



May 8, 2019

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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 Coalition¹ submits this letter summarizing a meeting on May 6, 2019 with Umair Javed, Legal Advisor, Wireless and International for Commissioner Jessica Rosenworcel. Present on behalf of the Coalition² were: Debbie Goldman, Communications Workers of America; David Goodfriend, on behalf of Communications Workers of America; George Slover, Consumer Reports; Jeff Blum, DISH; Hadass Kogan, DISH; Chris Shipley, INCOMPAS; Becky Chao, New America's Open Technology Institute; Cat Blake, Next Century Cities; and Mike Forscey, Writers Guild of America West.

During the meeting, 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.³

¹ 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.

² Consumer Reports participated in the meeting but is not a member of the 4Competition Coalition.

³ 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*").

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, in April, 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 \$3.3B.”⁴ 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.⁵ Just last week Sprint’s CEO boasted that “@Sprint’s network is better than ever – here’s another @speedtest showing awesome speeds in #Philadelphia!”⁶ 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.”⁷
- “Sprint will be able to borrow money... there is a certain amount of borrowing we will be able to do against our spectrum.”⁸

⁴ 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*”).

⁵ 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).

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

⁷ California Public Utilities Commission Evidentiary Hearing, Application: 18-07-011 and 18-07-012; Testimony of Brandon Dow Draper, Chief Commercial Officer for Sprint, 659: 17-18 (Feb. 6, 2019).

⁸ *Id.* at 649: 18-19, 23-25.

- “[T]here’s nothing in my rebuttal testimony, again, that says Sprint is going out of business, that Sprint is not going to build a 5G network, that Sprint is not going to be a competitor in the future.”⁹
- “[W]e are a stable company. Sprint is not going bankrupt. We are not a failing firm.”¹⁰

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.¹¹ Moreover, the combined company would control more than 50 percent of the pre-paid wireless market.¹² This concentration means that pre-paid wireless consumers, who are primarily lower income Americans, would likely see even greater price increases.

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.”¹³ 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%.”¹⁴ 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.¹⁵

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.¹⁶ The transaction would also lead to a dramatic increase in the HHI index—451 points from its already “highly concentrated” value

⁹ *Id.* at 673: 19-24.

¹⁰ *Id.* at 635: 15-17.

¹¹ 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).

¹² See *Common Cause et al. Petition* at 27.

¹³ 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).

¹⁴ 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.

¹⁵ See Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 8, 2019).

¹⁶ See *DISH Petition* at 71.

of 2,814 to 3,265.¹⁷ 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.”¹⁸

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. Just yesterday, Sprint boasted about its 5G progress, highlighting that the company has “made continued progress in the quarter on executing its Next-Gen Network plan” including deploying “approximately 1,500 Massive MIMO radios, which increase the speed and capacity of the LTE network and, with a software upgrade, will provide mobile 5G service in select cities in the coming weeks.”¹⁹ In addition, Sprint noted that “[s]tandards-based 5G is currently on-air in select locations, with commercial service expected to launch in the coming weeks. Chicago, Atlanta, Dallas and Kansas City are expected to be among the first cities to offer commercial 5G service; with Houston, Los Angeles, New York City, Phoenix and Washington D.C. slated to launch by the end of June.”²⁰ T-Mobile, for its part, announced in April that it is “[o]n track to have the first nationwide 5G network available next year[.]”²¹

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.²² 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.²³ T-Mobile, on the

¹⁷ *Id.* at 74.

¹⁸ 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>.

¹⁹ See News Release, *Sprint Reports Fiscal Year 2018 Fourth Quarter and Full Year Results* (May 7, 2019), https://s21.q4cdn.com/487940486/files/doc_financials/quarterly/2018/Q4/Fiscal-4Q18-Earnings-Release-FINAL.pdf.

²⁰ *Id.*

²¹ *T-Mobile Q1 2019 Press Release* (emphasis added).

²² 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*”).

²³ See *NTCA Petition* at 8-9; *NTCA Reply* at 2-4; *RWA Petition* at 11-16.

other hand, has shown no such interest in partnering with rural providers or continuing the public-private partnerships with educational entities.²⁴ 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.²⁵

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.²⁶ And, this merger would give the remaining wireless carriers much greater market power to hold down wages across the sector, further harming American consumers.²⁷

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.²⁸ 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: Umair Javed

²⁴ See *NTCA Petition* at 7-8; *RWA Petition* at 11-16.

²⁵ 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>.

²⁶ 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).

²⁷ 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>.

²⁸ 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).