Before the
Federal Communications Commission
Washington, DC 20554

In re Applications of	)	
	)	
T-Mobile US, Inc. and	)	WT Docket No. 18-197
Sprint Corporation	)	DA 18-740
	)	
For Consent to Transfer Control of	)	
Licenses and Authorizations	)	

PETITION TO DENY OF

UNION TELEPHONE COMPANY
CELLULAR NETWORK PARTNERSHIP, AN OKLAHOMA LIMITED PARTNERSHIP
NEX-TECH WIRELESS, L.L.C.
SI WIRELESS, LLC

David LaFuria
Todd B. Lantor

Lukas, LaFuria, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
Tysons, VA 22102
703-584-8678

Counsel for Petitioners

August 27, 2018

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SUMMARY

Unlike most transactions, where policymakers are largely informed by economic theories untested in the post-merger marketplace, the Commission's review of T-Mobile's proposed acquisition of Sprint is informed by actual marketplace dynamics, starting in 2011 when AT&T's acquisition of T-Mobile was abandoned. Since then, T-Mobile has embarked on an "Un-carrier" strategy that has driven its key performance indicators to levels far exceeding its competition. Its revenues, postpaid customer additions, EBITDA margin, 4G LTE coverage area, and profit have all increased dramatically while its three nationwide competitors have, in relative terms, languished. T-Mobile's balance sheet, its lack of a large pension obligation, and the absence of a declining wireline business, combine to paint a terrific outlook for T-Mobile, even if the FCC does not approve this transaction.

T-Mobile contends that this horizontal merger, reducing national competitors from 4 to 3, will increase competition, lower prices to consumers, prompt a competitive response from AT&T and Verizon, and increase employment. Were it to take actions necessary for all these things to happen, for example increasing capital expenditures, lowering prices, and hiring more people, its earnings per share would likely fall, an economic outcome at odds with its promises. In a marketplace reduced from 4 to 3, with one low-price competitor removed, the far more likely scenario is for T-Mobile to raise prices, while remaining the low-cost competitor, and reducing capital expenditures, to increase profitability and drive share price increases. Indeed, T-Mobile presents no example of a merged entity delivering all of these benefits to consumers when a market is reduced from 4 to 3 and the HHI Index rises to approximately 3333. This is

why the DOJ/FTC Merger Guidelines make it so difficult for the government to approve such a merger.

T-Mobile appears to hang its hat on the fact that it needs more mid-band spectrum to construct a high-quality 5G network, spectrum that Sprint currently holds in the BRS/EBS band. Yet, T-Mobile's SEC Form 10-K for 2017 states that it will construct the nation's first nationwide 5G network by 2020. If it needs additional spectrum to increase 5G throughput, it has multiple opportunities to acquire a healthy portion of the nearly 600 MHz of mid-band spectrum to be released in multiple upcoming FCC auctions. Its balance sheet, burdened with far less debt than AT&T or Verizon, and its ability to borrow on favorable terms due to its sovereign backing, should allow it to acquire more mid-band spectrum than it needs, and increase competition at the auction block which benefits the American people.

In many rural markets, where Petitioners seek to acquire more spectrum while maintaining nationwide bi-lateral roaming arrangements, New T-Mobile will hold far in excess of the 238.5 MHz spectrum screen. Should the Commission approve this merger, New T-Mobile must divest spectrum to permit competitors and competition to survive. As shown in Exhibit A, many rural markets where Petitioners serve will be left with three competitors, or a fourth that lacks spectrum needed to build a high-quality 4G/5G network.

Likewise, to preserve competition in rural America, the Commission must impose conditions to preserve both outbound and inbound roaming for ten years, allow small carriers time to build 5G networks, and adjust their business models to a new world of reduced competition for roaming. Reducing the number of roaming partners for small carriers greatly increases the market power of the remaining three carriers and, when T-Mobile decommissions

Sprint's CDMA network, provides rural CDMA carriers with only one roaming partner. Petitioners suggest a series of roaming and interoperability conditions to preserve competition in America's rural areas, benefitting consumers.

According to the DOJ/FTC Merger Guidelines and applicable precedent, there must be compelling reasons for the Commission to allow an already concentrated market to shrink from 4 to 3, raising the HHI to at least 3333. While T-Mobile promises to continue it Un-carrier marketing strategy, the far stronger economic incentives to increase earnings per share at the expense of increased competition will likely win out. T-Mobile's prospects without the merger are terrific, and are the public's prospects if the Commission acts to preserve competition.

Finally, at the core of the FCC's responsibility to ensure that a proposed merger would serve the public interest, must be an examination of the post-merger marketplace in rural America. Over the past two decades, the Commission has allowed a long string of mergers in the wireless industry to go through, each increasing the market power and leverage of the remaining four national carriers. Only AT&T-T-Mobile was blocked, and properly so.

Small rural carriers such as Petitioners provide vital services in their local communities and are oftentimes far more responsive to customer needs. If the Commission were to approve the proposed merger, concrete steps to protect the rural marketplace must be taken, including ensuring inbound and outbound roaming on reasonable terms and divestiture of vital spectrum needed to preserve competition. These steps are vital to bridging the digital divide for rural citizens.

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Union Telephone Company, dba Union Wireless (“Union”), Cellular Network Partnership, an Oklahoma Limited Partnership, dba Pioneer Cellular (“Pioneer”), Nex-Tech Wireless, L.L.C. (“Nex-Tech Wireless”), and SI Wireless, LLC dba Mobile Nation (“SI Wireless”) (“Petitioners”), by counsel and pursuant to § 309(d)(1) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 309(d)(1), § 1.939(a)(2) of the Commission's Rules ("Rules"), 47 C.F.R. § 1.939(a)(2), and the Public Notice, DA 18-740, 2018 WL 3495122 (July 18, 2018), hereby petition the Commission to deny the above-captioned applications (“Applications”) of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, “Applicants”) for the Commission's consent to the transfer control of the various radio station authorizations and licenses held by Sprint. In support thereof, the following is respectfully submitted:

I. STANDING

Petitioners provide commercial mobile wireless service in rural areas across the United States in Kansas, Illinois, Missouri, Nebraska, Idaho, Wyoming, Oklahoma, Tennessee, Colorado,

Kentucky, Utah, and Montana. A listing of the counties and Cellular Market Areas ("CMAs") where Petitioners are providing service is set forth in Exhibit A. Each Petitioner holds FCC authorizations and serves customers using various commercial mobile spectrum bands, including but not limited to 600 MHz, 700 MHz, 850 MHz, PCS, and the AWS bands.

Each of Petitioners competes directly with T-Mobile and Sprint in its respective markets. T-Mobile states in its Applications:

> New T-Mobile will bring increased broadband coverage to rural Americans, along with improved signal quality and increased network capacity that will enable data-intensive applications and superior rural consumer experiences. This improved service will be accompanied by enhanced customer service through 600 or more new stores and up to five call centers located to serve rural areas and small towns.[1]

If accurate, the "New T-Mobile" will be a stronger competitor than either the current T-Mobile or Sprint in rural areas. The merged entity will have more resources, more spectrum, and increased access to capital markets. Because this is a horizontal merger, one potential roaming partner will be removed from the marketplace, narrowing competitive choices substantially for Petitioners. Accordingly, Petitioners can be expected to sustain economic injury that is direct, tangible, and immediate.

Petitioners' status as direct and current competitors to the "New T-Mobile" confers standing to file a petition to deny the Applications under *Sanders Brothers Radio Station*, 309 U.S. 470 (1940) and its progeny. *See New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002). Consistent with *Sanders Brothers*, the Commission developed a "generous" standing

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[1] *See, Description of Transaction, Public Interest Statement, and Related Demonstrations* ("*Application Public Interest Statement*"), at ii-iii.

policy in assignment and transfer cases "so as to enable a competitor to bring to the Commission's attention matters bearing on the public interest because its position qualifies it in a special manner to advance such matters." *Stoner Broadcasting System, Inc*., 74 F.C.C. 2d 547, 548 (1979). *See WLVA, Inc. v. FCC*, 459 F.2d 1286, 1298 n.36 (D.C. Cir. 1972) (standing under § 309(d)(1) "liberally conferred" where a competitor alleges economic injury). Under that policy, Petitioners have standing under § 309(d)(1) to petition to deny the Applications. *See, e.g., Channel 32 Hispanic Broadcasters, Ltd.*, 15 FCC Rcd. 22649, 22651 (2000).

As required by 47 U.S.C. § 309(d)(1), a supporting affidavit from each Petitioner is attached hereto as Exhibit B.

II. THE STANDARD OF REVIEW.

A. The Public Interest Standard.

Under the Act, the Commission must review transactions involving authorizations to determine whether the proposed transaction would serve "the public interest, convenience, and necessity."[2] Inherent in its analysis is an examination of the proposed transaction's effects on competition, on consumers, and on competitors.[3] For example, no person may acquire an FCC authorization if "the purpose is and/or the effect thereof may be to substantially lessen

[2] *See,* 47 U.S.C. §§ 214(a), 310(d).

[3] *See, Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC,* 23 FCC Rcd 17444, 17461-62 (2008) ("*Verizon-Alltel Merger Order*").

competition."[4] This follows Section 7 of the Clayton Act, which prohibits acquisitions where "the effect of such acquisition may be substantially to lessen competition…."[5]

If, after reviewing the record in this proceeding, the Commission determines that there is a substantial and material question of fact, or that it cannot determine that the proposed transaction would serve the public interest, it must designate the Applications for an administrative hearing.[6]

Applicants bear the burden of proof by a preponderance of the evidence, to demonstrate that the Applications will serve the public interest, convenience, and necessity and otherwise be consistent with the Act.[7]

B. Defining the Product Market.

The Commission has defined the relevant product market to be "mobile telephony/broadband services," which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services). *Verizon-Alltel Merger Order,* 23 FCC Rcd at 17469-70.

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[4] *See,* 47 U.S.C. § 314.

[5] *See,* 15 U.S.C. § 18.

[6] *See,* 47 U.S.C. § 309(e).

[7] *Verizon-Alltel Merger Order, 23 FCC Rcd at 17460-61.*

C. Defining the Geographic Market.

The Commission has analyzed similar transactions at the CMA and Component Economic Area ("CEA") level. *Verizon-Alltel Merger Order,* 23 FCC Rcd at 17472-73.

Where the proposed transaction results in "a significant increase in market and spectrum concentration across a broad swathe of the nation,"[8] the Commission staff has recommended a geographic market analysis at the nationwide level, because it is not "necessary to assess the competitive effects in retail wireless services individually in each local market to determine the likely consequences of the proposed transaction for competition."[9]

III. ARGUMENT.

A. The Aftermath of the Failed AT&T/T-Mobile Merger Reveals Compelling Evidence that T-Mobile Has Put Competitive Pressure on AT&T and Verizon.

In most horizontal merger cases, challengers must use competition principles and economic arguments to demonstrate what is likely to happen if the transaction is approved.[10]

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[8] *See, e.g., Applications of AT&T, Inc. and Deutsche Telekom AG,* Bureau Staff Analysis and Findings (Nov. 11, 2011) at para. 34, https://docs.fcc.gov/public/attachments/DA-11-1955A2.pdf ("AT&T-Deutsche Staff Analysis").

[9] *Id*.

[10] Thus, for example, in the proposed merger of and AT&T-Mobile, the Department of Justice argued that:

> Due to the advantages arising from their scale and scope of coverage, each of the Big Four nationwide carriers is especially well-positioned to drive competition, at both a national and local level, in this industry. T-Mobile in particular—a company with a self-described "challenger brand," that historically has been a value provider, …—places important competitive pressure on its three larger rivals, particularly in terms of pricing, a critically important aspect of competition. AT&T's elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market. Additionally, T-Mobile's investment in an advanced high-speed network and its innovations in technology and mobile wireless telecommunications services have provided, and continue to provide, consumers with significant value. Thus, unless this acquisition is enjoined, customers of mobile wireless telecommunications services likely will

Arguments in such a "what if" world can never fully capture what will actually happen. Only after the transaction is consummated or abandoned are marketplace effects revealed, often years later, to determine real world effects.

Here, T-Mobile argues throughout its Applications that this horizontal merger, reducing national competitors from 4 to 3, will *increase* competition, lower prices to consumers, prompt a competitive response from AT&T and Verizon, and increase employment.[11] Yet, throughout over one thousand pages of various explanations, charts, graphs, and supporting economic analysis, T-Mobile cites not a single instance of where competition increased, prices were lowered, employment increased, and consumers were better served as a result of a horizontal merger reducing a marketplace from 4 to 3 competitors. Not one example.

In fact, a straightforward analysis of the failed AT&T/T-Mobile merger presents the Commission with compelling evidence of what happens when such a merger is not approved and the marketplace is preserved at four competitors. In November of 2011, AT&T and T-Mobile abandoned their proposed merger, forcing T-Mobile to go it alone.[12] Judging from information publicly available in the companies' SEC reports on Form 10-K over the following years, the effects on competition and consumers have been positive, and significant.

> face higher prices, less product variety and innovation, and poorer quality services due to reduced incentives to invest than would exist absent the merger.

Department of Justice, Complaint, *U.S. v. AT&T and T-Mobile* (U.S. Dist. Ct., D.C., Case 1:11-cv-01560), Aug. 31, 2011 ("DoJ Complaint"), at 3, https://www.justice.gov/atr/case-document/file/487776/download.

[11] *See, e.g., Application Public Interest Statement,* at i-iv.

[12] *See, Letter from Patrick J. Grant and Nancy J. Victory* (Nov. 29, 2011) at https://ecfsapi.fcc.gov/file/7021748296.pdf.

