that have experienced four-to-three consolidations than in markets with more than three mobile carriers.<sup>12</sup>

The deal would also lead to excessive market concentration. The combined company would exceed the Commission’s spectrum screen in 532 cellular market areas, or 1,996 of the nation’s 3,221 counties, covering all of the top 100 markets.<sup>13</sup> The transaction would also lead to a dramatic increase in the HHI index—451 points from its already “highly concentrated” value of 2,814 to 3,265.<sup>14</sup> In its 2016 complaint challenging Anthem’s acquisition of Cigna, the Department of Justice explained that “mergers that significantly increase concentration in already concentrated markets are presumptively anticompetitive and therefore presumptively unlawful.”<sup>15</sup>

The Applicants have staked their case on the assertion that their combination is somehow necessary to unlock the value of 5G deployment in the U.S. But the parties can deploy robust 5G networks without this merger, and both have already begun doing so. Sprint boasted about its 5G progress at the recent Mobile World Congress, citing plans to bring 5G to four cities in May 2019 and another five cities in the first half of 2019.<sup>16</sup> Last week Sprint’s CTO explained that Sprint is just waiting on network software and then it is “good to go” for its 5G launch.<sup>17</sup> T-

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<sup>10</sup> Letter from Senators Richard Blumenthal, Amy Klobuchar, Tom Udall, Sherrod Brown, Kirsten Gillibrand, Elizabeth Warren, Bernie Sanders, Cory Booker, and Edward Markey to FCC Chairman Ajit Pai, at 5 (Feb. 12, 2019).

<sup>11</sup> Rewheel Research, *The State of 4G Pricing, 1H 2019*, Digital Fuel Monitor (Apr. 2019), [http://research.rewheel.fi/downloads/The\\_state\\_of\\_4G\\_pricing\\_DFMonitor\\_11th\\_release\\_1H2019\\_PUB\\_LIC.pdf](http://research.rewheel.fi/downloads/The_state_of_4G_pricing_DFMonitor_11th_release_1H2019_PUB_LIC.pdf).

<sup>12</sup> See Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 8, 2019).

<sup>13</sup> See *DISH Petition* at 71.

<sup>14</sup> *Id.* at 74.

<sup>15</sup> Complaint, *United States of America v. Anthem, Inc.*, No. 1:16-cv-01493, ¶ 30 (Jul. 21, 2016), <https://www.justice.gov/opa/file/877886/download>.

<sup>16</sup> Linda Hardesty, *Sprint to Launch Commercial 5G in 4 U.S. Cities in May*, FierceWireless (Feb. 25, 2019), <https://www.fiercewireless.com/wireless/sprint-to-launch-commercial-5g-4-us-cities-may>.

<sup>17</sup> Kelly Hill, *Sprint’s CTO Talks Massive MIMO, Imminent 5G Launch*, RCR Wireless (Apr. 25, 2019), <https://www.rcrwireless.com/20190425/carriers/sprints-cto-talks-massive-mimo-imminent-5g-launch>.

Mobile, for its part, announced last week that it is “[o]n track to have the first nationwide 5G network available next year[.]”<sup>18</sup>

Further, while the Applicants tout the merger’s supposed benefits for rural Americans, the merger would do nothing to enhance service for these consumers. As a technical matter, the merged parties’ spectrum would not be particularly well-suited for rural coverage.<sup>19</sup> The parties would, instead, be faced with the same challenge that exists today, which is the need to make significant capital investments to reach sparsely populated areas. There is no reason to expect New T-Mobile to be motivated to make that investment post-merger, as competitive pressures lessen.

Even more troubling, instead of enhancing coverage, the merger threatens to undermine the services that rural Americans currently enjoy. Today Sprint stands out for its willingness to wholesale its network to rural wireless carriers – making roaming services possible for their customers – as well as educational entities that lease spectrum to Sprint.<sup>20</sup> T-Mobile, on the other hand, has shown no such interest in partnering with rural providers or continuing the public-private partnerships with educational entities.<sup>21</sup> Rural customers, and wireless customers everywhere, are more likely to see the benefits of 5G deployment and steady improvements in network service if competition is allowed to grow, not diminish.<sup>22</sup>

This deal also threatens thousands of American jobs. Analysis by leading Wall Street firms and others demonstrates that this transaction will eliminate tens of thousands of jobs, primarily in the retail sector.<sup>23</sup> And, this merger would give the remaining wireless carriers much greater market power to hold down wages across the sector, further harming American consumers.<sup>24</sup>

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<sup>18</sup> *T-Mobile Q1 2019 Press Release* (emphasis added).

