

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
T-Mobile US, Inc. and Sprint Corporation	)	WT Docket No. 18-197
Seek FCC Consent to the Transfer of	)	
Control of Licenses, Authorizations, and	)	
Spectrum Leases held by Sprint Corporation	)	
and Its Subsidiaries to T-Mobile US, Inc.	)	
and the <i>Pro Forma</i> Transfer of Control of	)	
the Licenses, Authorizations, and Spectrum	)	
Leases Held by T-Mobile US, Inc., and its	)	
Subsidiaries	)	

**MOTION TO STOP THE CLOCK,  
OR IN THE ALTERNATIVE  
MOTION FOR EXTENSION OF TIME**

Pursuant to section 1.46 of the Federal Communications Commission’s (“Commission” or “FCC”) rules,<sup>1</sup> the Communications Workers of America, Rural Wireless Association, NTCA – The Rural Broadband Association, Public Knowledge, Consumers Union, The Greenlining Institute, Common Cause, New America’s Open Technology Institute, Writers Guild of America West, Free Press, and Benton Foundation (“Movants”) file this request to stop the review clock in the above captioned proceeding until T-Mobile and Sprint (“Applicants”) supplement their public interest statement<sup>2</sup> to adequately describe the extensive spectrum aggregation that will result from the proposed transaction. The Commission should establish a new pleading cycle,<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 1.46.

<sup>2</sup> T-Mobile US, Inc. and Sprint Corporation Description of Transaction, Public Interest Statement, and Related Demonstrations, WT Docket No. 18-197 (filed June 18, 2018) (“Public Interest Statement”).

<sup>3</sup> The Commission’s current pleading cycle requires Petitions to Deny be filed by August 27, 2018. *See* T-Mobile US, Inc. and Sprint Corporation Seek FCC Consent to the Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held by Sprint Corporation and its

with Petitions to Deny due four weeks following the Applicant's submission of and the agency's publication of sufficient information for the Commission and the public to sufficiently review the spectrum concentration that would result from the proposed merger. In the alternative and at a minimum, the Movants request that the Commission extend its deadline for filing Petitions to Deny to September 17, 2018, an extension of four weeks. Grant of this extension is warranted in light of the importance and complexity of this proceeding, conflicts with the major Jewish holidays of Rosh Hashanah and Yom Kippur, and the glut of overlapping major proceedings the Commission has concurrently open for public comment.

### **ARGUMENT**

The Applicants' proposed merger will have a significant impact on wireless consumers, workers, and the deployment of next-generation wireless technology, especially in America's rural markets. Therefore, the Commission must ensure that interested members of the public have access to the information they need and sufficient time to prepare substantive comments to the Commission on the proposed transaction. The Applicants fail to provide essential information regarding spectrum aggregation; this information is essential for the public and the Commission to conduct a comprehensive competition analysis, and has routinely been provided in the initial Applications by parties proposing large wireless transactions that the Commission has previously reviewed.

In evaluating wireless transactions, the Commission conducts a spectrum screen analysis as one measure of the competitive impact and level of concentration that would result from a

proposed transaction.<sup>4</sup> The Commission evaluates the level of spectrum aggregation on a market-by-market basis. Yet in this instant proceeding, the Applicants have completely ignored any discussion of the potential competitive harm from spectrum aggregation save for a narrow acknowledgement the transaction will trigger the *Mobile Spectrum Holdings Order*'s enhanced factor test for sub-1-GHz spectrum.<sup>5</sup> The public interest statement does not even identify the individual markets in which the merged company would hit the Commission's spectrum screen, much less provide any justification for the levels of spectrum aggregation that would result in exceeding the screen in hundreds of local markets.

The Commission should follow its precedents in evaluating the spectrum aggregation that would result from this transaction. As a preliminary matter, the Commission should require the merging parties to submit complete spectrum charts that clearly identify any spectrum overages, listing for each county the New T-Mobile's total spectrum holdings and the applicable spectrum screen. While the Applicants in Appendix L-1 provide county-by-county spectrum data for the spectrum screen analysis, they deviate from the practices followed by prior applicants before the Commission by failing to provide 1) a *sum total* of the spectrum they hold in each local market

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<sup>4</sup> See Policies Regarding Mobile Spectrum Holdings, et al., WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6156 ¶ 44 (2014) ("*Mobile Spectrum Holdings Order*") (reaffirming the use of a spectrum screen triggered at aggregations of approximately one third or more of the suitable and available spectrum). See also e.g. Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 12-301, *Memorandum Opinion and Order and Declaratory Ruling*, DA 13-384, 12-13 ¶¶ 34-35 (rel. Mar. 12, 2013); Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox, TMI, LLC for Consent to Assign AWS-1 Licenses, et al., WT Docket Nos. 12-4, 12-175, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949598, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10719 ¶ 59 (rel. Aug. 23, 2012).