Shortly after the AT&T merger was abandoned, T-Mobile launched its "Un-carrier" strategy and inaugurated "14 signature initiatives that changed the wireless industry forever."[13] In its 2016 report on Form 10-K, T-Mobile listed its Un-carrier initiatives:

> • providing customers with affordable rate plans while eliminating annual service contracts;
>
> • allowing customers easier options to upgrade their eligible devices when they want;
>
> • reimbursing qualifying customers' early termination fees and/or remaining phone payments when they switch from other carriers and trade-in their phones;
>
> • allowing customers to stream music without it counting against their high speed data allotment;
>
> • providing Wi-Fi calling and texting for customers with capable smartphones;
>
> • giving qualified customers the ability to roll-over up to 20 GB per year of their unused high-speed data automatically each month;
>
> • providing reduced United States to international calling rates, and providing messaging and data roaming while traveling abroad at no extra charge;
>
> • allowing customers to access coverage and calling, as well as 4G LTE data, across the U.S., Mexico and Canada at no extra charge;
>
> • providing select video streaming services without it counting against their high speed data allotment on qualifying plans;
>
> • offering eligible new (through December 31, 2016) or existing (as of June 6, 2016) customers ownership in the Company with a free share of T-Mobile stock or an additional share of T-Mobile stock for every new active account each customer refers through

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[13] *See, T-Mobile 2017 SEC Form 10-K,* at p. 4.

December 31, 2016, subject to a maximum of 100 shares in a calendar year;

• enabling eligible customers who download the T-Mobile Tuesday app to be informed about and to redeem products and services offered by participating business partners each Tuesday;

• offering eligible customers a full hour of free in-flight Wi-Fi on their smartphone on all Gogo-equipped domestic flights;

• giving our customers one simple rate plan, T-Mobile ONE™, that includes unlimited calls, unlimited text and unlimited high-speed 4G LTE data on their device; and beginning in 2017, with our introduction of Un-carrier Next, T-Mobile ONE includes:

- monthly wireless service fees and taxes in the advertised monthly recurring charge;

- paying participating customers back for data that is not used in a month if they use less than 2GB high-speed data/month; and

- giving customers the first-ever price guarantee on an unlimited 4G LTE plan and allowing our customers to keep their T-Mobile ONE price until they decide to change it.[14]

Also in its 2016 10-K, T-Mobile stated:

• We have continued to build out our network to concentrate our cell sites where our customers need data most. We had approximately 66,000 cell sites, including macro sites and distributed antenna system network nodes as of December 31, 2016, compared to approximately 64,000 cell sites as of December 31, 2015.

• In 2015, we completed the shutdown of the MetroPCS Code Division Multiple Access ("CDMA") network. The migration of customers from the MetroPCS CDMA network onto T-Mobile's LTE and Evolved High Speed Packet Access Plus network provides faster network performance for MetroPCS customers with compatible handsets.

[14] *See, T-Mobile 2016 SEC Form 10-K*.

• We continue to expand our coverage breadth and currently provide 4G LTE coverage to 314 million people, up from zero 4G LTE coverage four years ago. We are targeting to provide 320 million people with 4G LTE coverage by year-end 2017.

• We own 700 MHz A-Block spectrum covering 272 million people or approximately 84% of the U.S. population. The spectrum covers all of the top 10 market areas and 29 of the top 30 market areas in the U.S.

• We have deployed our 700 MHz A-Block spectrum in over 500 market areas covering more than 252 million people under the name "Extended Range LTE." We expect to continue to aggressively roll-out new 700 MHz market areas in 2017 including Chicago, Eastern Montana, and substantially all of the remaining population in 700 MHz licensed areas.

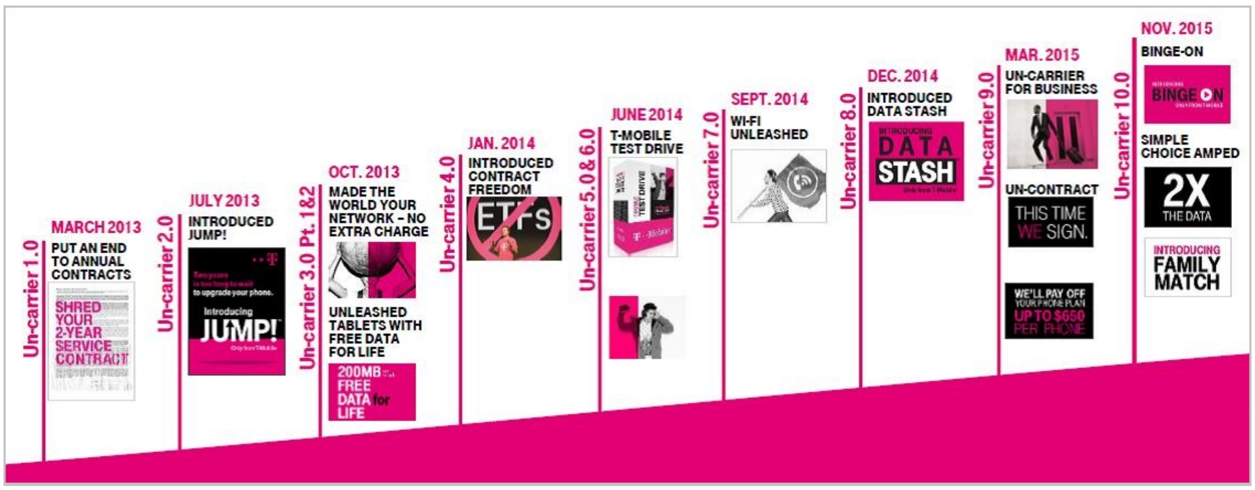
• We continue to have the fastest nationwide 4G LTE network in the U.S. based on both download and upload speeds from millions of user-generated tests. This is the twelfth consecutive quarter that we have led the industry in both download and upload speeds.

• In September 2016, we introduced our T-Mobile ONE plan, a move that gives our customers unlimited calls, unlimited text and unlimited high-speed 4G Long Term Evolution (LTE) data. On T-Mobile ONE, video typically streams at DVD (480p) quality and tethering is at maximum 3G speeds. Customers can choose to add on additional features to T-Mobile ONE for an additional cost. On T-Mobile ONE Plus customers also receive unlimited High Definition Video Day Passes, Voicemail to Text, NameID, unlimited Gogo in-flight internet passes on capable domestic flights and up to two times faster speeds when traveling abroad in 140+ countries and destinations. On T-Mobile ONE Plus International, customers receive the benefits of T-Mobile ONE Plus as well as free and reduced calling from the U.S. to foreign countries and unlimited high-speed 4G LTE mobile hotspot data.

• In January 2017, we introduced, Un-carrier Next, where monthly wireless service fees and sales taxes are included in the advertised monthly recurring charge for T-Mobile ONE. We also unveiled Kickback on T-Mobile ONE, where participating customers who use 2 GB or less of data in a month, will get up to a $10 credit per

qualifying line on their next month's bill. In addition, we introduced the Un-contract for Tmobile ONE with the first-ever price guarantee on an unlimited 4G LTE plan which allows current T-Mobile ONE customers to keep their price for service until they decide to change it. In September 2017, we introduced, Un-carrier Next: Netflix On Us, through an exclusive new partnership with Netflix where qualifying Tmobile ONE customers on family plans can opt in for a standard monthly Netflix service plan at no additional cost.[15]

T-Mobile has summarized its Un-carrier strategy in the following graphic:[16]



Over the past five years, T-Mobile claims to be the fastest, and fastest growing 4G LTE network.[17] Its SEC reports and news releases illustrate consistent and significant capital expenditures for network equipment and upgrades.[18] As a result of its investments, its network

[15] *See T-Mobile 2017 SEC Form 10-K,* at p. 25*.*

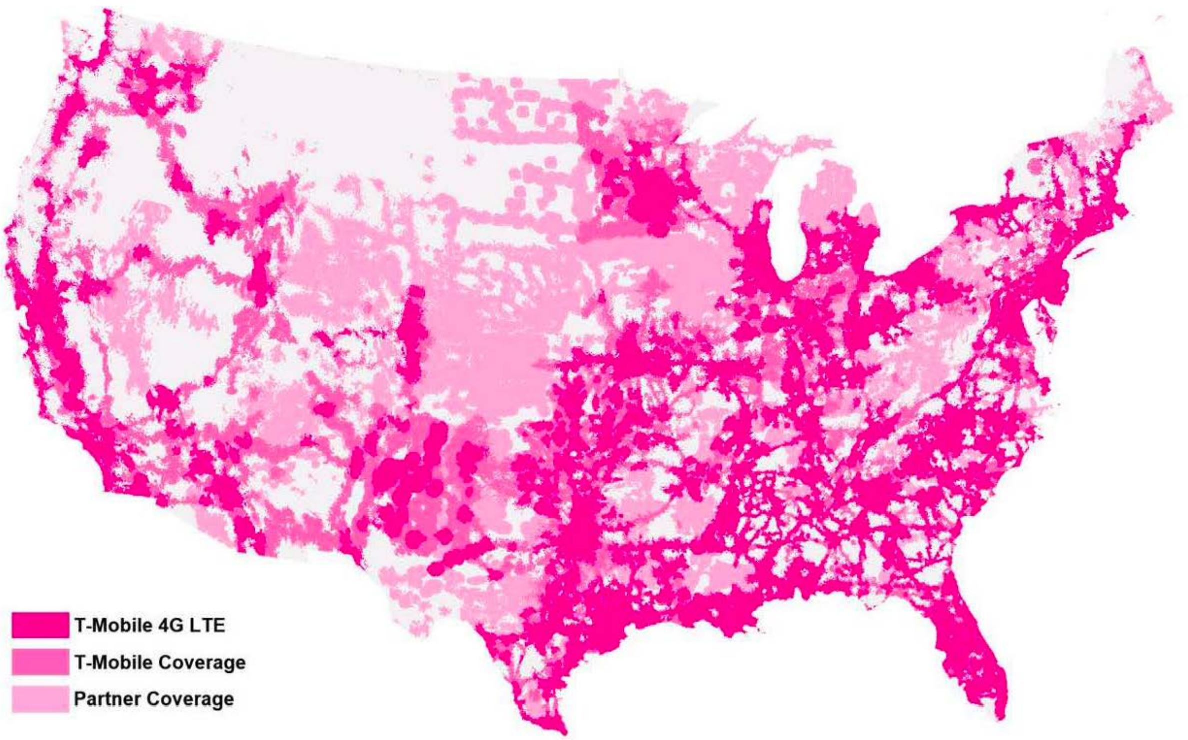
[16] *See T-Mobile 2015 SEC Form 10-K.*

[17] *See, e.g.,* https://twitter.com/NevilleRay/status/887767227113496576 (".@TMobile continues to be the fastest network in the US. And by a pretty significant margin;" and ".@TMobile continues to be the fastest growing network in the US.").

[18] *See, e.g., Application Public Interest Statement at p. 83,* showing steadily increasing capital expenditures for T-Mobile since 2012; *T-Mobile And Nokia Ink $3.5 Billion, Multi-Year 5G Network Agreement,* (Press Release, July 30,

has significantly improved, benefitting consumers and increasing competition, especially in rural areas.

In 2013, T-Mobile's national map looked like this:[19]

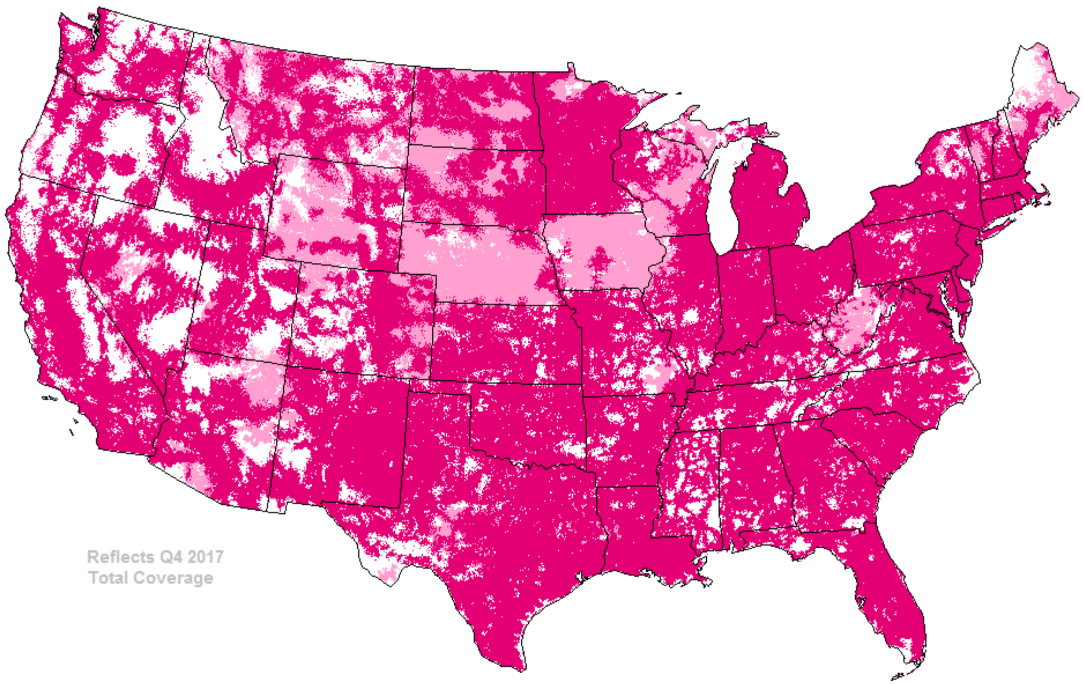


T-Mobile did not display this national map in its 2017 SEC Form 10-K, however its web site currently shows the following map, reflecting significant network investment since 2013:[20]

2018), at http://investor.t-mobile.com/file/Index?KeyFile=394414122; SEC Form 10-K for 2017 (reporting purchased of property and equipment of $5.2 billion for 2017, and $4.7 billion for each of 2016 and 2015).