<sup>19</sup> See *Common Cause et al. Petition* at 44-46; *DISH Petition* at 38-43; *DISH Reply* at 104-110; Reply of NTCA – The Rural Broadband Association, WT Docket No. 18-197 at 6-7 (Oct. 31, 2018) (“*NTCA Reply*”).

<sup>20</sup> See *NTCA Petition* at 8-9; *NTCA Reply* at 2-4; *RWA Petition* at 11-16.

<sup>21</sup> See *NTCA Petition* at 7-8; *RWA Petition* at 11-16.

<sup>22</sup> See Chip Pickering, *Why INCOMPAS is Opposing the Merger Between T-Mobile and Sprint*, Medium (Feb. 12, 2019), <https://medium.com/@ChipPickering/why-incompas-is-opposing-the-merger-between-t-mobile-and-sprint-ef72a6487e70>.

<sup>23</sup> See Mark Davis, *Could a Sprint Merger With T-Mobile Kill More Jobs than Sprint Has?*, Kansas City Star (Oct. 6, 2017), <https://www.kansascity.com/news/business/technology/article177413566.html>; *Common Cause, et al. Petition* at 30-32; *CWA Comments* at 61-65; Reply of Communications Workers of America, WT Docket No. 18-197, at 2-14 (Oct. 31, 2018).

<sup>24</sup> See Adil Abdela & Marshall Steinbaum, *Labor Market Impact of the Proposed Sprint/T-Mobile Merger*, Economic Policy Institute & Roosevelt Institute (Dec. 17, 2018), <http://rooseveltinstitute.org/wp-content/uploads/2018/12/The-Labor-Market-Impact-of-the-Proposed-Sprint-T-Mobile-Merger-2018-EPI-RI-Report.pdf>.

Throughout this proceeding, the Applicants' ever-changing efficiency claims have been shown to be inflated, unverifiable, speculative, remote in time, not merger specific and based on faulty assumptions and substantial omissions.<sup>25</sup> In an attempt to counter the overwhelming evidence of the harms to competition and consumers, the Applicants have proffered vague, loophole-filled, and unenforceable promises. But, these promises would not protect against the clear harms to consumers and competition that would result from this dramatic change in market structure. And any attempt to enforce a set of pricing conditions would force the Commission to be a central planner and day-to-day umpire for the pricing decisions of the combined company.

For these reasons, among others, the Coalition urged the Commission to reject the proposed merger.

/s/  
4Competition Coalition

cc: Bill Davenport  
Nick Degani  
Aaron Goldberger  
David Lawrence  
Jamie Susskind  
Erin McGrath

Enclosures

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<sup>25</sup> See *DISH Petition* at 22-38; *DISH Reply* at 58-102; Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Feb. 4, 2019); Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 8, 2019); Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 16, 2019).

# The T-Mobile/Sprint Merger Needs to Collapse

April 29, 2019 Carmen Scurato



Today marks one year since the announcement of the proposed merger between T-Mobile and Sprint.

It's not looking good for the \$26.5-billion deal — and that's great news for people struggling to afford wireless services.

In March, I **testified** (<https://www.freepress.net/news/press-releases/carmen-scurato-testifies-congress-t-mobilesprint-merger-would-harm-low-income>) before Congress on how the deal would harm low-income people and people of color, and how it would hurt Lifeline too — a program that provides a modest \$9.25 subsidy to low-income individuals for voice or broadband service. It was the merger's **second congressional hearing** (<https://judiciary.house.gov/legislation/hearings/state-competition-wireless-market-examining-impact-proposed-merger-t-mobile-0>) in a month, a sure sign of growing skepticism about the deal's alleged benefits.

In response, T-Mobile kicked its public relations and lobbying machine into overdrive, making a slew of new promises, including pledging not to increase prices for three years, promising to enter the home-broadband market, and supposedly committing to stay in the Lifeline program.

This dizzying number of 11th-hour pledges prompted the Trump FCC to pause its internal “shot clock” for reviewing the deal — suggesting that even Chairman Ajit Pai’s merger-friendly agency needed more time to look under the hood.

