

**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)	
)	

REPLY TO JOINT OPPOSITION TO INFORMAL REQUEST FOR COMMISSION ACTION

The Rural Wireless Association, Inc. (“RWA”) and NTCA – the Rural Broadband Association (“NTCA”) (jointly, “Petitioners”) hereby respond to the Joint Opposition filed by Sprint Corporation (“Sprint”) and T-Mobile US, Inc. (“T-Mobile”) in response to Joint Petitioners’ Informal Request for Commission Action (“Informal Request”) requesting that the Federal Communications Commission (“FCC” or “Commission”) seek public comment on: (1) changes to the proposed merger between Sprint and T-Mobile resulting from a Stipulation and Order and proposed Final Judgment (collectively, “Consent Decree”) between the U.S. Department of Justice (“DOJ”) and Sprint, T-Mobile, and a new third party, Dish Network Corporation (“Dish”), filed after the close of the comment cycle in this proceeding; and (2) a

letter filed by Dish seeking an extension of the construction deadline for hundreds of FCC licenses.¹

T-Mobile and Sprint claim that the record in this proceeding is “comprehensive and complete.”² Nothing could be further from the truth. DOJ has already determined that the merger deal on which the Commission has developed a record to date would substantially lessen competition and harm consumers. Only after that determination, when T-Mobile and Sprint, *changed their proposed arrangement to bring in Dish as a potential fourth nationwide wireless carrier* did DOJ agree to adopt a Consent Decree and approve the *new* arrangement. If the changes to the deal are so significant that they proved dispositive to DOJ, how can they not be relevant to the FCC to the point where the public has opportunity to comment on the *new* proposed merger?

T-Mobile and Sprint’s argument that the Administrative Procedure Act’s (“APA”) notice and comment requirements apply only to rulemakings is also incorrect. Under the APA, an agency action is considered arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The APA, which requires courts reviewing federal agency actions to set aside decisions which are “arbitrary, capricious, an abuse of discretion, or otherwise not in

¹ Joint Opposition of T-Mobile US, INC. and Sprint Corporation to Requests for Commission Delay, WT Docket No. 18-197 (August 9, 2019) (“Joint Opposition”). This pleading mischaracterizes the Informal Request as a request for Commission delay. The Informal Request did not request Commission delay; it merely requested that the Commission seek additional public comment before rendering a decision, and noted that such a process would not cause delay to the parties as they still needed to wait for the resolution of two related litigation proceedings before they would be in a position to legally close, proceedings that would take a minimum of 60 days to conclude.

² Joint Opposition at p. 2.

accordance with law,”³ applies to FCC license application proceedings as well as rulemaking proceedings.⁴ The FCC has routinely asked for public comment on requests for extension of license construction deadlines.⁵

Given these material changes, it would be arbitrary and capricious for the Commission to render a decision here without consideration of public input on the significant public interest issues related to the modified merger proposal and the Dish extension request. Yet a draft order currently being circulated would apparently approve, subject to conditions, the proposed merger between T-Mobile and Sprint. That order “addresses certain extensions, commitments, and modifications to DISH’s spectrum holdings to effectuate its deployment of a nationwide 5G network” and concludes, among other things, that:

- “The divestiture of Boost Mobile, along with other conditions, would address the potential for competitive harm from the transaction.”
- “[T]he Boost Mobile divestiture is necessary to ensure that price-sensitive customers in densely-populated areas are not harmed.”
- “DISH’s planned 5G deployment, in connection with its acquisition of Boost, would also be in the public interest.”⁶

³ 5 U.S.C. §706(2)(A).

⁴ See, e.g., *Press Communications v. FCC*, 875 F.3d 1117, 1121 (D.C. Cir. 2017) (applying Section 706(2)(A) “arbitrary and capricious” standard to FCC decision to dismiss a license modification application).

⁵ See, e.g., *Wireless Telecommunications Bureau Seeks Comment on SAL Spectrum LLC Request for Extension of Time to Meet Geographic Coverage Requirement for 700 MHz License in Texas*, Public Notice, 31 FCC Rcd 12620 (WTB 2016).

⁶ Pai Statement at pp. 1-2.

It is difficult to see how the FCC can possibly make such substantial determinations, with far-reaching ramifications, without allowing the public to weigh in on how the revised transaction would affect the public interest as a whole. For the reasons discussed herein and in the Informal Request, as well those discussed by other parties, the Commission should seek public comment on the revised merger proposal and Dish applications as requested in the Informal Request.

Respectfully submitted,

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