[19] *See, T-Mobile 2013 SEC Form 10-K.*

[20] *See, Where does T-Mobile offer partner coverage? at* https://www.t-mobile.com/coverage/coverage-map (visited Aug. 12, 2018).



4G LTE Coverage
Partner Coverage

Over the years, T-Mobile's press shop has unleashed a series of attacks on its nationwide competitors' prices, service quality, customer service, and rate plans.[21] On Twitter, CEO John Legere unceasingly mocks T-Mobile's rivals.[22]

In reviewing AT&T's 10-K reports, they have announced the following wireless initiatives:

[21] *See* http://investor.t-mobile.com/Press-Releases.

[22] *See, e.g.,* https://twitter.com/JohnLegere/status/1028320918811168770.

- We launched in 2016 a program for wireless subscribers that also purchase our video service to view such programming without it counting against their wireless data allowances.[23]

- To attract and retain subscribers in a mature and highly competitive market, we have launched a wide variety of plans, including unlimited, as well as equipment installment programs. Beginning in 2017, we expanded our unlimited wireless data plans to make them available to customers that do not subscribe to our video services.[24]

- In 2014, we launched our AT&T Next program, which allows customers to buy handsets on an installment basis in exchange for discounted service charges, along with other benefits, and we also offer new customers the opportunity to bring their own device.[25]

- For example, we have launched our innovative home monitoring service (Digital Life) and have announced plans for car-related security and entertainment services. In 2013, we launched a new wireless brand, Aio, which offers prepaid services and devices with no annual contract.[26]

In reviewing Verizon's 10-K reports, they have announced the following wireless initiatives:

- To promote long-term relationships with our customers, we launched the Verizon Up program, which offers a variety of rewards to customers in exchange for points they earn in connection with their account-related transactions with Verizon Wireless.[27]

- In August 2015, we launched a simplified shared data plan, the Verizon Plan, that offers customers various sizes of data packages that can be shared among up to 10 devices on a customer's account.[28]

[23] *See, AT&T 2017 SEC Form 10-K.*

[24] *Id.*

[25] *See, AT&T 2017 SEC Form 10-K.*

[26] *See, AT&T 2013 SEC Form 10-K.*

[27] *See*, *Verizon 2017 SEC Form 10-K.*

[28] *See*, *Verizon 2015 SEC Form 10-K.*

- In February 2016, we announced we would offer retail postpaid Verizon Wireless customers video streaming in go90 over our 4G LTE network free of data charges via the FreeBee Data 360 sponsored data service. Customers must have the latest version of the go90 application to take advantage of this offer.[29]

- During the third quarter of 2015, we announced the availability of Hum, an aftermarket vehicle technology and subscription service, to consumers. With this subscription-based service, drivers will have diagnostic technology in their vehicles, access to live assistance and will be able to request roadside assistance with GPS accuracy when needed.[30]

In reviewing Sprint's 10-K Reports and press releases, they have announced the following wireless initiatives:

- iPhone X for $5.00 per month.[31]

- Roll out of improved rate plans – unlimited basic, unlimited plus, unlimited military and unlimited 55+.[32]

- Introduction of 5G Technology in early 2019.[33]

- During fiscal year 2017, we introduced a non-Sprint branded postpaid offering allowing prepaid customers to purchase a device under our installment billing program. This program provides prepaid customers with access to this offer

[29] *Id.*, (go90 was discontinued in 2018). *See,* https://www.businessinsider.com/verizon-discontinuing-go90-video-service-2018-6).

[30] *Id.*

[31] Sprint Exclusive: Get iPhone X for $5/Month, Press Release Aug. 10, 2018, http://investors.sprint.com/news-and-events/press-releases/press-release-details/2018/Sprint-Exclusive-Get-iPhone-X-for-5Month/default.aspx.

[32] Sprint's Industry-Leading Unlimited Plans Just Got Even Better! New Unlimited Plans Include Features Customers Love for the Best Price, Press Release July 12, 2018, http://investors.sprint.com/news-and-events/press-releases/press-release-details/2018/Sprints-Industry-Leading-Unlimited-Plans-Just-Got-Even-Better-New-Unlimited-Plans-Include-Features-Customers-Love-for-the-Best-Price/default.aspx.

[33] Sprint Announces New York City, Phoenix and Kansas City Among First to Experience Sprint 5G, Press Release May 15, 2018, http://investors.sprint.com/news-and-events/press-releases/press-release-details/2018/Sprint-Announces-New-York-City-Phoenix-and-Kansas-City-Among-First-to-Experience-Sprint-5G/default.aspx.

under their respective brands. Qualified customers on this non-Sprint branded postpaid offering receive an extension of credit to purchase their device.[34]

- We recently launched the Sprint Framily SM plan, which is available to new and existing subscribers, and allows subscribers to create a Framily group consisting of up ten subscribers. The first subscriber pays $55 per month for unlimited talk, text and 1GB of data. For each additional new Sprint subscriber that joins the Framily group, the monthly wireless service fee decreases by $5 per person within that Framily group, up to a maximum monthly discount of $30 per person.[35]

T-Mobile's various pro-competition initiatives are reflected in its financial and operating data. Below are data from T-Mobile's reports on SEC Form 10-K for the past five years since the AT&T/T-Mobile merger was abandoned:

T-Mobile Financial Data from SEC 10-K						
Year	Postpaid Customers	Revenues	Diluted EPS	Postpd. Adds	Postpaid ARPU	EBITDA Margin
2017	38.0M	$40.6B	$5.20	3.6M	$46.97	37%
2016	34.4M	$37.2B	$1.69	4.1M	$47.47	38%
2015	31.7M	$32.0B	$0.82	4.5M	$47.68	31%
2014	27.2M	$29.6B	$0.30	4.9M	$49.44	25%
2013	22.3M	$24.4B	$0.05	2.0M	$53.03	26%

Below are data from Verizon's wireless segment reports on SEC Form 10-K for the past five years since the AT&T/T-Mobile merger was abandoned:

[34] *See, Sprint 2017 SEC Form 10-K.*

[35] *See, Sprint 2013 SEC Form 10-K.*

Verizon Wireless Financial Data from SEC 10-K						
Year	Postpaid Connections	Revenues	Diluted EPS*	Postpd. Adds	Postpaid ARPA**	EBITDA Margin
2017	110.9M	$87.5B	n/a	2.1M	$135.99	44.1%
2016	108.8M	$89.2B	n/a	2.3M	$144.32	43.8%
2015	106.5M	$91.7B	n/a	4.5M	$152.63	42.5%
2014	102.1M	$87.7B	n/a	5.5M	$159.86	48.5%
2013	96.8M	$81.0B	n/a	4.1M	$153.93	49.5%

* Not broken out by segment
** Verizon Wireless only reports Average Revenue Per Account

Below are data from AT&T Mobility segment reports on SEC Form 10-K for the past five years since the AT&T/T-Mobile merger was abandoned:

AT&T Mobility Financial Data from SEC 10-K						
Year	Postpaid Customers	Revenues	Diluted EPS*	Postpd. Adds	Postpaid ARPU	EBITDA Margin
2017	77.9M	$71.3B	n/a	594K	$58.00	39.4%
2016	77.8M	$72.8B	n/a	1.1M	$58.45	39.7%
2015	77.1M	$73.7B	n/a	1.7M	$60.45	37.9%
2014	75.8M	$74.0B	n/a	3.3M	n/a	34.7%
2013	72.2M	$69.9B	n/a	1.8M	n/a	36.3%

* Not broken out by segment

Below are data from Sprint Corporation's wireless segment reports on SEC Form 10-K for the past four years since its SoftBank merger was completed.

Sprint's Wireless Segment Financial Data from SEC 10-K						
Year	Postpaid Connections	Revenues	Diluted EPS*	Postpd. Adds	Postpaid ARPU	EBITDA Margin
2018*	31.7M	$31.2B	$1.81	424K	$45.70	n/a
2017	31.2M	$31.8B	($0.30)	811K	$49.77	n/a
2016	30.6M	$30.4B	($0.50)	1.2M	$53.30	n/a
2015	31.2M	$32.3B	($0.85)	(218K)	$59.32	n/a

*FY ending March 31.

As evidenced by their ARPU statistics, T-Mobile and Sprint have been leaders in price competition. Here are their latest offerings for a single line:

Price Comparison as of August 12, 2018 for a Single Line of "Unlimited" Talk/Text/Data				
Company	Price	Taxes/Fees	GB of LTE Data	Streaming Speed
AT&T	$70	Yes	22	480p
Verizon	$85	Yes	22	480p
T-Mobile	$70	No	50	480p
Sprint	$60	Yes	50	480p

To sum up the data above, over the past five years:

- T-Mobile has aggressively taken pro-competitive actions that significantly outnumber those of AT&T and Verizon, especially in the area of lowering prices, increasing the volume of service, and aggressively constructing networks to compete head-to-head. Sprint remains a low-cost provider.

- T-Mobile has dramatically increased its postpaid customer counts from 22.3 to 38 million, while postpaid customer growth at AT&T and Verizon has languished. T-Mobile is far outstripping the competition in net postpaid adds.

- T-Mobile's increased customer counts have driven dramatically higher top line revenues, from $24.4 to $40.6 billion, while revenue growth at AT&T and Verizon has languished. As the fourth place carrier, Sprint has managed to keep postpaid customer counts and wireless revenues steady, and just recently reported increases in key performance indicators.

- T-Mobile's EBITDA margin has expanded from 26% to 37% while Verizon's margins have shrunk by 5%. AT&T's EBITDA margin peaked in 2016 and has begun to decline.[36]

- T-Mobile has increased capital expenditures from $2.9 billion in 2012 to $5.2 billion in 2017,[37] while Sprint has announced an increase of capital expenditures to $6 billion or more in 2018.[38]

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[36] AT&T's ability to maintain EBITDA margin growth may have been the result of significantly cutting capital expenditures from $11.3 billion in 2014 to $7.8 billion in 2017. *See Application Public Interest Statement*, at pp. 83-85.

[37] *See Application Public Interest Statement,* at p. 87.

[38] Anjali Athavaley, *Sprint to Accelerate Network Investment, CEO Says* (Reuters, Nov. 8, 2017) https://www.reuters.com/article/us-sprint-corp-network/sprint-to-accelerate-network-investment-ceo-says-idUSKBN1D82P2.

The data above raise a number of substantial questions of fact going to the heart of whether the proposed merger would serve the public interest. Over the past five years, since the AT&T/T-Mobile merger was abandoned, T-Mobile has proven to be an effective and formidable competitor in the nationwide market for mobile services. The actions it has taken, to invest in its network, to lower prices, to increase the volume of services offered, to aggressively advertise, and others, all demonstrate the kinds of actions that the Commission would want a carrier to take in a competitive market. Additionally, its actions have delivered dramatic growth in postpaid consumers, revenues, postpaid adds, and margins. Conversely, the actions of its two larger competitors do not appear to be nearly as aggressive and their financials have turned downward, likely as a result of an aggressive competitor taking a bite out of them.

AT&T's EBITDA margin growth peaked in 2016. Verizon's EBITDA margins have fallen much more. Both Verizon and AT&T have seen top line postpaid customer revenues fall over the past two years, while T-Mobile's has risen 26.9%, from $32 billion to 40.6 billion. In 2017, T-Mobile had six times more net postpaid customer additions than AT&T and 1.7 times more than Verizon. In the meantime, Sprint's revenues and postpaid customer numbers have been flat, while their ARPU and postpaid adds have declined, likely indicating that low-price alone is not enough to successfully compete with T-Mobile's similarly priced but more attractive offerings.

These facts raise substantial and material questions. What evidence is there that removing one of four nationwide competitors from the marketplace will increase competitive choices for consumers and ultimately serve the public interest? What evidence is there that T-

Mobile and Sprint cannot continue to increase customer counts, margins, capital expenditures, and revenues?[39] If the transaction is approved, what evidence is there besides T-Mobile's promises that it will (or is likely to) continue to take pro-competitive and pro-consumer actions similar to those T-Mobile has taken over the past five years to discipline AT&T and Verizon?

A hearing is needed to determine whether, if the proposed transaction is approved, the marketplace will end up where the DoJ predicted it would be when it filed to block the AT&T/T-Mobile merger. That is, Sprint will be eliminated as an independent competitive constraint, it will no longer be able to discipline the two largest carriers, and concentration will increase in many markets, resulting in higher prices, diminished investment, and less product variety and innovation than would exist without the merger.[40]

B. Even if the FCC Does Not Approve the Transaction, the Outlook for T-Mobile is Excellent.

In reviewing how T-Mobile has progressed under its Un-carrier strategy over the past five years, there is no reason to believe that it cannot catch its two larger competitors even if this merger is denied. As shown above, all of T-Mobile's key metrics, postpaid customers, revenues, EBITDA margin, and EPS are trending in a positive direction, some dramatically, in the face of competition that is, in relative terms, languishing.

[39] Among other things, T-Mobile avers that Sprint will struggle to roll out a massive IoT network and will face a network overhaul in the coming years, however it does not state or even intimate that Sprint cannot remain a viable competitor. *See Application Public Interest Statement,* at p. 56; *Appendix G,* at pp. 127-28.

[40] *See,* DoJ Complaint, *supra* at 18.

In the short term, T-Mobile does not claim that it lacks enough spectrum to allow it to add customers to its existing and rapidly growing 4G network. The technology and engineering techniques of cell splitting, offloading traffic via fiber, microwave, or millimeter wave spectrum continue to improve, and T-Mobile makes no mention of any inability to continue to expand 4G services in the immediate future.