But the PR blitz didn’t help. Many recent media reports say that the Department of Justice is unlikely to approve the deal, and several state attorneys general may be **gearing up to challenge** (<https://www.bloomberg.com/news/articles/2019-03-28/t-mobile-sprint-merger-said-to-face-possible-lawsuit-by-states>) it too. While this is bad news for T-Mobile and Sprint, it’s good news for everyone else — especially the most vulnerable wireless users.

The T-Mobile commitment that rings most hollow is its claim that it would “indefinitely” continue Sprint’s participation in Lifeline, **“barring material changes”** ([https://cardenas.house.gov/sites/cardenas.house.gov/files/3-6-19%20T-MOBILE%20RESPONSE%20-%20Final%20Cardenas%20Response%20030619%200908%20am%20est\\_Executed%20%28002%29%281%29.pdf](https://cardenas.house.gov/sites/cardenas.house.gov/files/3-6-19%20T-MOBILE%20RESPONSE%20-%20Final%20Cardenas%20Response%20030619%200908%20am%20est_Executed%20%28002%29%281%29.pdf)) to the program. Lifeline was created during the Reagan administration to ensure that people can afford vital communications services — especially those in low-income communities and communities of color.

Yet the Trump FCC put forward **proposals** ([http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1201/FCC-17-155A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/FCC-17-155A1.pdf)) in 2017 that would fundamentally damage the program.

One proposal would ban resellers, the providers that serve over 70 percent of current Lifeline subscribers. The agency has also proposed a self-enforcing budget cap, a mandatory co-pay and a lifetime limit, all proposals designed to shrink Lifeline and hurt the most vulnerable individuals in our society. Such changes could disconnect millions from essential communications services.

This gives the new T-Mobile an easy out. Any material change — such as the passage of the FCC’s bad proposals — would allow it to scale back its participation or completely back out of Lifeline altogether.



**Next Century Cities** commissioned independent researcher **RVA LLC** to conduct market research with the goal of determining the current deployment status of and attitudes toward small cell deployment and smart city applications. **176 surveys were completed by local government employees from a diverse array of communities.**\* Full research findings are here:

<http://nextcenturycities.org/wp-content/uploads/5Gresearch.pdf>

### **Key Findings: Small Cell Deployment**

- **Small cell deployment is already underway:** Nearly half of respondents (44%) reported small cell deployment in their community, while an additional 26% reported consideration of deployment.
- **Small cell deployment is very likely in large communities that already have fiber:** 95% of communities with a population greater than 500,000 and fiber already deployed reported deployment or consideration of small cells, while just 21% of communities with a population of under 50,000 and with no fiber activity reported small cell deployment or consideration.
- **Communities are concerned about maintaining local control and input:** Over half of respondents reported being greatly concerned about state laws (59%) and federal regulations (52%) that are passed without city input. 84% of respondents believe that state laws under consideration related to pole use for small cells are negative for their community.
- **Communities face a variety of obstacles related to small cell deployment:**
  - 58% of respondents reported complaints from citizens about deployment aesthetics
  - 42% reported complaints from citizens about safety concerns of deployments
- **\$1,200:** Median annual lease rate per pole, from communities currently leasing poles.\*\*

### **Key Findings: Smart City Technology**

- **Over half (55%) of respondents' communities are pursuing smart city solutions.**
- **Presence of fiber is key for smart city deployments:** 65% of communities with residential and/or business fiber deployed are pursuing smart city applications, while 39% of communities with no residential or business fiber are doing the same.
- **Larger communities are far more likely to deploy smart city technology:** 93% of communities with populations larger than 500,000 are pursuing smart city applications, while 29% of communities smaller than 50,000 are doing the same.
- **Citizen safety and improved quality of life are primary drivers:** Among communities deploying smart city applications, 75% said the purpose of deployment was to improve public safety, and 88% responded that improving citizens' quality of life was a very important driver for deploying smart city technology.
- **Respondents are most concerned with hacking, privacy, and digital equity:** When considering smart city deployments, communities are interested in developing cybersecurity to prevent hacking (67% of respondents), maintaining an acceptable level of citizen privacy (64%), and serving all residents equally (61%).

\* It should be noted that these communities overall display higher than average fiber deployment and community involvement in deployment.

\*\* Caution should be used due to small sample size and large variance.