

August 8, 2018

The Honorable Makan Delrahim
Assistant Attorney General for the Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street
Washington, DC 20554

Dear Assistant Attorney General Delrahim and Chairman Pai:

On June 27, 2018, the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights held a hearing on T-Mobile US, Inc.'s (T-Mobile) proposed acquisition of Sprint Corporation (Sprint) to explore the potential effects of the transaction on competition and consumers. As Ranking Member of the Subcommittee, I write to highlight several issues that were raised at the hearing and to urge the Department of Justice's Antitrust Division (DOJ) and the Federal Communications Commission (FCC) to consider these issues as part of their respective reviews.

T-Mobile and Sprint have explored a potential combination several times over the last four years. When the companies last proposed a merger in 2014, DOJ and FCC officials expressed skepticism that further consolidation in the already-concentrated wireless market would be good for competition or consumers, and the companies subsequently abandoned negotiations.

Four years later, wireless service is even more important to Americans. Millions of people rely on wireless networks to connect with loved ones, access news and entertainment, and conduct business. An increasing number of consumers, particularly those with lower incomes, rely on wireless service as their primary connection to the internet. And new technological developments promise to make wireless technologies even more integral to our way of life. Against this backdrop, I have raised a number of concerns to your agencies about how a merger of T-Mobile and Sprint might affect wireless consumers, competition, and innovation. At the Subcommittee hearing, six witnesses—including representatives of both parties—offered testimony on these issues. The discussion made clear that the proposed merger raises complex questions regarding the likely effect of eliminating one of only four national wireless carriers, the likely competitive dynamics in a restructured wireless market, and whether the merged company would have the

economic incentives to lower prices and make the network investments that the parties are promising.

The proposed merger would reduce the number of national wireless carriers from four to three, eliminating Sprint—the lowest cost provider—as an independent competitive force. Over the past several years, competition between Verizon, AT&T, T-Mobile, and Sprint produced lower prices, led to the introduction of innovative service plans, and forced carriers to invest in faster, more reliable 4G LTE networks. These developments, which have benefited consumers across the country, were largely driven by the aggressive competitive pressure applied by the two smaller players—T-Mobile and Sprint—on the two larger players—Verizon and AT&T—who were forced to respond. This competitive dynamic would not have been present if the DOJ and FCC had not rejected AT&T's bid to buy T-Mobile in 2011 or if Sprint and T-Mobile had merged in 2014.

Today, market observers, including several witnesses at the hearing, have warned that removing Sprint from the market could eliminate the competitive pressure that has been benefiting consumers. Although not all mergers that increase market concentration are anticompetitive, two witnesses identified particular features of this transaction that have heightened my concerns about this merger. They pointed to the elimination of Sprint as the lowest-cost competitor, the inability of mobile virtual network operators (MVNOs) to effectively compete with the nationwide wireless carriers, the potential effects on lower-income customers, the high barriers to entry into nationwide wireless, and the current close competition between the parties in both the pre-paid and post-paid wireless markets. They also noted that the transaction would leave MVNOs with only three national wireless network operators from which to purchase network access. In short, I share the significant concerns raised by the witnesses that the proposed merger would leave consumers with higher prices, lower service quality, and reduced choice.

While the merging parties have claimed that the transaction will build a strong third national wireless carrier that will be better able to compete with Verizon and AT&T, witnesses focused on consumer issues doubted that the combined company would have the incentives to continue the aggressive competitive behavior we have seen from T-Mobile and Sprint when it is nearly as large as its rivals. One of the witnesses suggested that the merged company may be better positioned to target higher-income customers with more expensive plans, potentially leaving customers who prefer lower-priced plans with fewer options. As Sprint currently offers the lowest-priced plans compared with the other three carriers, it is unclear whether the new T-Mobile would have the incentive to offer similar low-price options once the terms of those plans expire and Sprint is eliminated as a competitor.

The merging parties also claim that the combination of their resources and spectrum assets would allow the new T-Mobile to increase its network capacity, expand its rural coverage, and build a nationwide 5G network that would be superior to anything that Verizon and AT&T could offer. The parties testified that the merged company would invest nearly \$40 billion in its wireless network over the next three years, much more than what the companies would invest separately. Although all of the witnesses seemed to acknowledge that the proposed merger could offer efficiencies, there was disagreement over how significant and likely those efficiencies would be and how necessary the merger might be to achieving them. Two of the witnesses, as well as

some market observers, have expressed doubt that the proposed merger's efficiencies could offset its likely anticompetitive effects. The economic incentives for the combined company to make costly investments in its network once the merger closes are also unclear, particularly if the promised capacity expansion will force the new T-Mobile to lower prices. As all national carriers face significant challenges in making network expansion economically feasible, particularly in underserved rural areas, it is unclear whether a new T-Mobile would find it profitable to undertake such expansions even when other carriers do not. In addition, some have questioned whether spectrum licensing or spectrum sharing agreements might achieve some of the same efficiencies that the merger might achieve, while still maintaining the present level of competition.

The proposed transaction would significantly alter the landscape of the wireless market. In light of the increasing importance of wireless access to our society, it is critical to ensure that the transaction would not violate the antitrust laws or harm the public interest. While I appreciate the willingness of the CEOs of T-Mobile and Sprint to answer detailed questions about their proposed merger, I still have significant concerns about how it would affect competition and consumers. Since the government and consumers will have no recourse if the new T-Mobile decides to change its investment and pricing plans after the merger is completed, it will be essential to conduct a thorough analysis of the combined firm's economic incentives to invest in its network, improve rural service, and then lower its prices to consumers. The hearing transcript is lengthy and should provide you and your staffs additional information in reviewing this proposed merger.

I urge you to seriously consider the issues discussed above as part of your respective investigations into this proposed transaction.

Sincerely,


Amy Klobuchar
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 9, 2018

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

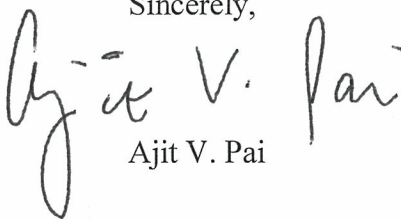
Dear Senator Klobuchar:

Thank you for your letter regarding the proposed transfer of control of the licenses, authorizations, and spectrum leases held by Sprint Corporation to T-Mobile US, Inc. On June 18, 2018, T-Mobile and Sprint filed their application and associated public interest statement with the Commission. As is the common practice, the Commission found the application acceptable for filing on July 18 and established a pleading cycle. Petitions to deny are due August 27; oppositions are due September 17; and replies are due October 9.

Although I am unable to discuss the merits of this pending proceeding, I can assure you that Commission staff will carefully review the transaction to ensure that it complies with all applicable laws and to determine whether it is in the public interest.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding and considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, reading "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent.

Ajit V. Pai