With respect to 5G, T-Mobile already has enough 600 MHz spectrum on its own to "deploy America's first nationwide 5G network expected by 2020."[41] T-Mobile claims that by 2024, the New T-Mobile will be able to deliver much faster 5G speeds than T-Mobile could on its own.[42] That could be true, but this transaction is not the only path to T-Mobile achieving faster 5G speeds, and there are other less anti-competitive ways to get there.

For example, T-Mobile has been one of the most aggressive players in the FCC's Citizens Band Radio Service ("CBRS") proceedings in GN Docket No. 17-258, making thirteen filings in the FCC's Electronic Comment Filing System ("ECFS") since October of 2017.[43] Spectrum in the CBRS band is well-suited to 5G services, especially in urban environments, and when it is auctioned within the next year or two it will provide an opportunity for T-Mobile to acquire up to 40 MHz of additional spectrum in markets where it is needed.

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[41] *See,* T-Mobile 2017 SEC 10-K.

[42] *See, Application Public Interest Statement,* at i.

[43] *See, e.g., Comments of T-Mobile USA, Inc. (Dec. 28, 2017),* https://ecfsapi.fcc.gov/file/12282892614063/T-Mobile%20Second%20Further%20Notice%20Comments%2012-28-17.pdf; *Notice of Oral Ex Parte Presentation of T-Mobile USA, Inc.* (Aug. 9, 2018), https://ecfsapi.fcc.gov/file/108090319923360/T-Mobile%20Ex%20Parte%2008092018.pdf.

The FCC is also preparing to auction 500 MHz of prime 5G spectrum in the 3.7-4.2 GHz band, that will likely be on the market within the next two to four years.[44] Like the CBRS band, this spectrum is well-suited to urban environments. If T-Mobile acquires a contiguous block of even ten percent of the available spectrum (50 MHz), it would significantly boost the company's 5G speeds. Given T-Mobile's status as the third largest player in the market, strong balance sheet, and access to capital, it is highly likely that it could acquire just ten percent of this spectrum at auction, and probably more. T-Mobile has been active in this proceeding as well, making six filings in ECFS since April of 2018.[45]

T-Mobile claims that it will augment its upcoming 5G rollout with millimeter wave spectrum, but that its holdings are far smaller than those of Verizon and AT&T.[46] Luckily for T-Mobile, the FCC is holding two millimeter wave spectrum auctions starting in November of 2018, providing an opportunity to acquire up to two 425 MHz blocks in the 28 GHz band in selected markets,[47] and seven 100 MHz blocks in the 24 GHz band nationwide.[48]

Finally, T-Mobile may have continuing opportunities to purchase spectrum on the open market. In sum, it is simply not credible for T-Mobile to intimate that it could not obtain the

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[44] *See, Expanding Flexible Use of the 3.7-4.2 GHz Band*, GN Docket Nos. 18-122, 17-138; RM Nos. 11510, 11660.

[45] *See*, *e.g.*, Comments of T-Mobile USA, Inc. (May 31, 2018), https://ecfsapi.fcc.gov/file/106011648411447/T-Mobile%20Comments%20-%203.7-4.2%20GHz%20MOBILE%20NOW%20PN.pdf; Notice of Ex Parte Presentation of T-Mobile USA, Inc. (July 3, 2018), https://ecfsapi.fcc.gov/file/10703281009707/T-Mobile%20Ex%20Parte%2007032018.pdf.

[46] *See, Application Public Interest Statement*, at 21-22.

[47] *See,* https://www.fcc.gov/auction/101.

[48] *See,* https://www.fcc.gov/auction/102.

mid- and high-band spectrum it needs to roll out robust 5G services on a rapid schedule in the absence of this transaction.

Taking the longer view, there are other factors that make it quite possible for T-Mobile to overtake its two larger competitors in the marketplace. For example, both AT&T and Verizon remain significantly invested in the landline business, offering voice telephone, broadband, and cable television, over fixed copper or fiber plant. As the Commission knows, cable television cord cutting is accelerating, threatening the core cable bundle. Approximately 20% of households have cut the traditional broadband connection, opting to access the Internet solely through mobile broadband networks, using a smartphone or other device.[49] Many of these households cannot afford multiple subscriptions and are opting to abandon the fixed broadband connection in favor of wireless. As such, the number of access lines have been steadily falling for all traditional landline companies, including both AT&T and Verizon.[50]

AT&T's year-end 2017 post-employment benefit obligation was $31.8 billion and its pension benefit obligation was unfunded by $13.8 billion.[51] Verizon's pension benefit obligation was $21.5 billion and its health care and life insurance obligation was $19.5 billion. T-Mobile has no pension/retirement overhangs on its balance sheet,[52] nor does it have a declining access line business to manage. Its consolidated balance sheet for EoY 2017 shows

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[49] *See,* Phil Britt, *Pew: Smartphone-Only Homes Grow, Now 1 in 5 Use Smartphones Exclusively for Internet Access,* Telecompetitor (May 1, 2018) https://www.telecompetitor.com/pew-smartphone-only-homes-grow-now-1-in-5-use-smartphones-exclusively-for-internet-access/.

[50] *See, AT&T and Verizon 2017 SEC Form 10-K.*

[51] *See, AT&T 2017 SEC Form 10-K.*

[52] *See, T-Mobile 2017 SEC Form 10-K.*

$26.7 billion in long term debt, compared to $125 billion for AT&T at EoY 2017.[53] In AT&T's most recent 10-Q, long term debt is up to $168 billion.[54] Verizon's 2017 10-K shows $113 billion in long term debt.[55]

The Federated Republic of Germany, a sovereign that can access capital on more favorable terms than AT&T, Verizon, and Petitioners, will continue to hold a significant interest in T-Mobile if the Commission withholds consent to the proposed transaction. Having favorable access to capital, or just a significant sovereign holding, is a marketplace advantage for T-Mobile, just as it will be with respect to New T-Mobile if the transaction is approved.

Understanding that much of T-Mobile's growth comes from taking customers from other carriers, the marketplace could look very different in five to ten 10 years, with T-Mobile in a much stronger position, if it remains on its current Un-carrier trajectory. T-Mobile states that it has enough spectrum to roll out 5G. It has balance sheet flexibility to purchase spectrum at upcoming auctions or on the open market, and its business is focused on the best part of the telecom industry – IoT, 5G, telemedicine, autonomous vehicles, AI, and everything else in mobile broadband that is just around the corner. In sum, the long-term outlook for T-Mobile going it alone is terrific.

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[53] *See, id.*

[54] *See, AT&T 2017 SEC Form 10-K.*

[55] *See, Verizon 2017 SEC Form 10-K.*

C. Post-Merger, There Will Be Only Three Genuine Facilities-Based Competitors in Many Rural Areas.

As shown on Exhibit A, in many places where Petitioners serve, post-merger there will be only three operating facilities-based carriers holding sufficient spectrum to provide high-quality mobile broadband to the public and serve as a genuine competitor. In the *Verizon-Alltel Merger Order*, the Commission declared, "Generally, we find that, in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction."[56] Moreover, approval would eliminate a "particularly aggressive competitor in a highly concentrated market, a factor which is certainly an important consideration when analyzing possible anti-competitive effects."[57]

The Commission has defined a "genuine" competitor to be one that holds sufficient spectrum, a sufficiently built out network to discipline the merged entity post-merger,[58] and has the capability of offering competitive nationwide services.[59] Petitioners, each of whom offers competitive nationwide services through roaming arrangements with one or more of the big four carriers, qualify as genuine competitors. As discussed below, Petitioners can only remain genuine competitors if they have access to roaming agreements on reasonable terms.

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[56] *See, Verizon-Alltel Merger Order,* 23 FCC Rcd at 17491.

[57] *See, United States v. H&R Block, Inc.,* 833 F. Supp. 2d 36, 79 (D.D.C. 2011) (citing *FTC v. Staples, Inc.*, 970 F.Supp. 1066, 1083 (D.D.C 1997)).

[58] *AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21555 (2004).

[59] *See, Verizon-Alltel Merger Order,* 23 FCC Rcd at 17490-91.

T-Mobile states that, "the transaction would not cause the number of genuine competitors to be reduced below three in any local market,"[60] pretty much conceding the point of Exhibit A, that in many rural areas there will be *only* three genuine competitors. Yet, in the *Verizon-Alltel Merger Order*, the Commission recognized the dangers of having three or fewer competitors in any market leading to anti-competitive behavior, including successful unilateral effects or coordinated interaction that harms consumers.[61]

While openly asserting that three strong nationwide carriers will deliver robust consumer benefits, and stating its intention to take a number of pro-competitive actions if the transaction is approved, T-Mobile provides no examples illustrating where a marketplace populated by three dominant providers was better for consumers.

Nor does it offer any commitments that might partially offset anticompetitive effects from shrinking from 4 to 3, such as: 1) to ensuring that a fourth or even fifth small or regional competitor in a market can survive by guaranteeing the availability of nationwide roaming on reasonable rates and terms, and 2) committing to not undermine existing or future roaming commitments, such as by restricting its customers from accessing Petitioners' networks, even in areas where a compatible roaming signal is present, or by programming handsets so they are not interoperable with Petitioners' networks operating on the same spectrum bands.

In Petitioners' experience, small rural wireless carriers are first movers in rural areas, often leading the deployment of new coverage and technologies, as large carriers busy

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[60] *See Application Public Interest Statement,* at p. 136.

[61] *Verizon-Alltel Merger Order,* 23 FCC Rcd at 17491.

themselves focusing on urban/suburban areas first. Sometimes, Petitioners rely on federal universal service funding to accelerate deployments to close the communications gap. To the extent that the proposed merger significantly weakens rural wireless carriers, the substantial benefits that Petitioners have brought to their communities will be threatened.

To sum up, T-Mobile's public interest showing is almost completely focused on the unlikely and perhaps never before seen public interest benefits of having only three competitors in a market without the presence of significant regulation of rates and service quality needed to protect consumers and competition. Nothing in the Applications assuages the Commission's already expressed concerns regarding the prospect of anti-competitive behavior in markets with three or fewer competitors. Moreover, the Applicants have not supported their claim, with a preponderance of evidence, that the proposed merger would not lessen competition, especially in rural areas where small carriers face difficulty accessing sufficient spectrum and favorable roaming arrangements to be genuine competitors in the years to come.

D. Post-Merger, Many Rural Areas Must Be Classified as Highly Concentrated Markets Under the HHI Index.

According to the *DOJ/FTC Horizontal Merger Guidelines*, a Herfindahl-Hirschman Index ("HHI") above 2500 indicates a market with a high degree of concentration, and mergers resulting in a concentration above this level that increase the HHI by more than 200 points are presumed likely to enhance market power.[62] The Commission's stated view, that a mobile

[62] *U.S. Department of Justice and Federal Trade Commission Horizonal Merger Guidelines* (Aug. 19,

broadband market needs at least four genuine facilities-based competitors, flows in part from the fact that in a market of only three competitors, as would be the case here, the lowest possible HHI score is 3333 points (shares of 33.3%, 33.3% and 33.4%) which is 832 points above the level at which the market is considered to be "highly concentrated."[63] Indeed, when AT&T attempted to acquire T-Mobile in 2011, Sprint argued that shrinking the number of nationwide carriers from four to just three in a highly concentrated market, "would result in precisely the type of anti-competitive harms that have led the government to block other four-to-three mergers."[64]

Even with four competitors, the lowest possible HHI score is 2500 (all four competitors having exactly 25%), thus even four competitors constitutes a highly concentrated market, since one or more will likely hold in excess of 25% market share.

T-Mobile posits that DISH should be treated as a competitor because it has considered constructing a network.[65] In fact, DISH has only gone so far as to announce that it intends to build a narrowband Internet of Things network, stating that it does not currently have sufficient unencumbered spectrum to build a competitive facilities-based mobile broadband network that

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2010) at § 5.3. ("DOJ/FTC Horizontal Merger Guidelines") https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c.

[63] *See,* https://www.justice.gov/atr/herfindahl-hirschman-index.

[64] *See,* Reply Comments of Sprint Nextel Corp., Applications of AT&T, Inc. and Deutsche Telekom AG (June 20, 2011) at 15-16 (citing William E. Kovacic, Assessing the Quality of Competition Policy: The Case of Horizontal Merger Enforcement, at 143 ("the 'threshold at which the federal agencies could be counted on to apply strict scrutiny' – and be most likely to challenge – was a reduction in the number of significant competitors from 4 to 3")), https://ecfsapi.fcc.gov/file/7021688803.pdf.

[65] *See, Application Public Interest Statement*, at p. 112.

would compete head-to-head with the major carriers.[66] If a DISH 5G network actually happens, it is two or more years from breaking ground. And, assuming that DISH does not sell its spectrum to Verizon or AT&T (both of whom will have significantly less spectrum than New T-Mobile post-merger), it will be many years before DISH could build a nationwide broadband network to compete with the three post-merger entities. Moreover, it is far from clear that DISH will *ever* build a competitive 5G network in most of rural America.

T-Mobile also urges the Commission to treat TracFone and other resellers, such as Google's Project FI, as competitors.[67] This should be rejected out of hand, simply because resellers are not facilities-based carriers, that is, they are not "genuine" competitors.[68] Resellers can stay in business only as long as resale margins make sense. And, given that the Commission long ago did away with the resale rule, resellers are only in business as long as big carriers want them to serve customers who prefer retail prepaid or Lifeline services. Since there is no obligation to resell at a discount, facilities-based carriers can kill resale competition at any time.[69]

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[66] *See, e.g.,* John Edgerton, *Ergen: Narrowband Net will be "Big Dish" IoT Play; 5G to Follow*, Multichannel News (May 23, 2018) ("Ergen said he would love to do broadband from the get go, but the company doesn't have enough uplink spectrum cleared to be able to do that.")

