

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Applications of T-Mobile US, Inc.)	
)	WT Docket No. 18-197
and)	
)	
Sprint Corporation)	
)	
Consolidated Applications for Consent To)	
Transfer Control of Licenses and Authorizations)	

**JOINT OPPOSITION OF T-MOBILE US, INC.
AND SPRINT CORPORATION**

By this filing, T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint” and, with “T-Mobile,” “Applicants”) oppose the “Motion to Stop the Clock, or In the Alternative Motion for Extension of Time” filed in this proceeding.¹ The *Motion* seeks to revise the pleading cycle and stop the review clock in this proceeding until T-Mobile and Sprint supplement their public interest statement to describe the spectrum aggregation that will result from the proposed transaction.² It alternatively requests that “at a minimum” the Commission extend its deadline for filing Petitions to Deny by four weeks “in light of the importance and complexity of this proceeding, conflicts with the major Jewish holidays of Rosh Hashanah and

¹ Motion to Stop the Clock, or In the Alternative Motion for Extension of Time of 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”], WT Docket No. 18-197 (Aug. 17, 2018) (“*Motion*”).

² *Id.* at 1.

Yom Kippur, and the glut of overlapping major proceedings the Commission has concurrently open for comment.”³

The FCC’s rules and precedent are clear that “extensions of time shall not be routinely granted.”⁴ Here, Movants have demonstrated no legitimate grounds for the relief they request and therefore the *Motion* should be summarily dismissed or denied.⁵ The Applicants submitted the spectrum holdings information about which Movants express concern on June 18, and it has been publicly available for almost two months. Movants’ complaint that Applicants submitted information in pdf format and did not provide a sum total of spectrum for each market, and that Movants are therefore “left with the time consuming task of calculating spectrum aggregation by hand in more than 3,200 local markets covering 79 pages of data” is meritless.⁶

- *First*, Applicants are unaware of any major transaction application where spectrum holdings data has been provided in any format other than pdf.
- *Second*, pdf readers have the capacity to “Save As” whereby a pdf file is converted to a different format. It took less than four minutes for counsel to download the Appendix L-1 data from the FCC’s website, to open the file in a pdf

³ *Id.* at 2.

⁴ 47 C.F.R. §1.46(a); *see also Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, 26 FCC Rcd 7688 (2011) (denying extension of time request by The Greenlining Institute as unjustified and citing Section 1.46(a)).

⁵ Movants have filed their *Motion* slightly more than one week prior to the deadline for filing Petitions to Deny in this proceeding. While that coincides with the deadline for “timely filed” extensions of time in rulemaking proceedings pursuant to Section 1.46(b), this proceeding is not a rulemaking proceeding. Thus, should the FCC deny the extension of time request, even if that denial occurs on the Petition due date, Movants would not have the benefit of the “two extra business days” to file Petitions to Deny under that subsection. *See Mobilecomm of Alabama, Inc.*, 3 FCC Rcd 5736 (1988) (stating “[Movant’s] reliance on Section 1.46(b) is entirely misplaced in that this subsection only applies to motions for extension of time in rulemaking proceedings . . . [g]iven the fact that the instant proceeding involves a . . . merger . . . not a rulemaking, Section 1.46(b) is inapplicable”).

⁶ *Motion* at 4.

reader, and to save the file as an Excel file that could be manipulated electronically.

- *Third*, although Applicants filed the application over two months ago, Movants have ignored what they now view as a fatal defect until well into the pleading period—just over a week from the Petition to Deny deadline.⁷

In sum, Movants have had ample time to automate the arithmetic that they believe is so onerous, and their last-minute complaints are a red herring.

Movants’ claim that the Commission has “acknowledged” the Applicants’ “failure” to provide necessary information because the Wireless Telecommunications Bureau has issued an information request that includes a data request “to provide market-by-market spectrum license information, in a csv format” is likewise without merit.⁸ The data requested by the Bureau, would be of no use in a spectrum screen analysis, as the Bureau asks for certain data on a county and license basis.⁹ Because individual carriers may hold multiple licenses in a county for the same spectrum block, the requested data cannot be “rolled up” to the county level for aggregation purposes without knowing the geographic partitions of the licenses within the county and the specific frequency bands in the county. Accordingly, the Information Requests in no way stand as an “acknowledgement” of any defect in the spectrum aggregation showings in Applicants’ filing.

⁷ While the FCC did not issue a Public Notice on the transaction until July 18th, Gene Kimmelman, the President of Public Knowledge, one of the Movants, acknowledged the application in his testimony before the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights well before that time.

⁸ *Motion* at 5.

