The Honorable Ajit Pai June 12, 2019

Chairman

Federal Communications Commission

445 12th St. SW

Washington, DC 20554

Re: Docket 18-197

Proposed Merger of Sprint and T-Mobile

Dear Chairman Pai:

We are writing on behalf of NTCH, Inc. and Wise Electronics (“Commenters”) to alert the Commission to potential damage to the wireless industry that is likely to be caused by the proposed merger between Sprint and T-Mobile. Commenters are a wireless carrier and a wireless internet provider. They are likely to be seriously adversely affected if the merger is approved without conditions remediating the harmful effect.

Briefly, the small wireless carrier community has complained for over a decade now that it has been unable to negotiate reasonable roaming rates with the major carriers such as AT&T and Verizon. Evidence has been presented in many proceedings, including the *T-Mobile Declaratory Ruling proceeding*[[1]](#footnote-1), the acquisition of SpectrumCo’s AWS holdings by Verizon[[2]](#footnote-2), and several formal complaints filed with the Commission[[3]](#footnote-3) demonstrating that roaming rates charged by the majors to small carriers are often so grossly excessive that they cannot possibly be borne by the carriers and therefore amount to a denial of roaming service.

The Commission’s attitude has been to ignore the rapid consolidation of the industry which has dramatically changed the competitive landscape over the last ten to fifteen years. The loss of literally dozens of independent competitive carries from the market including such larger ones as MetroPCS, Leap Wireless, Atlantic Telenetwork, and Allied are both a primary cause and a result of the growing crisis in roaming rates. Many carriers found it difficult to sustain business models (especially to higher end traveling customers) when the prices that they had to pay to allow their local subscribers to roam on the large national carriers’ networks were impossibly high, sometimes reaching many times the actual cost of providing those roaming services, as determined by reference to retail rates. Those carriers determined that they could not be competitive under those circumstances. This effect snowballed as more and more regional and local wireless carriers found that they had fewer and fewer reasonably priced roaming partners to roam on, forcing them too to give up and sell out. This is how a vibrant national ecosystem of hundreds of independent local, regional and national carriers, each serving their own competitive niche in the wireless marketplace, has been transformed into one dominated by four national carriers which have less and less incentive to offer reasonable roaming rates.

Sprint and T-Mobile themselves had complained to the FCC that they, despite their considerable size, had been unable to negotiate reasonable roaming rates from their larger competitors. Those pleas resulted in the *T-Mobile Declaratory Ruling*, supra, an order which seemed to ensure that objective benchmarks for reasonable rates would be applied in the course of roaming rate negotiations. In fact, in the years since that Ruling was adopted, the Commission has consistently refused to apply the principles enunciated there, somehow believing, despite all evidence to the contrary, that a competitive marketplace for roaming exists which will discipline roaming rates. The Sprint and T-Mobile merger, if approved, will make an already bad situation disastrous for the independent carrier community.

Sprint and T-Mobile addressed this issue cursorily in the Public Interest Statement included in their transfer of control application. They commit to allow existing roaming partners of each company to select the roaming rate schedule of either company going forward.[[4]](#footnote-4) This is fine for the immediate future since Sprint’s roaming rates are considerably more reasonable than AT&T’s and Verizon’s. (The problem with having Sprint as a CDMA roaming partner is that its coverage area is significantly smaller than Verizon’s, so a roaming customer is often left with only Verizon as an option – an option which is so expensive as to be unavailable at all.) But because Sprint and T-Mobile make no commitment to retain their current roaming rates, those could rise as soon as the dust settles on the merger. Indeed, as the history of Leap Wireless and MetroPCS teaches us, roaming rates immediately jump once a company is acquired by one of the majors. Just as disturbingly, if T-Mobile phases out Sprint’s CDMA service as it did with MetroPCS’s service, there will be no national carrier which offers CDMA-based service besides Verizon, which is the same as none at all. The scores of smaller carriers who have CDMA networks will have nowhere for their customers to roam in most of the country, especially in the metropolitan areas where they will most need such access. While this problem may someday be ameliorated as the industry moves towards ubiquitous LTE, that day is not nearly here yet. The crushing impact of this situation on smaller CDMA carriers cannot be overstated since it will be difficult for them to offer competitive service to their local customers if they cannot roam when outside their home territory.

A proposed solution. We have reached the point in the evolution of the wireless industry where the Commission cannot keep pretending that the wireless market, especially the roaming market, is policed by the invisible hand of competition. That hand does not exist now in those parts of the country where Sprint does not have service, and it will exist not at all once Sprint exits the stage. The Commission’s abolition last year of all Title II restraints on the reasonableness of roaming rates leaves small carriers with no regulatory recourse whatsoever other than the “commercially reasonable” standard adopted in the *T-Mobile Declaratory Ruling*. But the FCC has never found a roaming rate, no matter how outrageous, to be commercially unreasonable, so that standard is meaningless. In the absence of actual competition and having abandoned traditional Title II tools for reining in roaming rates, the Commission needs to do something to preserve the viability of small carriers and the customers they serve.