[67] *See, Application Public Interest Statement,* at p. 114.

[68] *Verizon-Alltel Merger Order*, 23 FCC Rcd at 17491.

[69] In 1996, the FCC discontinued its rule requiring facilities-based carriers to offer services to resellers at a discount. *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, 11 FCC Rcd 18455 (1996), *aff'd sub nom., Cellnet Communications v. FCC*, 149 F.3d 429 (6th Cir. 1998).

Finally, T-Mobile asks the Commission to treat Comcast and Charter as competitors because they intend to explore working together.[70] Until specific plans are announced to build a nationwide 5G network, including the acquisition of spectrum and a business plan to build about two hundred thousand cell sites, the prospect of a big cable partnership delivering a terrestrial-based mobile broadband facilities-based network to rural Wyoming, Kansas, or the Panhandle of Oklahoma, is nil.

As discussed above, the Commission must focus only on genuine competitors that have substantially constructed facilities, capable of offering consumers a nationwide rate plan. The Commission must examine whether the presence of a highly concentrated market in many rural areas, with an HHI well above 3000, would serve the public interest or substantially lessen competition.

E. Post-Merger, New T-Mobile Will Hold Well Above the 238.5 MHz Spectrum Threshold in Many Markets.

The FCC employs an initial spectrum screen to determine whether the proposed transaction will result in the acquiring entity holding more than one-third of the spectrum available for mobile broadband service.[71] When an acquiring party proposes to hold more than one-third of the spectrum below 1 GHz, the FCC employs an enhanced analysis to determine potential anti-competitive effects.[72]

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[70] *See, Application Public Interest Statement,* at p. 111.

[71] *See, Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133 (2014).

[72] *Id.,* at 6233.

Currently, the initial spectrum screen is 715.5 MHz, and accordingly one-third of the spectrum screen for any single CMA is 238.5 MHz, as follows:[73]

BAND	MHz
600 MHz Band	70
Lower 700 MHz Band	48
Upper 700 MHz Band	22
800 MHz Cellular	50
800 MHz ESMR	14
AWS-1/AWS-3	155
2.1 GHz PCS	120
G Block	10
H Block	10
AWS-4	40
2.3 GHz WCS	20
2.5 GHz BRS	67.5
2.5 GHz EBS	89
TOTAL	**715.5**
ONE-THIRD TOTAL	**238.5**

In a number of counties where Petitioners serve, or adjacent to where they serve, the merged entity will hold more than 238.5 MHz of spectrum under the initial spectrum screen.

In Pioneer's markets, the merged entity will exceed 238.5 MHz in 45 of 60 counties.[74] In 17 counties, Pioneer and U.S. Cellular each have 60 MHz or less, leaving only three competitors in those counties capable of providing high-quality 4G/5G mobile broadband service to the local communities.

[73] *Id.,* at 6222-23, 6228.

[74] See Exh. A.

In SI Wireless' markets, the merged entity will exceed 238.5 MHz in 57 of 72 counties.[75] In all 72 counties, SI Wireless and U.S. Cellular each have 60 MHz or less, that is, neither SI Wireless nor U.S. Cellular will have sufficient spectrum to provide a competitive 4G/5G mobile broadband service in those counties, leaving only three competitors post-merger capable of providing high-quality mobile broadband service to their local communities.

In Union's markets, the merged entity will exceed 238.5 MHz in 26 of 69 counties.[76] In 42 of 69 counties, Union will have 60 MHz or less, leaving only three competitors in those counties capable of providing high-quality 4G/5G mobile broadband service to the local community and offering nationwide rate plans.

For Nex-Tech Wireless' markets, the merged entity will exceed 238.5 MHz in 21 of 81 counties.[77] In 23 counties, Nex-Tech Wireless and U.S. Cellular each have 60 MHz or less, leaving only three post-merger competitors in those counties capable of providing high-quality 4G/5G mobile broadband service to the local community and offering nationwide rate plans.

F. Access to Spectrum is the Single Biggest Determinant of Competition in Rural Areas.

Each of Petitioners can attest to the fact that spectrum, as much or more than any other factor (e.g., access to capital through either debt or equity, human resources, or management skills) determines whether small rural carriers can meaningfully participate as competitors in

[75] See Exh. A.

[76] See Exh. A.

[77] See Exh. A.

any market. For small rural carriers, spectrum is difficult to obtain and difficult to access through spectrum leasing, even where the spectrum has lain fallow for many years.[78] Each Petitioner would expand their business with access to additional spectrum, either in markets they already serve or in new markets.[79]

The Applicants state as one of their principal justifications for this merger the critical need for sufficient spectrum to compete effectively.[80] Thus, there can be no serious question regarding Petitioners' need for sufficient spectrum if they are to offer "genuine" competition. In a merger review, the Commission must consider whether Applicants' assertions that they need more spectrum is credible, but it must also determine whether the merged entity would control too much spectrum in some or all of its geographic markets, especially in rural areas with lower population density. The Commission employs its spectrum screen for this evaluation.[81]

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[78] Under the Commission's construction rules, once a carrier provides coverage to a certain percentage of the population, it is no longer obligated to build to the rest, nor is it required to return unused spectrum to the FCC. *See, e.g.,* 47 C.F.R. § 24.203 (construction requirements for Personal Communications Services.).

[79] *See*, Exh. B.

[80] *See, e.g.,* Public Interest Statement at 26 ("On a standalone basis, neither company has enough or the right combination of spectrum or cell site resources to deliver the enormous gains in capacity that New T-Mobile will provide."); Evans Decl., ¶ 6 ("The … stand-alone companies would deploy weaker versions of 5G networks than New T-Mobile, given their … spectrum limitations"); Ewens Decl., ¶ 11 ("Sprint and T-Mobile have announced 5G implementation, but our plans are severely limited by our access to spectrum"); Ray Decl., ¶ 22 ("The merger will give New T-Mobile the spectrum and infrastructure resources to expedite its deployment of a superior 5G network than either company could do on a standalone basis"); Sievert Decl., ¶ 10 ("10. As a standalone company, T-Mobile would not independently have the type of spectrum resources that would enable it to launch a robust and deep 5G network").

[81] *See, Verizon Alltel Merger Order,* 23 FCC Rcd at 17482-43.

The sheer amount of spectrum that the merged entity will hold in many rural markets should raise a significant question of both fact and law, namely whether in granting these Applications the Commission would frustrate Congress' goal of "promoting the widespread dissemination of information from a multiplicity of sources"[82] by reducing the nationwide market for mobile broadband services and greatly concentrating spectrum into the hands of just three carriers.

G. Divestiture of Spectrum is the Surest Way to Preserve and Promote Competition.

Our nation's Assistant Attorney General for the Antitrust Division recently remarked that if there is evidence that a particular aspect of a merger would harm competition, "businesses should be prepared to divest those aspects that harm competition."[83] The Assistant Attorney General has also observed that "[a]ntitrust enforcement should ensure that the markets allow for new, more efficient, more innovative competitors to enter."[84]

Petitioners present a *prima facie* case that, in numerous markets, the amount of spectrum held by the merged entity is so far above the 238.5 MHz initial spectrum screen as to harm competition and serve as an insuperable barrier to new entrants. When one company

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[82] *See, id.* at 17461 ("Our public interest evaluation also necessarily encompasses the 'broad aims of the Communications Act,' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing spectrum in the public interest").

[83] Remarks of Assistant Attorney General for the Antitrust Division, U.S. Department of Justice, "*The Street Speaks With Makan Delrahim Ahead of the AT&T-Time Warner Decision*," https://www.thestreet.com/video/thestreet-speaks-with-makan-delrahim-ahead-of-the-att-time-warner-decision-14616199 (June 9, 2018).

[84] *See,* Makan Delrahim, "*Don't Stop Believin': Antitrust Enforcement in the Digital Era,*" University of Chicago's Antitrust and Competition Conference, (Apr. 19, 2018), https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-university-chicagos.

holds over 238.5 MHz of low- and mid-band spectrum in relatively sparsely populated rural areas, along with two other competitors, the addition of a fourth carrier holding sufficient spectrum to provide a credible competitive alternative for consumers reduces market concentration by approximately 800 HHI points, by creating a marketplace that measures closer to 2500 rather than 3333.

T-Mobile makes the unsupported assertion that, "post-transaction, competitors to New T-Mobile will continue to have access to sufficient spectrum to compete."[85] That is not true for Petitioners in many of their markets. As shown in Exhibit A, there are numerous counties where Petitioners lack access to sufficient spectrum to provide a competitive mobile broadband service. In many rural counties adjacent to or near their current markets, Petitioners have *no* spectrum to compete with T-Mobile. Meanwhile, in many sparsely populated rural areas, New T-Mobile would have well in excess of 238.5 MHz, sometimes in excess of 300 MHz, much more spectrum than it could use in the foreseeable future.

Although the exact amount of spectrum needed to provide a credible broadband service in rural areas can vary based on population density and a carrier's market share, any divestiture of low- or mid-band spectrum could significantly enhance Petitioners' ability to provide genuine competition (e.g., enabling an expansion from 40 MHz to 80 MHz in a market). To help maintain a stable and competitive market, the Commission should determine that there would be no public interest reason to allow the merged entity to retain more than 238.5 MHz of spectrum in any county.

[85] *See, Application Public Interest Statement,* at p. 135.

The easiest spectrum to divest is the BRS/EBS spectrum because it is available in almost every market and it would be easy for competitors to build a competitive platform that is interoperable with New T-Mobile, maximizing both utility for consumers while providing competitors with spectrum having acceptable propagation characteristics for rural areas.

The Commission should impose an across-the-board divestiture of spectrum so that New T-Mobile holds no more than 238.5 MHz of spectrum in any county, enabling and encouraging facilities-based competition in rural America.

H. T-Mobile's Aggressive Competitive Response Following the Failed AT&T Merger is Not Likely to be Repeated if the Current Transaction is Approved.

T-Mobile justifiably states that it has been innovative and aggressive in competing with the other three national wireless carriers since its proposed merger with AT&T was abandoned.[86] In its Applications, T-Mobile promises that:

- It will build a world-class nationwide 5G network;
- consumers will pay less and get more;
- rural Americans will win big with better service; and
- the merger will create thousands of additional jobs.[87]

For all of these promises to come true, a company would be expected to (i) increase capital expenditures, (ii) lower prices and correspondingly reduce revenues, (iii) increase the quantity of services offered, (iv) increase operating costs in rural areas that are the most expensive to serve and offer the lowest return on investment, and (v) increase employee

[86] *See, Application Public Interest Statement*, at p. 15.

[87] *Id.,* at pp. i-iii.

expenses.[88] All else being equal, this combination of changed behaviors would normally lead to lower earnings per share, a lower stock price, and lower bonuses for a company's officers and directors. The acquisition price, integration costs, and enormous expenditure needed to decommission Sprint's CDMA network and migrate its customers to New T-Mobile are being sold as a more efficient alternative than spending that same money on building T-Mobile's current business. In this regard, T-Mobile has not made a *prima facie* case that this transaction will deliver on these promises, as opposed to reverting to more traditional economic choices that happen when a low-price competitor is consolidated out of the marketplace.

Before crediting T-Mobile's claims, the Commission should examine whether each claim meets several criteria. First, the claimed benefit must not only be likely to occur as the result of the proposed transaction but it must be unlikely to be realized by other practical means having fewer anti-competitive effects.[89] Each of the four claimed benefits has occurred over the past five years, driven by T-Mobile's strategy and execution. It cannot be said that each of the four claimed benefits listed above would not continue to occur. T-Mobile's rapid expansion of customers, revenues, profits, and margins all illustrate that T-Mobile is capable of delivering

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[88] For example, T-Mobile recently announced an app that permits postpaid customers to contact its customer service representatives directly, bypassing phone trees and automated response systems. *See https://www.t-mobile.com/customers/customer-care?cmpid=ADV_PB_18UCCARE_43700035763136732&mx_ch=ADV_PB&_vsrefdom=625-537-2546&mchxkw=c:1507749799,k:t%20mobile%20customer%20service,m:e,p:1t1,d:c,ai:58108534735,ad:287863268349,s:g&gclid=CjwKCAjwzenbBRB3EiwAItS-uwry55VvGAnNCXmC-LbzqTjXuSgdZnUTDhwEldV0bgh8vjp00LLGuBoCTMgQAvD_BwE&gclsrc=aw.ds.*

[89] AT&T-Deutsche Staff Analysis at para. 124 (citing *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 25 FCC Rcd 3763, 3781 (2008), and DOJ/FTC Horizontal Merger Guidelines, supra, at ¶ 7.1).

lower prices, higher customer satisfaction, and building a nationwide 5G network without the anti-competitive effects of this transaction.

Second, the claimed benefit must be verifiable and the applicant must provide sufficient supporting evidence to permit the verification of the likelihood, timing, and magnitude of each claimed benefit.[90] In each of the four benefits claimed above, T-Mobile provides little or no actual evidence as to likelihood, timing, and magnitude. It asserts that it will have economic incentives to do these things, but there are stronger economic incentives for T-Mobile to do just the opposite. Post-merger, there is a strong incentive to raise prices, especially in areas where T-Mobile can do so while remaining a low-cost provider, while also spending less on capital expenditures. These two adjustments would combine to expand T-Mobile's margins and profits, giving the company flexibility to pay down debt accrued as a result of the transaction, increasing the share price. Where the marketplace is contracting from 4 to 3, it is especially important for T-Mobile to make a strong showing that promises appearing to be counterintuitive will actually be kept, a showing that is absent here.