⁹ General Information and Document Request for T-Mobile at 1-2, attached to Letter from Donald K. Stockdale, Jr., Chief, Wireless Telecommunications Bureau, FCC, to Kathleen O’Brien Ham, T-Mobile US, Inc., WT Docket 18-197 (Aug. 15, 2018); General Information and Document Request for Sprint at 1-2, attached to Letter from Donald K. Stockdale, Jr., Chief, Wireless Telecommunications Bureau, FCC, to Vonya B. McCann, Sprint Corporation, WT Docket 18-197 (Aug. 15, 2018) (collectively, “Information Requests”).

Movants are also incorrect in their claim that the Applicants’ filing does not comply with precedent and lacks necessary information because the public interest statement does not identify the individual markets in which the merged company would hit the Commission’s spectrum screen or justify the proposed spectrum aggregation.¹⁰ The FCC’s rules do not require “identification” of individual markets that exceed the screen, and the FCC has in fact, found that the application is acceptable for filing and placed it on Public Notice.¹¹ Moreover, Movants fail to recognize that the fulsome public interest statement and supporting economic and business declarations substantiate the public interest benefits and competitive incentives that accrue by virtue of combining the assets—particularly the complementary spectrum assets—of T-Mobile and Sprint. Movants similarly ignore Applicants’ Appendices L and M, which describe in great detail the amount of spectrum held by both companies (and the New T-Mobile) in each spectrum band and the competitive landscape for such licenses on a county-by-county basis.¹²

Finally, the Commission has made clear—in denying a similar extension request—“[i]f [Movants] believe that the Applications are substantially incomplete or that they fundamentally lack the information to establish that the proposed transaction is in the public interest, the proper

¹⁰ *Motion* at 2.

¹¹ 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 Subsidiaries To T-Mobile US, Inc., and the Pro Forma Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held By T-Mobile US, Inc., and Its Subsidiaries, *FCC Public Notice*, DA 18-740 (rel. July 18, 2018). Movants also incorrectly state “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,” citing to pages 132-137 of the public interest statement, *Motion* at 3. That section of the public interest statement, however, explicitly discusses the FCC’s spectrum screen and is impossible to read as only a “narrow acknowledgement” related only to the low-band (below 1 GHz) screen.

¹² See Sprint Spectrum Realty Company, LLC, ULS File No. 0008224209 at Apps. L-M; available at <https://www.fcc.gov/ecfs/filing/10620029903941> (last visited Aug. 17, 2018).

procedure is for Movants to file a petition to deny on those grounds.”¹³ In that decision, the Commission also observed that “[i]f the Applicants amend their Applications or supplement it [sic] in response to requests for information by Commission staff, Movants and other third parties will be able to file submissions based on new or newly discovered facts,” and that “participants in the proceeding also will be able to present their arguments to the Commission as part of the *ex parte* process.”¹⁴ No basis exists, therefore, for an extension based on the sufficiency of the information provided by the Applicants.

The Movants also argue that the pleading cycle should be extended because it “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 comment.”¹⁵ Yet, as previously noted, Movants will have had access to the public interest filings for over 10 weeks by the time Petitions to Deny are due. Moreover, the Commission always has multiple, significant proceedings pending.

Merger applicants are entitled to a reasonably expeditious review process. Accepting Movants’ reasoning would invite delay in the FCC’s review of every transaction. Further, both Rosh Hashanah (September 10-11) and Yom Kippur (September 19), as well as some of the other proceeding deadlines cited, occur *after* the deadline for Petitions to Deny and therefore cannot be justifications for moving the Petition due date.¹⁶ Movants have thus utterly failed to justify any extension of time, much less the four weeks they seek.

¹³ *Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) Consolidated Applications for Consent to Transfer Control*, 32 FCC Rcd 5799, 5801 ¶8 (2017).

¹⁴ *Id.* at ¶9.

¹⁵ *Motion* at 2.

¹⁶ Jewish Holidays 2018-2019, <https://www.hebcal.com/holidays/2018-2019> (last visited Aug. 17, 2018).

For the foregoing reasons, Movants' arguments that they have insufficient data or are overburdened are unavailing—the data they seek has been readily available and they have had the application materials for too long to plead a lack of opportunity at the 11th hour, just over a week before the filing deadline. The *Motion* therefore should be summarily dismissed or denied.

Respectfully submitted,

SPRINT CORPORATION

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August 20, 2018

CERTIFICATE OF SERVICE

I, Cathy Smithmeyer, declare that on this 20th day of August, 2018, I caused one copy of the foregoing “Joint Opposition of T-Mobile US, Inc. and Sprint Corporation” to be sent by first class mail to each of the following:

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In addition, the following staff of the Federal Communications Commission received a copy of the Joint Opposition by email: David Lawrence, Kathy Harris, Linda Ray, Kate Matraves, Jim Bird, and David Krech.

/s/ Cathy Smithmeyer
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