<sup>5</sup> See *Mobile Spectrum Holdings Order* at 6240 ¶ 286; Public Interest Statement at 132-137, Public Interest Statement, Appendix J.

and 2) the amount by which their total spectrum holdings differ from the spectrum screen.

Because Appendix L-1 is provided in PDF rather than spreadsheet format, the public is left with the time consuming task of calculating spectrum aggregation by hand in more than 3,200 local markets covering 79 pages of data.

Certainly, the Applicants are well aware of how to prepare such charts. For example, in 2016, when Sprint and Verizon Wireless swapped spectrum in a number of different markets, Sprint submitted charts that provided exactly such information.<sup>6</sup> In previous wireless transactions – including AT&T/T-Mobile, Verizon/SpectrumCo (2012), T-Mobile/MetroPCS (2014), among others<sup>7</sup>-- merging parties have listed their combined spectrum holdings in each county, the variance from the screen for each county, a detailed discussion of each market in which they hit the screen. Further, in instances in which the combined firm would exceed the screen, the applicants provided analysis making the case why hitting the screen did not endanger competition. Even in recent smaller transactions, T-Mobile and Sprint have provided more detailed spectrum screens than they provide in this instant proceeding.<sup>8</sup> There is no justification for the Applicants' attempt to obfuscate the extent of the proposed spectrum aggregation in this

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<sup>6</sup> Verizon Wireless and Sprint Application or Notification of Spectrum Leasing Arrangement, ULS File No. 0007106958, Exhibit A-1 (filed Apr. 24, 2017).

<sup>7</sup> See Acquisition of T-Mobile USA, Inc. by AT&T Inc., Description of Transaction, Public Interest Showing, and Related Demonstrations at 72-78, Appendix A (spectrum screen), WT Docket No. 11-65 (filed Apr. 21, 2011); Applications of Verizon Wireless and SpectrumCo Request for Consent to Assignment of AWS-1 Licenses Application, Description of Transaction and Public Interest Statement at 26-32, Exhibit 5 (market-by-market spectrum screen analysis), WT Docket No. 12-4, et al. (filed Dec. 16, 2011); Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations, Description of Transaction, Public Interest Showing, and Related Demonstrations, Exhibit 3, WT Docket No. 12-301 (filed Oct. 18, 2012).

<sup>8</sup> See T-Mobile and Cross Telephone License Exchange, Exhibit 2, ULS File No. 0008134077 (filed March 16, 2018); Verizon Wireless and Sprint Spectrum Exchange, Exhibits 2A and 2B, ULS File 0007656407 (filed Feb. 20, 2017).

transaction by submitting incomplete spectrum charts and a threadbare spectrum aggregation narrative.

The Applicants' failure to provide complete spectrum aggregation charts has already been acknowledged by the Commission. On August 15, 2018, the Wireless Telecommunications Bureau issued a data request to the parties to provide market-by-market spectrum license information, in a csv format. The information is due September 5, 2018, after the current Petition to Deny filing deadline of August 27, 2018.<sup>9</sup>

The Commission should stop the clock until the merging parties have provided the necessary spectrum aggregation information, then restart the clock only once the public is able to review and comment on the Applicants' completed spectrum concentration and competition analysis. The Applicants bear the burden of demonstrating that their transaction serves the public interest. Thus far they have failed to provide sufficient information about spectrum aggregation for meaningful public comment. The public needs access to complete application documents and adequate time to evaluate and comment on the likely impact of the transaction.

