

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of T-Mobile US, Inc. and Sprint Corporation, Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations)	WT Docket No. 18-197
)	
DBSD Corporation, AWS-4, Lead Call Sign T070272001; Gamma Acquisition L.L.C., AWS-4, Lead Call Sign T060430001; Manifest Wireless L.L.C., Lower 700 MHz E Block, Lead Call Sign WQJY944; American H Block Wireless L.L.C., H Block, Lead Call Sign WQTX200; ParkerB.com Wireless L.L.C., 600 MHz, Lead Call Sign WQZM232)	
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INFORMAL REQUEST FOR COMMISSION ACTION

Pursuant to Section 1.41 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), the Rural Wireless Association, Inc. (“RWA”)¹ and NTCA – The Rural Broadband Association (“NTCA”)² (jointly, “Petitioners”) file this Informal Request for Commission Action (“Informal Request”) in connection with the above-captioned applications of Sprint Corporation (“Sprint”) and T-Mobile US, Inc. (“T-Mobile”) seeking consent to the transfer of control of certain licenses, authorizations, and spectrum leases from Sprint to T-Mobile. Specifically, the Petitioners request that the Commission issue a public

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers and broadband providers.

notice seeking additional comment on the proposed merger between T-Mobile and Sprint in light of the Stipulation and Order and proposed Final Judgment (collectively, “Consent Decree”) filed late last week in the U.S. District Court for the District of Columbia.³ The Consent Decree brings a third party, Dish Network Corporation (“Dish”), into the proposed merger agreement between T-Mobile and Sprint.

I. Background

As originally proposed, the merger between T-Mobile and Sprint would result in the removal of one of four nationwide mobile wireless carriers from the market. The Commission has developed a record on that proposal, including a Petition to Deny filed by Petitioners wherein Petitioners demonstrated the many public interest and competitive harms that would befall American consumers, and particularly those consumers who reside or travel through rural America, if the proposed merger were to be approved.

Last week, the U.S. Department of Justice (“DOJ”), as part of its review of the same merger, concluded that the merger as originally proposed (and currently before the FCC) “would substantially harm competition.”⁴ DOJ, along with the offices of five state Attorneys General (“Plaintiff States”), filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to block the proposed merger.⁵ That lawsuit concluded that the proposed merger

³ *U.S. v. Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp., and Sprint Corporation*, Stipulation and Order, Case 1:19-cv-02232, Document 2-1, filed July 26, 2019, U.S. District Court for the District of Columbia; *U.S. v. Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp., Sprint Corporation and Dish Network Corporation*, [Proposed] Final Judgment, Case 1:19-cv-02232, Document 2-2, filed July 26, 2019, U.S. District Court for the District of Columbia.

⁴ Tony Romm, *Sprint, T-Mobile Receive Merger Approval From Justice Department*, Washington Post, July 26, 2019 (quoting Makan Delrahim, head of DOJ’s Antitrust Division).

⁵ *United States of America, State of Kansas, State of Nebraska, State of Ohio, State of Oklahoma, and State of South Dakota v. Deutsche Telekom AG, T-Mobile US, Inc., Softbank Group Corp.*,

“would substantially lessen competition and harm consumers.”⁶ However, at the same time, DOJ and the Plaintiff States filed the Consent Decree, a proposed settlement whereby T-Mobile and Sprint would divest certain assets to Dish, which in the view of DOJ and the Plaintiff States would ultimately allow Dish to take the place of Sprint as a fourth facilities-based supplier of nationwide mobile wireless service.

II. Informal Request

In light of the Consent Decree, the proposed merger is now a completely different arrangement than what is currently before the Commission. The Consent Decree relies on the highly questionable assumption that the harm to competition recognized by DOJ that would result from the loss of Sprint from the nationwide mobile wireless marketplace would be offset by the competitive impact of the Dish acquisition of assets that would supposedly result in Dish becoming a fourth facilities-based nationwide mobile wireless competitor with sufficient strength to prevent the substantial competitive harms that would result from the exit of Sprint. The Commission should not rule on the pending license transfer applications without developing a record on the significant changes that Sprint and T-Mobile are now proposing. It would be arbitrary and capricious to rule on the pending applications without considering evidence of the substantial changes to what is being proposed. Indeed, should the Commission rule on the proposed merger, any action it takes will have little to no bearing on any action ultimately taken by the U.S. District Court on the *current* merger proposal (which is not the merger proposal as it existed on July 18, 2018, the date the Commission commenced this proceeding).

and Sprint Corporation, Complaint, Case 1:19-cv-02232, Document 1, filed July 26, 2019 in U.S. District Court for the District of Columbia (“Complaint”).

⁶ Complaint at p. 6.

As part of its efforts to comply with the conditions of the Consent Decree, Dish has filed a letter seeking an extension of the construction deadline for hundreds of licenses.⁷ Specifically, Dish seeks an extension of the construction deadlines for 696 separate licenses across the country in the AWS Band (AWS-4 and AWS H Block), and the Lower 700 MHz Band (E Block). While Dish does not explicitly tie the extension requests in the Dish Letter to the proposed merger, the Dish Letter (filed on the same day as the Consent Decree) clearly contemplates the need for additional time as the result of its new obligations pursuant to the Consent Decree. For example, in exchange for the extensions, Dish agrees not to sell its 600 MHz and AWS-4 licenses for a period of six years “without prior FCC and DOJ approval.”⁸

Additionally, on the same day the DOJ and Plaintiff States filed the Complaint and Consent Decree with the court, Dish executives had telephone calls with the offices of three of the five FCC Commissioners, and the requisite *Ex Parte* letter summarizing those discussions was filed in the Commission’s merger docket.⁹ Dish describes the subject matter of those discussions as “an overview of the terms of a series of arrangements and commitments it has entered into with Sprint, T-Mobile, and the Department of Justice (‘DOJ’) in connection with the

⁷ *In re: DBSD Corporation, AWS-4, Lead Call Sign T070272001; Gamma Acquisition L.L.C., AWS-4, Lead Call Sign T060430001; Manifest Wireless L.L.C., Lower 700 MHz E Block, Lead Call Sign WQTX200; ParkerB.com Wireless L.L.C., 600 MHz, Lead Call Sign WQZM232, Ex Parte* (filed July 26, 2019) (“Dish Letter”).