A condition should therefore be imposed on the New T-Mobile that (i) the roaming rates it charges independent carriers will not exceed the retail rates it charges its own customers or MVNOs for the same services, (ii) New T-Mobile will not phase out Sprint’s CDMA service for at least five years, (iii) roaming rates must be made public, a simple remedy that will itself incent the majors to offer non-discriminatory rates[[5]](#footnote-5) and (iv) Sprint customers should be released from their phone leases without penalty.

You have announced that you are prepared to approve the merger as long as certain conditions are met, including Sprint’s divestiture of its Boost prepaid brand. Commenters believe that this condition , could be the vehicle for restoring real, structural competition from the local and regional carriers that have been largely forced out of the market or marginalized. This could be accomplished by requiring Sprint-T-Mobile, as part of the Boost divestiture, to grant current or former small facilities-based carriers a license to use the Boost tradename and platform, subject to reasonable licensing standards set by T-Mobile and the owner of the Boost network. They would offer Boost’s prepaid product to customers under Boost’s normal agency terms or terms they would negotiate with T-Mobile. At the same time, T-Mobile would be required to offer these carriers a non-exclusive right to lease for no more than 2 cents per MHz/pop/year 20 MHz of the combined Sprint-TMO spectrum in a band range compatible with their historical operations in their home territories which the carriers could use to offer their own competitive product in addition to the prepaid product offered by Boost. Access to T-Mobile’s spectrum would be coupled with an obligation by the small carriers to build out a minimum number of sites at their own expense that would be switched off the T-Mobile network and would be credited toward T-Mobile's 5G buildout commitment. The small carriers would get roaming revenue from out-of-market roamers on the sites they build, and, as noted above, would be guaranteed reasonable roaming rates for their own customers on T-Mobile’s national network.

This solution has the felicitous effects of eliminating the crushing weight of exorbitant roaming rates on small independent carriers, establishing a network of experienced agents for Boost’s prepaid product, preserving locally based sources of innovation and competition to the national carriers, and accelerating the availability of 5G service by T-Mobile in fulfillment of its commitment to rural areas at no expense to T-Mobile.[[6]](#footnote-6) Because this plan calls for collaborative efforts by all parties to accomplish its purposes, many details would need to be worked out between Sprint, T-Mobile, and Commenters. With broad enough buy-in from the small independent carrier community, the “New Boost” could be the 4th true national competitor that the Department of Justice appears to be looking for.

We stand ready to explain further the urgent need for action to prevent what could be the *coup de grace* for independent local and regional wireless carriers if the merger is approved without the conditions described above. As sources of innovation, locally based customer service, lower prices, and customized service plans, local wireless carriers should remain an important actor on the communications stage. Without remedial action, we fear that this segment of the industry will very quickly perish, leaving the communications ecosystem of this country poorer and less diverse. The actions suggested above will also establish the principle that true competition in the communications marketplace must include a place for smaller carriers, not just the doddering giants who now dominate the market with little incentive to deliver better services at lower prices to consumers.

Respectfully submitted,

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Eric Steinmann

Development Manager for NTCH, Inc.

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Thomas Wise

Wise Electronics, Inc.

President

Cc: Honorable Brendan Carr

Honorable Michael O’Reilly

Honorable Jessica Rosenworcel

Honorable Geoffrey Starks

Donald Stockdale

Katherine Harris

1. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, DA 14-1865, rel. Dec. 18, 2014 (*T-Mobile Declaratory Ruling*”). [↑](#footnote-ref-1)
2. *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and a few o LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10730 at ¶ 84 (2012). ("*SpectrumCo Order*"). [↑](#footnote-ref-2)
3. NTCH, Inc. v. Cellco, File No. EB-13-MD-006; Flat Wireless, LLC v. Cellco, File No. EB-15-MD-005 , Worldcall Interconnect v. AT&T Mobility, EB- 14-MD-011 [↑](#footnote-ref-3)
4. See Declaration of Sievert, Attachment C to Public Interest Statement, at ¶ 17. [↑](#footnote-ref-4)
5. NTCH filed a Petition in 2014 asking the Commission to lift its forbearance from Section 211 of the Act that generally requires carriers to make copies of their contracts with other carriers public. (Petition to Rescind Forbearance and Initiate Rulemaking Proceeding filed July 2, 2014). The Commission had cursorily forborne from this bedrock provision of the Act back in 1994 on the grounds that the industry was highly competitive so there was no need for such information to be public. In a roaming market which is already non-competitive and likely to become dramatically less so if the merger is approved, the need for public rates is compelling as a check on discrimination and unreasonable rates. Almost five years later, the Commission has yet to take action on NTCH’s petition. [↑](#footnote-ref-5)
6. This plan assumes that Boost subscribers will have access to the full combined Sprint-TMO spectrum holdings. Without such access, this divestiture will leave Boost in an unsustainable competitive position. [↑](#footnote-ref-6)