Additionally, many parties in this proceeding face mounting filing deadlines in concurrent proceedings of great importance and complexity, and an extension of the deadline for submission of Petitions to Deny would ensure that the public has sufficient opportunity to review and comment on the approximately 2,300 pages of documents filed by the Applicants. As the Commission is likely aware, many of the Movants are planning to file in the FCC's ongoing

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<sup>9</sup> See Letter from Donald K. Stockdale Jr., Chief, Wireless Telecommunications Bureau to Ms. Kathleen O'Brien Ham, T-Mobile US, Inc., and General Information and Document Request for T-Mobile, Question 4, WT Docket No. 18-197 (rel. Aug. 15, 2018); and Letter from Donald K. Stockdale Jr., Chief, Wireless Telecommunications Bureau to Vonya B. McCann, Sprint Corporation, and General Information and Document Request for Sprint, Question 4, WT Docket No. 18-197 (rel. Aug. 15, 2018).

Fixed Broadband Competition and Wireline Deployment proceedings, with filing deadlines of August 17, 2018 and September 10, 2018, respectively.<sup>10</sup> Further, some Movants are participating in the Commission’s proceeding regarding USTelecom’s petition for forbearance from a number of provisions of the Communications Act and the Commission’s rules, which currently has a reply comment deadline of September 5, 2018.<sup>11</sup> Lastly, the Federal Trade Commission has requested public comment regarding Hearings on Competition and Consumer Protection in the 21st Century, and established a filing deadline of August 20, 2018.<sup>12</sup> The crush of so many important proceedings regarding competition, broadband deployment, and consumer protection in such a short time period, particularly during the dog days of summer, runs the risk that the public is insufficiently able to weigh in on the present transaction. Such an outcome would not serve the public interest.

### **RELIEF REQUESTED**

Movants request that the Commission stop the clock until the Applicants provide complete spectrum aggregation information, including charts that clearly identify any spectrum screen overages, and provide an adequate description of and explanation for the spectrum aggregation that will result from this transaction. Only once the Commission has determined that

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<sup>10</sup> Wireline Competition Bureau Seeks Comment on State of Fixed Wireline Competition, GN Docket No. 18-231, *Public Notice*, DA 18-784 (rel. July 27, 2018); Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 18-238, *Fourteenth Broadband Deployment Report Notice of Inquiry*, FCC 18-119 (rel. Aug. 9, 2018).

<sup>11</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, *Order* (rel. June 1, 2018) (“*USTelecom Forbearance Petition Extension*”).

<sup>12</sup> Federal Trade Commission Announces Hearings on Competition and Consumer Protection in the 21st Century, Federal Trade Commission, *available at* <https://www.ftc.gov/system/files/attachments/hearings-competition-consumer-protection-21st-century/hearings-announcement.pdf>

the Applicants have rectified this deficiency in their application should the Commission restart the clock and establish a new pleading cycle that provides the public a minimum of 30 days to evaluate the complete Application and prepare comments. Failure to provide essential information in a transfer of control application provides sufficient justification for the Commission to stop the clock and take the afore-mentioned recommended action.

At a minimum, the Commission should provide a four-week extension of time for the initial comments to be due September 17. Grant of this extension of time is warranted in light of the importance of the proceeding, the failure of the Applicants to provide a complete application, the numerous ongoing Commission proceedings and the forthcoming crush of filing deadlines, and the conflict in early to mid-September with the major Jewish Holidays of Rosh Hashanah and Yom Kippur.

As noted above, the Commission has already requested the Applicants provide updated documentation regarding spectrum aggregation in a user-friendly format. Because the Applicants are already on notice to produce the data and analysis the Movants seek, no parties will suffer inconvenience from the delay. Further, earlier this year when granting a significantly longer sixty-day extension in a separate proceeding, the Commission noted, like here, that that parties intended to submit additional data and analysis, and that an extension “will provide interested parties additional time to review and respond to the complex issues and questions raised” and “result in a more robust record to inform the Commission’s decision-making.”<sup>13</sup>

## **CONCLUSION**

WHEREFORE, the Movants request that the Commission stop the clock in this proceeding until the Applicants provide complete spectrum charts and provide an adequate

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<sup>13</sup> *USTelecom Forbearance Petition Extension* at 2-3.

description of and explanation for the spectrum aggregation that will result from this transaction. Once the Applicants have provided this information, the Commission should restart the clock and establish a new pleading cycle to begin four weeks later. In the alternative, and at a minimum, the Movants request that the Commission delay the comment deadline to September 17, 2018, with comparable four week extension of time for Oppositions and Replies in this proceeding.

Respectfully submitted,

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