Third, benefits should count only if they will flow through to consumers and benefit the public interest.[91] It remains counterintuitive that removal of Sprint from the marketplace, with its low-cost product offerings, leaving consumers with three choices, will lead to consumer benefits. When a market shrinks from 4 to 3, the economic incentives to raise prices and spend less are greater than T-Mobile's promise to lower prices and spend more. T-Mobile has offered

[90] *Id*., at para. 125.

[91] *Id*., at para. 126.

no convincing evidence that it will actually choose the lesser incentive, nor offered any examples of where this has occurred when a market shrinks from 4 to 3. Its claim that Comcast, Charter, or DISH will provide competitive alternatives is speculative at best, especially in rural areas. Petitioners do not expect either big cable or DISH to be building out 5G networks in rural America any time soon, if ever.

Finally, the claimed benefits are evaluated on a sliding scale. As harms to the public become greater and more certain, the degree and certainty of the public benefits must also increase commensurately.[92] It is axiomatic that condensing a market from 4 to 3 is going to substantially increase the likelihood that the public will be harmed, yet T-Mobile has not demonstrated any certainty that the promised benefits will actually occur, delivering only a marketing slogan that it will remain the Un-carrier in a consolidated market.

The Commission must carefully "evaluate the risk of coordinated effects using measures of market concentration … in conjunction with an assessment of whether a market is vulnerable to coordinated conduct."[93] As the Commission's staff aptly summarized well-established law on mergers:

> [T]ransactions raise competitive concerns when they reduce the availability of substitute choices to the point that the merged firm has a significant incentive and ability to engage in anticompetitive conduct…. *Mergers that result in both a highly concentrated market and the new firm controlling an undue share of that market are presumptively illegal*. The antitrust laws do not require proof that a merger or other acquisition has caused higher prices in the affected market. All that is necessary is that the mergers create an *appreciable danger of such consequences in the future*.

[92] *Id.,* at para. 127.

[93] *DOJ/FTC Horizontal Merger Guidelines*, § 7.1.

> The Congress used the words "may be substantially to lessen competition" … to indicate that its concern was with probabilities, not certainties.[94]

In Petitioners' experience, Sprint has been a much better roaming partner than other carriers, and its willingness to support Mobile Virtual Network Operators ("MVNO") has had salutary effects on competition and consumer choice. In this sense, Sprint could be considered a "maverick firm in a market vulnerable to coordinated conduct" which could be "likely to cause coordinated effects."[95] Removing the benefit of T-Mobile as a disruptive force is more likely than not if the merger were to be approved, given the economic incentives, while losing the benefit of Sprint's openness to MVNOs and roaming is a near-certainty, as T-Mobile has provided no commitment that it will maintain Sprint's liberal policies promoting MVNOs and roaming relationships.

On the retail side, as shown in the tables above, Sprint is the other low price leader. By eliminating the only other lower-priced national carrier and shrinking from 4 to 3 carriers, "[t]he combination of a concentrated market and barriers to entry is a *recipe for price coordination*."[96]

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[94] AT&T-Deutsche Staff Analysis, ¶¶ 15-16 (emphasis added, internal notes and certain quotation marks omitted) (citing *EchoStar-DirecTV HDO,* 17 FCC Rcd. at 20608, ¶ 97; *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21557, ¶ 70; *FTC v. Heinz Co.*, 246 F.3d at 715-16; *H&R Block*, *supra,* 833 F. Supp. 2d 36; *Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1389 (7th Cir. 1986)).

[95] *See, DOJ/FTC Horizontal Merger Guidelines,* ¶ 7.1.

[96] *FTC v. Heinz*, 246 F.3d 708, 724 (D.C. Cir. 2001) (emphasis added); *University Health*, 938 F.2d at 1218 n.24 ("Significant market concentration makes it 'easier for firms in the market to collude, expressly or tacitly, and thereby force price above or farther above the competitive level'"); *FTC v. PPG Indus.,* 798 F.2d 1500, 1503 (D.C. Cir. 1986) ("[W]here rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels").

The new T-Mobile will have both the capability and economic motivation to reduce capital expenditures, maintain or slowly raise prices to consumers, defer rural builds, cut jobs and services to reduce costs, take advantage of merger synergies, and reduce roaming expenses, all to the detriment of rural competitors as well as customers of New T-Mobile and Petitioners. The substantially increased market power and a highly concentrated market make this scenario much more likely than the one portrayed by T-Mobile.

I. If the Commission Intends to Approve the Proposed Transaction, It Must Impose Conditions to Preserve Competition.

1. Conditions to Ensure Reasonable Roaming Arrangements.

If the Commission wants to retain Petitioners as genuine competitors in rural markets, capable of disciplining the New T-Mobile, it will need to impose a condition that the merged entity provide nationwide roaming on commercially reasonable terms. The most powerful competitive lever held by large carriers over small ones is the roaming relationship. As discussed above, without access to a nationwide roaming agreement on reasonable terms, and without a commitment to not restrict customers from roaming, there is no viable business for small rural carriers.

Over the years, the Commission has largely allowed the market to sort out roaming issues, with a fairly difficult, expensive, and lengthy FCC complaint process available to aggrieved carriers.[97] Small carriers are at a tremendous disadvantage because just the act of filing a complaint with the FCC risks their roaming relationships with much larger carriers,

[97] *See*, 47 C.F.R. § 20.12.

allowing the largest carriers to dictate terms and conditions in a fashion that would not otherwise occur if the two parties had relatively even bargaining power.

With the proposed consolidation, CDMA carriers such as Nex-Tech Wireless, SI Wireless, and Pioneer are particularly imperiled, as T-Mobile has already announced its intention to rapidly decommission Sprint's CDMA network and convert all of its customers to LTE, similar to its conversion of MetroPCS.[98] Even assuming all carriers nationwide move to a 4G LTE standard that makes Voice Over LTE ("VOLTE") and data roaming compatible across all networks, something that remains several years out, all rural wireless carriers will be limited to, at most, three choices. If this transaction is approved, T-Mobile's stated intent to shut down Sprint's network may eliminate the need for many of these rural partners and contribute to local service disruptions for subscribers.

For each of the Petitioners, access to roaming on commercially reasonable terms is an existential aspect of their business. On the outbound side, each Petitioner must be able to offer its customers a nationwide rate plan – the ability to place and receive calls and access data from any location in the United States. To accomplish that, big carriers must open their networks to outbound roamers on reasonable terms. Because Petitioners compete directly with the large carriers for local customers, unreasonable outbound roaming terms impede the small carrier's ability to offer its customers a true nationwide rate plan.

Large carriers can exert tremendous leverage because, in Petitioners' experience, they do not feel obligated to allow their customers to roam on small carrier networks. A very small percentage of a big carrier's New York City customers travel to rural Wyoming or Kansas in any

[98] *See, Application Public Interest Statement*, at p. 39.

one year, generating a very small percentage of complaints if roaming is unavailable in a particular remote area because no roaming dispute agreement is reached. Conversely, many carrier customers in rural Wyoming or Kansas travel to one of the other 49 states each year, almost all of whom would complain if their phone does not work when roaming. This makes outbound roaming a necessity for Petitioners, but not for the large carriers.

On the inbound side, it is the inverse. Small rural carriers, including Petitioners, oftentimes have no densely populated areas to generate outsized returns that can offset remote cell sites that generate insufficient revenues to cover operating expenses. They rely on customer revenues, roaming revenues, and sometimes universal service funding to maintain profitability that allows for continuing investment and upgrades. For Petitioners, it is essential that their networks be filled up with traffic.

Even when a roaming agreement is in place, sometimes a large carrier denies its own customers the ability to roam on Petitioners' networks, or throttles a roaming customer's data throughput, causing the device to generate little or no traffic and revenue for Petitioners. These activities frustrate the purpose of a roaming agreement and harm consumers, who expect their devices to work properly everywhere – particularly in emergency situations – that a compatible network signal is available. These activities skew the amount of data that should be flowing through Petitioners' networks, thus tilting the flow of funds away from Petitioners and toward large carriers in the roaming relationship. It is not feasible for Petitioners to balance the flow of roaming traffic by likewise cutting off or throttling their own customer roaming on big carrier networks. As stated above, Petitioners cannot afford to lose those customers to their large carrier competition in the local market.

It is not enough for the Commission to say that this is just a marketplace problem that the market must resolve. If this transaction is approved, Petitioners having CDMA-based networks will be down to one choice for roaming, and the differential in bargaining power will become crushing. In addition, since data roaming has been reclassified as an information service, it is not possible for Petitioners to file a complaint for unreasonable practices or unreasonable discrimination under Sections 201 and 202 of the Act.[99]

Nor is it feasible for small carriers post-merger to rely on the Commission's complaint process put in place under Section 20.12 of the Commission's rules, a process that takes months to play out. Post-merger, the leverage and incentives will increase dramatically, necessitating an accelerated dispute resolution process to level the playing field. Accordingly, special conditions on roaming are warranted.

In the *Verizon-Alltel Merger Order*, petitioners requested extension of then-current Alltel roaming agreements for ten years, and the Commission granted the longer of four years or the expiration of agreements then in place.[100] This transaction will exert significantly higher anti-competitive pressure on small rural competitors, and therefore roaming conditions similar to those imposed on Verizon in the Alltel transaction should be imposed here, for a period of ten years. Those conditions are:

- New T-Mobile's commitment to honor Sprint's existing agreements with Petitioners to provide roaming on Sprint's networks and unthrottled/unrestricted roaming for its customers on Petitioners' networks.

- The option for each Petitioner that has a roaming agreement with Sprint to keep the rates and terms set forth in that roaming agreement in force for the full term

[99] 47 U.S.C. §§ 201, 202.

[100] *See Verizon-Alltel Merger Order,* 23 FCC Rcd at 17524.

of the agreement, notwithstanding any change of control or termination for convenience provisions that would give New T-Mobile the right to accelerate the termination of such agreement.

- The option for each Petitioner that currently has roaming agreements with both T-Mobile and Sprint to select either agreement to govern all roaming traffic between it and New T-Mobile.

- New T-Mobile may not unilaterally adjust the rates set forth in Sprint's existing agreements with each Petitioner for the full term of the agreement or for ten years from June 18, 2018, whichever occurs later.

- Upon New T-Mobile's shut down of Sprint's CDMA network, if there is no roaming agreement in place between Petitioners and New T-Mobile, New T-Mobile must provide Petitioners with a roaming agreement containing terms and conditions (i) identical to those in a Petitioner's roaming agreement with Sprint, or (ii) equivalent to or better than those then in place with AT&T for 4G LTE and 5G traffic.

- If New T-Mobile restricts its customers from roaming on Petitioners' networks, or throttles, caps, or blocks its customers' data throughput when roaming on Petitioners' networks, Petitioners will have the option to bypass Section 20.12 of the Commission's rules and bring evidence of such conduct to the Wireless Telecommunications Bureau ("WTB") for mediation. If by a preponderance of evidence, Petitioners demonstrate that New T-Mobile has imposed restrictions or throttling on roamers using Petitioners' networks, the WTB shall be empowered to enjoin New T-Mobile from such conduct immediately, pending the resolution of a formal complaint pursuant to Section 20.12.

If the Commission truly values small rural carriers' ability to act as "genuine" competitors in local markets, it is critical that such carriers have the ability to offer local customers a nationwide calling plan and that they have an opportunity to serve incoming roamers. No small carrier can be competitive without one or more nationwide roaming agreements having reasonable rates and terms for both incoming and outgoing roaming. A firm remedy in this area is essential to preserving consumer choice and boosting competition.

2. There Must be Spectrum Divestitures to the Initial Spectrum Screen.

T-Mobile made no effort to explain in its public interest statement why it should be permitted to hold more than 238.5 MHz of spectrum in any market. To paraphrase Assistant Attorney General Delrahim's remarks above, spectrum is a critical aspect of this transaction that can result in a substantial lessening of competition and New T-Mobile should be prepared to divest spectrum to promote and preserve competition.

Petitioners need not assert any anti-competitive intent. Under the Commission's Clayton Act analysis, it should reject any transaction where "the effect of such acquisition may be substantially to lessen competition…."[101] When only three competitors dominate a market, there is a substantial danger of unilateral actions or other anti-competitive actions that will lessen competition for consumers, especially when one of the competitors being eliminated is a low-price leader. No behavioral remedy can be as effective as the structural remedy of spectrum divestitures, allowing a new competitor to emerge, innovate, and potentially create a new business model that benefits consumers.

Accordingly, the merged entity should not be permitted to hold more than 238.5 MHz of spectrum in any county. As stated above, the Commission should require the divestiture of a contiguous block of BRS/EBS spectrum and, if necessary, other spectrum, to bring the merged entity within the initial spectrum screen. This will permit a public sale allowing smaller regional competitors the opportunity to acquire additional spectrum in their territories, which will enhance competition.

[101] 15 U.S.C. § 18.

3. There Must be Interoperability.

The Commission has committed to not allowing a carrier with a dominant position in a spectrum band to block interoperability.[102] Should the Commission require the divestiture of BRS/EBS or other spectrum from the merged entity, New T-Mobile must commit that its devices will be interoperable with all carriers across the country acquiring the divested spectrum, and that it will take no steps to throttle or interfere with its customers' ability to use other carrier networks, nor throttle or interfere with other carriers' customers' ability to use New T-Mobile's network, nor attempt to obtain exclusivity on any device using the BRS/EBS or other spectrum bands. Moreover, New T-Mobile must allow bi-directional roaming on any divested bands on commercially reasonable terms. All BRS/EBS capable devices must work nationwide, and roaming must be open and available to all consumers.

IV. CONCLUSION.

For all of the reasons set forth above, the Commission must deny the Applications.