⁸ Dish Letter at p. 3.

⁹ *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, Ex Parte of Dish Network Corporation, WT Docket No. 18-197* (filed July 30, 2019) (“*Ex Parte*”).

DOJ's approval of the Sprint/T-Mobile merger."¹⁰ Furthermore, Dish asserts in its *Ex Parte* that the DOJ's Consent Decree "solve[s] the competitive harms of the transaction as it was *originally* proposed."¹¹ (emphasis added) Not only does Dish acknowledge that its multiple requests for extensions of construction deadlines are directly related to the proposed merger, it also acknowledges that the present terms of the proposed Sprint/T-Mobile merger are fundamentally different from what was originally proposed by the applicants, commented on by the public, and reviewed by the Commission.

Not only do the Consent Decree and Dish's Extension Request merit an opportunity for public comment, they raise numerous questions pertaining to the current terms of the proposed Sprint/T-Mobile merger and whether the public interest is being served now that Dish has voluntarily inserted itself as a participant. Sample questions include:

- Why is Dish claiming in the Dish Letter that it will fast-track the buildout of its 600 MHz licenses, yet in the proposed Final Judgment it has agreed to lease this very same 600 MHz spectrum to Sprint and T-Mobile and only allow the "retail consumers" of Sprint and T-Mobile to use it and not Dish's customers?¹²
- The proposed Full MVNO Agreement referenced in the Consent Decree and that is a lynchpin of Dish's future success is supposed to have "commercially reasonable"

¹⁰ The proposed Final Judgment and the Dish Letter submitted in the Commission's ULS for all 696 licenses are attachments to the Dish *Ex Parte* filed in WT 18-197.

¹¹ *Id.* at p. 1.

¹² Proposed Final Judgment at p. 18.

terms, yet no one has seen these terms. At a minimum, this MVNO Agreement should be made available under the FCC protective orders for review.

- Can Sprint and T-Mobile reject Dish's inbound, lawful traffic or is it prohibited from doing so? The Consent Decree stipulates that Sprint/T-Mobile "shall not reject" any of Dish's "lawful traffic" but then that is immediately qualified with the clause "unless authorized to do so by any Full MVNO Agreement."¹³

These are but some of the issues that need to be vetted and understood to determine if this transaction is in the public interest. Indeed, in the absence of better information, there appears very real risk that, as structured, this "Fourth Network" concept might not only eliminate Sprint as a competitor, but could call into question the sustainability and viability of Dish as well. While DOJ may believe that Dish is capable of serving as a fourth nationwide competitor, the Commission should conduct a transparent review of such an assertion, including opportunity for public comment.

There is no immediate urgency for the FCC to act without public comment to resolve these issues. The parties still need to wait until both the Tunney Act approval process has run its course¹⁴ and for the resolution of the lawsuit pending in New York by the now 15 attorneys

¹³ Proposed Final Judgment at p. 19.

¹⁴ 15 U.S.C. § 16. See The Antitrust Procedures and Penalties Act, Pub. L. 93-528, 88 Stat. 1708. (Tunney Act). Under the Tunney Act, judges are required to provide a 60-day period in which third parties can submit comments. It also requires a judicial review of the terms of any consent decree to determine if the merger settlement is in the public interest and sufficiently satisfies the harms the DOJ has identified in its complaint.

general, not scheduled to go to trial until December 9, 2019.¹⁵ At a minimum, the transaction could not legally close for 60 or more days. The FCC must be transparent in its decision-making process. Failure to do so would violate the Administrative Procedure Act and other bases for judicial appeal.

The Petitioners therefore request that the Commission issue a public notice seeking comment on both the Consent Decree and the Extension Request. Because the Extension Request is seeking a waiver of the construction deadlines for all of the Dish licenses made part of the Extension Request, such a request is required to be put out on public notice in its own right.¹⁶

¹⁵ *State of New York, State of California, State of Colorado, State of Connecticut, District of Columbia, State of Maryland, State of Michigan, State of Mississippi, Commonwealth of Virginia, and State of Wisconsin v. Deutsche Telekom AG, T-Mobile US, Inc., Sprint Corporation, and Softbank Group Corp.*, Redacted Complaint, Case 1:19cv5434, filed June 11, 2019 in U.S. District Court for the Southern District of New York

¹⁶ RWA has consistently opposed extension requests resulting from attempts by large carriers to warehouse spectrum and the public interest demands careful Commission consideration and public comment on any such attempts to do so.

The relationship between the Extension Request and this merger proceeding also demands that comment be sought in this proceeding on the merits of the Extension Request.

Respectfully submitted,

NTCA–The Rural Broadband Association

By: /s/ Michael R. Romano

Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
mromano@ntca.org

By: /s/ Jill Canfield

Jill Canfield
Vice President, Legal
jcanfield@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)

Rural Wireless Association, Inc.

By: /s/ Caressa D. Bennet

Caressa D. Bennet, General Counsel
Daryl A. Zakov, Assistant General
Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 551-0010
legal@ruralwireless.org

**Outside Counsel to Rural Wireless
Association, Inc.**

By: /s/ Michael R. Bennet

Womble Bond Dickinson (US) LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Michael.Bennet@wbd-us.com

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