Respectfully submitted,

By:______________________________

David LaFuria
Todd B. Lantor
Counsel for Petitioners

Lukas, LaFuria, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
Tysons, VA 22102
703-584-8678

August 27, 2018

[102] *See, Promoting Interoperability in the 700 MHz Commercial Spectrum,* Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2013).

Exhibit A

List of Petitioners' Counties and Cellular Market Areas

Pioneer Cellular Spectrum by County

CMA	County	VZW	ATT	TMO	US CELL	PIONEER
597	Alfalfa, OK	30	191	265	44	111
604	Atoka, OK	30	193	255	99	52
440	Barber, KS	87	181	241	10	84
602	Beckham, OK	67	161	232	42	64
600	Blaine, OK	30	181	237	44	109
604	Bryan, OK	70	163	247	77	42
89	Butler, KS	117	173	311	24	30
602	Caddo, OK	77	201	238	54	52
45	Canadian, OK	87	205	301	42	10
604	Carter, OK	40	213	245	89	72
442	Chautauqua, KS	87	166	268	91	35
604	Coal, OK	30	193	263	99	52
440	Comanche, KS	87	161	224	0	60
260	Comanche, OK	72	193	216	59	30
603	Cotton, OK	97	166	236	89	52
441	Cowley, KS	117	158	291	69	50
600	Custer, OK	20	151	257	42	141
600	Dewey, OK	30	151	247	42	131
442	Elk, KS	87	166	202	81	50
597	Ellis, OK	20	171	257	42	111
302	Garfield, OK	30	181	275	44	99
604	Garvin, OK	52	213	277	109	30
602	Grady, OK	67	203	301	54	30
598	Grant, OK	87	158	285	32	67
436	Greenwood, KS	97	166	218	69	50
602	Greer, OK	97	136	260	77	64
602	Harmon, OK	97	136	260	77	64
441	Harper, KS	117	158	209	69	50
597	Harper, OK	20	171	257	42	111
601	Hughes, OK	0	193	277	97	10
603	Jackson, OK	87	156	250	87	64
603	Jefferson, OK	107	166	225	89	52

604	Johnston, OK	40	213	281	89	52
600	Kingfisher, OK	30	181	291	44	109
441	Kingman, KS	117	158	282	69	50
440	Kiowa, KS	87	151	234	0	40
602	Kiowa, OK	77	181	247	52	64
598	Logan, OK	87	205	311	32	20
604	Love, OK	40	213	245	89	72
597	Major, OK	30	191	283	44	111
604	Marshall, OK	40	213	245	89	52
45	McClain, OK	87	205	301	42	20
442	Montgomery, KS	87	166	251	91	35
604	Murray, OK	40	213	281	89	72
599	Nowata,OK	97	166	258	91	35
601	Okfuskee, OK	63	193	263	97	10
604	Pontotoc, OK	30	193	263	109	52
440	Pratt, KS	87	151	239	12	30
600	Roger Mills, OK	30	131	212	42	141
89	Sedgwick, KS	117	183	311	24	10
601	Seminole, OK	63	193	281	97	10
603	Stephens, OK	97	166	217	89	52
441	Sumner, KS	107	158	291	69	50
603	Tillman, OK	127	136	249	77	42
599	Washington, OK	97	191	286	91	20
602	Washita, OK	77	161	247	42	74
442	Wilson, KS	87	166	207	91	35
597	Woods, OK	30	191	247	44	111
437	Woodson, KS	97	166	192	101	30
597	Woodward, OK	20	181	257	42	111

Union Cellular Spectrum by County

CMA	County	VZW	ATT	TMO	UNION
299	Natrona, WY	107	133	291	104
348	Grand, CO	60	158	267	67
348	Jackson, CO	50	158	214	77
348	Moffat, CO	50	158	214	67
348	Rio Blanco, CO	40	138	224	77
348	Routt, CO	50	158	214	67
350	Clear Creek, CO	80	193	277	12
350	Delta, CO	60	183	287	22
350	Eagle, CO	70	183	224	12
350	Garfield, CO	60	163	269	22
350	Gunnison, CO	70	193	224	12
350	Mesa, CO	70	183	287	22
350	Montrose, CO	60	183	251	22
350	Pitkin, CO	80	183	224	12
350	Summit, CO	80	193	224	12
351	Chaffee, CO	70	193	224	12
351	Custer, CO	60	193	293	12
351	Fremont, CO	60	193	303	12
351	Lake, CO	70	183	224	12
351	Park, CO	70	183	313	12
353	Ouray, CO	40	185	224	10
353	San Miguel, CO	40	185	224	10
390	Custer, ID	45	133	242	10
390	Lemhi, ID	67	158	242	10
392	Butte, ID	100	145	254	10
393	Bannock, ID	122	135	231	40
393	Bear Lake, ID	157	135	222	52
393	Bingham, ID	147	135	284	10
393	Bonneville, ID	147	135	262	10
393	Caribou, ID	142	135	222	32
393	Clark, ID	147	135	254	10
393	Franklin, ID	142	140	244	40
393	Fremont, ID	147	135	254	10

CMA	County	VZW	ATT	TMO	UNION
393	Jefferson, ID	147	135	307	10
393	Madison, ID	147	135	284	10
393	Oneida, ID	142	145	244	20
393	Power, ID	122	135	254	30
393	Teton, ID	147	135	254	10
532	Carter, MT	90	96	204	25
532	Custer (Part), MT	105	141	194	25
673	Cache, UT	97	185	234	40
673	Rich, UT	72	215	212	47
677	Dagget, UT	40	145	202	72
677	Duchesne, UT	40	195	214	20
677	Grand, UT	60	195	224	10
677	Uintah, UT	40	195	214	20
718	Big Horn, WY	105	131	204	74
718	Hot Springs, WY	75	131	202	106
718	Park, WY	105	131	181	74
718	Washakie, WY	75	131	202	106
719	Campbell, WY	60	133	202	104
719	Crook, WY	90	143	124	74
719	Johnson, WY	60	133	277	82
719	Sheridan, WY	90	143	257	62
719	Weston, WY	90	143	124	74
720	Carbon, WY	60	86	224	109
720	Fremont, WY	80	86	224	99
720	Lincoln, WY	50	101	212	69
720	Lincoln (Star Valley), WY	50	101	212	64
720	Sublette, WY	90	86	224	84
720	Sweetwater, WY	50	86	224	99
720	Teton, WY	95	121	236	47
720	Uinta, WY	50	126	214	79
721	Albany,WY	117	153	202	74
721	Goshen, WY	87	133	192	52
721	Laramie, WY	117	153	202	74
721	Niobrara, WY	107	133	202	104
721	Platte, WY	107	133	202	104
722	Converse, WY	107	121	291	104

Nex-Tech Wireless Spectrum Holdings by County

CMA	County	AT&T	Verizon	US Cell	New T-Mobile	NTW
440	Barber, KS	181	87	10	241	12
434	Barton, KS	183	87	0	231	147
89	Butler, KS	173	117	24	311	10
436	Chase, KS	131	87	89	248	22
428	Cheyenne, KS	171	107	0	184	60
430	Cloud, KS	180	97	47	219	40
437	Coffey, KS	131	97	81	229	10
440	Comanche, KS	161	87	0	224	32
441	Cowley, KS	158	117	69	291	10
428	Decatur, KS	156	87	0	116	74
435	Dickinson, KS	136	87	89	237	87
440	Edwards, KS	161	87	0	234	52
434	Ellis, KS	161	87	0	231	162
435	Ellsworth, KS	156	97	59	265	85
431	Geary, KS	158	97	77	212	12
433	Gove, KS	161	87	0	194	117
429	Graham, KS	161	97	0	204	127
433	Greeley, KS	151	87	0	116	94
436	Greenwood, KS	166	97	69	218	12
441	Harvey, KS	168	107	69	286	30
430	Jewell, KS	168	97	47	202	105
441	Kingman, KS	158	117	69	282	30
440	Kiowa, KS	151	87	0	245	40
433	Lane, KS	151	87	0	116	94
430	Lincoln, KS	180	97	47	219	63
433	Logan, KS	161	87	0	194	117
436	Lyon, KS	126	87	89	239	32
435	Marion, KS	166	97	69	242	72
435	McPherson, KS	156	97	59	273	72
430	Mitchell, KS	168	97	47	202	105
436	Morris, KS	126	97	89	239	45
434	Ness, KS	161	87	0	214	137
429	Norton, KS	171	97	0	194	117
429	Osborne, KS	171	97	0	211	117
430	Ottawa, KS	170	97	47	219	40
434	Pawnee, KS	171	87	0	231	157
429	Phillips, KS	171	97	0	194	117
440	Pratt, KS	151	87	12	239	84
428	Rawlins, KS	146	47	0	116	74
441	Reno, KS	148	107	59	237	60
430	Republic, KS	168	97	47	202	52
435	Rice, KS	156	97	59	245	72

CMA	County	AT&T	Verizon	US Cell	New T-Mobile	NTW
429	Rooks, KS	161	97	0	211	127
434	Rush, KS	171	87	0	231	137
434	Russell, KS	173	87	12	239	151
435	Saline, KS	156	87	59	257	62
433	Scott, KS	151	87	0	134	94
89	Sedgwick, KS	183	117	24	311	10
428	Sheridan, KS	161	87	0	194	131
428	Sherman, KS	161	107	0	194	77
429	Smith, KS	171	97	0	194	117
440	Stafford, KS	171	87	0	241	84
441	Sumner, KS	158	107	69	291	10
428	Thomas, KS	161	87	0	194	131
434	Trego, KS	161	87	0	231	151
436	Wabaunsee, KS	136	87	89	249	12
433	Wallace, KS	171	107	0	184	71
430	Washington, KS	150	97	77	192	10
433	Wichita, KS	151	87	0	116	94
352	Kit Carson, CO	193	70	0	184	20
352	Lincoln, CO	193	80	0	184	20
533	Banner, NE	111	87	0	192	24
533	Box Butte, NE	111	87	0	134	10
533	Cheyenne, NE	111	87	0	134	10
533	Dawes, NE	111	87	0	134	10
533	Garden, NE	111	67	42	134	10
533	Kimball, NE	111	87	0	17	10
533	Morrill, NE	111	87	0	192	24
533	Scotts Bluff, NE	111	87	0	192	24
533	Sioux, NE	111	87	0	192	24
536	Arthur, NE	121	67	64	182	10
536	Blaine, NE	121	67	89	182	10
536	Hooker, NE	121	67	89	182	10
536	Logan, NE	121	67	89	194	10
536	McPherson, NE	121	67	89	273	10
536	Thomas, NE	121	67	89	182	10
538	Keith, NE	101	67	91	182	10
538	Lincoln, NE	101	67	91	120	24
538	Perkins, NE	121	67	91	182	10
540	Chase, NE	111	67	67	114	10
721	Goshen, WY	133	87	0	192	10

SI Wireless Spectrum by County

CMA	County	VZW	ATT	TMO	US CELL	SI Wire.
443	Ballard, KY	127	175	277	0	30
648	Bedford, TN	122	203	298	0	10
649	Bledsoe, TN	127	190	281	0	10
643	Benton, TN	122	195	229	0	35
444	Caldwell, KY	87	215	287	0	10
443	Calloway, KY	127	175	287	0	30
644	Cannon, TN	122	158	300	0	10
443	Carlisle, KY	127	175	313	0	30
643	Carroll, TN	107	180	297	0	35
46	Cheatham, TN	122	195	288	0	20
647	Chester, TN	107	180	287	0	35
644	Coffee, TN	122	158	300	0	10
444	Crittenden, KY	97	205	267	0	30
643	Crockett, TN	107	180	305	0	35
645	Cumberland, TN	117	165	224	55	10
647	Decatur, TN	107	180	269	0	35
644	DeKalb, TN	122	158	290	0	10
46	Dickson, TN	122	195	252	0	20
643	Dyer, TN	107	190	287	0	35
647	Fayette, TN	117	180	311	0	20
648	Franklin, TN	122	203	279	0	10
443	Fulton, KY	127	180	267	0	25
643	Gibson, TN	107	180	305	0	35
648	Giles, TN	122	203	279	0	20
443	Graves, KY	127	175	267	0	30
644	Grundy, TN	127	153	300	0	10
88	Hamilton, TN	127	190	281	0	10
647	Hardeman, TN	117	180	275	0	20
647	Hardin, TN	97	180	276	0	35
647	Haywood, TN	117	180	293	0	10
647	Henderson, TN	107	180	297	0	35
643	Henry, TN	122	195	219	0	20
443	Hickman, KY	137	175	303	0	20
647	Hickman, TN	132	195	318	0	10
444	Hopkins, KY	87	215	234	0	10

643	Houston, TN	117	195	287	0	10
643	Humphreys, TN	132	195	282	0	10
643	Lake, TN	107	190	295	0	35
647	Lawrence, TN	132	195	236	0	20
647	Lewis, TN	132	195	236	0	10
648	Lincoln, TN	117	173	322	0	10
444	Livingston, KY	97	205	232	0	30
444	Lyon, KY	97	205	277	0	30
647	Madison, TN	107	180	305	0	35
88	Marion, TN	127	190	299	0	10
443	Marshall, KY	127	175	232	0	30
648	Marshall, TN	122	203	298	0	10
401	Massac, IL	107	205	232	0	20
443	McCracken, KY	127	175	232	0	30
647	McNairy, TN	97	180	294	0	35
522	Mississippi, MO	97	163	281	24	10
209	Montgomery, TN	117	195	267	0	10
648	Moore, TN	122	203	279	0	10
651	Maury, TN	122	195	308	0	20
643	Obion, TN	107	190	295	0	35
647	Perry, TN	132	195	229	0	10
402	Pope, IL	97	183	220	24	10
645	Putnam, TN	122	160	146	55	10
649	Rhea, TN	127	190	281	25	10
46	Rutherford, TN	122	195	288	0	10
88	Sequatchie, TN	127	190	281	0	10
644	Smith, TN	122	158	229	0	10
643	Stewart, TN	117	195	287	0	10
444	Trigg, KY	117	215	267	0	10
644	Van Buren, TN	122	158	272	0	10
644	Warren, TN	122	158	290	0	10
647	Wayne, TN	127	185	286	0	10
643	Weakley, TN	107	190	259	0	35
444	Webster, KY	117	185	313	0	10
644	White, TN	122	158	184	0	10
46	Williamson, TN	122	195	288	0	20
46	Wilson, TN	122	195	288	0	10

Exhibit B

Petitioners' Affidavits

AFFIDAVIT

I, Richard Ruhl, am the General Manager of Pioneer Cellular.

This statement is provided in connection with a petition to deny ("Petition") T-Mobile's proposed acquisition of Sprint Corporation's mobile voice and broadband business.

Pioneer Cellular holds FCC authorizations and provides commercial mobile voice and broadband service to customers in the states of Oklahoma and Kansas.

Pioneer Cellular's spectrum holdings are set forth on Exhibit A attached to the Petition.

Pioneer Cellular competes directly with T-Mobile and Sprint for retail mobile voice and broadband customers in its markets.

The single biggest barrier to expanding our product offerings, or to expanding our geographic service area is access to sufficient low- and mid-band spectrum. Without sufficient spectrum, there is no business. With spectrum, we can access capital, purchase equipment, and build a mobile wireless business.

In some markets we currently serve, and in markets adjacent to our current service area, we lack sufficient spectrum to effectively compete with AT&T, Verizon, T-Mobile and Sprint (the "big four" carriers) in the mobile broadband and 5G marketplace.

In many of these markets, New T-Mobile will have more spectrum than they need to provide mobile broadband service. Because many of the FCC's construction requirements are based on population coverage, it is possible that New T-Mobile will never use spectrum that is above the 238.5 MHz screen level.

We attempt to lease unused spectrum from other carriers, however it is often difficult to do so, and some carriers refuse to lease spectrum on commercially reasonable terms, if at all.

If we could access additional spectrum, we would utilize it to expand our geographic footprint and expand our product offerings.

Pioneer Cellular would actively seek to acquire any spectrum that the Commission causes the merged entity to divest.

In order to offer our customers the ability to use their phones throughout the nation, known as a nationwide rate plan, we must have access to other carrier networks pursuant to an intercarrier roaming agreement. As a CDMA carrier, the loss of Sprint as a roaming partner will reduce the market for nationwide CDMA roaming to a single carrier.

It may be several years before we are able to complete the build of a 4G LTE/5G network that is capable of roaming on other carrier networks. Moreover, we do not expect to decommission our CDMA network for several more years, leaving our CDMA customers with only one choice of roaming carrier during that time.

If the proposed transaction is approved, the merged entity will be much stronger and we expect to face increased competition in our markets and to be adversely affected.

The reduction in national carriers from four to three significantly narrows our ability to access spectrum and to achieve acceptable roaming arrangements.

I have read the Petition and declare under penalty of perjury that the statements set forth above and in the Petition to which this affidavit is made part of are true and correct to the best of my knowledge, information and belief.

Richard Ruhl, General Manager
Pioneer Cellular

August 27, 2018

AFFIDAVIT

I, Jon Lightle, am the President and Chief Executive Officer of Nex-Tech Wireless, LLC ("Nex-Tech Wireless" or the "Company").

This statement is provided in connection with a petition to deny ("Petition") T-Mobile's proposed acquisition of Sprint Corporation's mobile voice and broadband business.

Nex-Tech Wireless holds FCC authorizations and provides commercial mobile voice and broadband service to customers in the states of Kansas and Colorado.

Nex-Tech Wireless' spectrum holdings are set forth on Exhibit A attached to the Petition.

Nex-Tech Wireless competes directly with T-Mobile and Sprint for retail mobile voice and broadband customers in service area.

The single biggest barrier to expanding our product offerings, or to expanding our geographic service area is access to sufficient low- and mid-band spectrum. Without sufficient spectrum, there is no business. With spectrum, we can access capital, purchase equipment, and build a mobile wireless business.

In some Nex-Tech Wireless currently serves, and in markets adjacent to Nex-Tech Wireless' current service area, the Company lacks sufficient spectrum to effectively compete with AT&T, Verizon, T-Mobile and Sprint in the mobile broadband and 5G marketplace.

In many of these markets, New T-Mobile will have more spectrum than it needs to provide mobile broadband service. Because many of the FCC's construction requirements are

based on population coverage, it is possible that New T-Mobile will never use spectrum that is above the 238.5 MHz screen level.

Nex-Tech Wireless has attempted to lease unused spectrum from other carriers, however, it is often difficult to do so, and some carriers refuse to lease spectrum on commercially reasonable terms, if at all.

If Nex-Tech Wireless could access additional spectrum, the Company would utilize it to expand its geographic footprint and expand our product offerings.

Nex-Tech Wireless would actively seek to acquire any spectrum that the Commission causes the merged entity to divest.

In order to offer our customers the ability to use their phones throughout the nation, we must have access to other carrier networks pursuant to an intercarrier roaming agreement. As a CDMA carrier, the loss of Sprint as a roaming partner will reduce the market for nationwide CDMA roaming to a single carrier, Verizon. This will confer enormous market power to Verizon, allowing it to dictate rates and terms to the Nex-Tech Wireless, primarily because Verizon does not need for its customers to have access to our network. It may be several years before Nex-Tech Wireless is able to complete the build of a 4G LTE network that is capable of roaming on other carrier networks. Moreover, Nex-Tech Wireless does not expect to decommission our CDMA network for several more years, leaving our CDMA customers with only one roaming carrier option during that time.

It is critical to our business that Nex-Tech Wireless customers have access to voice and data roaming on nationwide carrier networks. Likewise, it is critical that nationwide carriers

deliver inbound traffic to our network, and pay a reasonable price for our network's usage, so that Nex-Tech Wireless can maintain and upgrade its network in rural and remote areas.

If the proposed transaction is approved, the merged entity will be much stronger and Nex-Tech Wireless expects to face increased competition in our markets and to be adversely affected.

The reduction in national carriers from four to three significantly narrows Nex-Tech Wireless' ability to access spectrum and to achieve acceptable roaming arrangements.

The fact that the Federated Republic of Germany will hold approximately 13% of the merged entity may provide it with an advantage in accessing capital that is not available to private companies here in the United States.

I have read the Petition and declare under penalty of perjury that the statements set forth above and in the Petition to which this affidavit is made part of are true and correct to the best of my knowledge, information and belief.

Jon Lightle
President and CEO
Nex-Tech Wireless

August 27, 2018

AFFIDAVIT

I, Stacey Aughe, am the Chief Administrative and Information Officer of Union Telephone Company.

This statement is provided in connection with a petition to deny ("Petition") T-Mobile's proposed acquisition of Sprint Corporation's mobile voice and broadband business.

Union Telephone Company holds FCC authorizations and provides commercial mobile voice and broadband service to customers in the states of Wyoming, Utah, Colorado, Idaho and Montana.

Union Telephone Company's spectrum holdings are set forth on Exhibit A attached to the Petition.

Union Telephone Company competes directly with T-Mobile and Sprint for retail mobile voice and broadband customers in its markets.

The single biggest barrier to expanding our product offerings, or to expanding our geographic service area is access to sufficient low- and mid-band spectrum. Without sufficient spectrum, there is no business. With spectrum, we can access capital, purchase equipment, and build a mobile wireless business.

In some markets we currently serve, and in markets adjacent to our current service area, we lack sufficient spectrum to effectively compete with AT&T, Verizon, T-Mobile and Sprint (the "big four" carriers) in the mobile broadband and 5G marketplace.

In many of these markets, New T-Mobile will have more spectrum than they need to provide mobile broadband service. Because many of the FCC's construction requirements are

based on population coverage, it is possible that New T-Mobile will never use spectrum that is above the 238.5 MHz screen level.

We attempt to lease unused spectrum from other carriers, however it is often difficult to do so, and some carriers refuse to lease spectrum on commercially reasonable terms, if at all.

If we could access additional spectrum, we would utilize it to expand our geographic footprint and expand our product offerings.

Union Telephone Company would actively seek to acquire any spectrum that the Commission causes the merged entity to divest.

In order to offer our customers the ability to use their phones throughout the nation, known as a nationwide rate plan, we must have access to other carrier networks pursuant to an intercarrier roaming agreement. The loss of Sprint as a potential 4G LTE/5G roaming partner will reduce the market for nationwide roaming to three big carriers. We do not currently roam with Verizon. It may be several years before we are able to complete the build of a 4G LTE network that is capable of roaming on other carrier networks.

It is critical to our business that our customers have access to voice and data roaming on nationwide carrier networks. Likewise, it is critical that nationwide carriers deliver inbound traffic to our network, and pay a reasonable price for our network's usage, so that we can maintain and upgrade our networks in rural and remote areas. In order to survive in post-merger marketplace, we must maintain the inbound roaming arrangements we have with T-Mobile for ten years, to permit the company to build out a modern 4G/5G network that is capable of roaming with the other two carriers.

If the proposed transaction is approved, the merged entity will be much stronger and we expect to face increased competition in our markets and to be adversely affected.

The reduction in national carriers from four to three significantly narrows our ability to access spectrum and to achieve acceptable roaming arrangements.

I have read the Petition and declare under penalty of perjury that the statements set forth above and in the Petition to which this affidavit is made part of are true and correct to the best of my knowledge, information and belief.

Stacey Aughe
Chief Administrative and Information
Officer
Union Telephone Company

August 27, 2018

AFFIDAVIT

I, Michael Beehn, am the Chief Executive Officer of SI Wireless, LLC.

This statement is provided in connection with a petition to deny ("Petition") T-Mobile's proposed acquisition of Sprint Corporation's mobile voice and broadband business.

SI Wireless holds FCC authorizations and provides commercial mobile voice and broadband service to customers in the states of Tennessee and Kentucky.

SI Wireless's spectrum holdings are set forth on Exhibit A attached to the Petition.

SI Wireless competes directly with T-Mobile and Sprint for retail mobile voice and broadband customers in some of its markets.

A significant barrier to expanding wireless product offerings or to expanding geographic coverage is access to sufficient low- and mid-band spectrum. Without sufficient spectrum, there is no business.

In some markets that we currently serve, and in markets adjacent to our current service area, we lack sufficient spectrum to effectively compete with AT&T, Verizon, T-Mobile and Sprint (the "big four" carriers) in the mobile broadband and future 5G marketplace.

In many of these markets, New T-Mobile may have more spectrum than they need to provide mobile broadband service. Because many of the FCC's construction requirements are based on population coverage, it is possible that New T-Mobile will never use spectrum that is above the 238.5 MHz screen level.

If the evolving industry dynamics of this proposed merger do not put us out of business and business relationships can be secured to allow small wireless carriers like us to survive the changing wireless ecosystem, SI Wireless would actively negotiate to lease or acquire any spectrum that the Commission causes the merged entity to divest.

In order to offer our customers the ability to use their phones throughout the nation, known as a nationwide rate plan, we must continue to have access to other carrier networks pursuant to an intercarrier roaming agreement. As a CDMA carrier, the potential loss of Sprint as a roaming partner will reduce the market for nationwide CDMA roaming to a single carrier, Verizon. Depending on the timing of the Sprint network closure by T-Mobile, this could confer increased market power to Verizon, allowing it to dictate rates and terms to SI Wireless. At best, the loss of Sprint roaming on CDMA would accelerate the requirement of converting subscribers to VoLTE which could burden these subscribers.

It may be several years before we are able to fully complete the build of a 4G LTE network, or that all subscribers have phones capable of roaming on non-CDMA carrier networks. Moreover, we do not expect to decommission our CDMA network for several more years, and it's imperative to our business that Sprint's CDMA network is maintained through a minimum of 2023.

We began our business as a Sprint partner providing coverage in rural areas, and the proposed merger and roaming agreement announced at the time of T-Mobile / Sprint merger announcement places that relationship at severe risk. It is critical that nationwide carriers continue to deliver inbound traffic to our network at business structures consistent with relationships at the time of the T-Mobile public filing, so that we can maintain and upgrade our

networks in rural and remote areas. In order to survive in post-merger marketplace, we must maintain the inbound roaming arrangements we have with Sprint for ten years, to permit the company to adapt to this changing wireless carrier ecosystem.

If the proposed transaction is approved, the merged entity will be much stronger and we expect to face increased competition in our markets and to be adversely affected.

The reduction in national carriers from four to three significantly narrows our ability to access spectrum and to achieve acceptable roaming arrangements including national roaming partners that continue to utilize our network.

I have read the Petition and declare under penalty of perjury that the statements set forth above and in the Petition to which this affidavit is made part of are true and correct to the best of my knowledge, information and belief.

Michael Beehn
CEO, SI Wireless, LLC

August 27, 2018

Certificate of Service

I, David LaFuria, certify that on August 27, 2018 a copy of the Petition to Deny attached hereto was sent via US Postal Service mail to the following:

Nancy J. Victory, Esq.
DLA Piper LLP
500 Eighth Street, NW
Washington, DC 20004
Counsel for T-Mobile US, Inc.

Regina M. Keeney, Esq.
Lawler, Metzger, Keeney & Logan, LLC
1717 K Street, NW, Suite 1075
Washington, DC 20006
Counsel for Sprint Corporation

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David LaFuria