

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

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

**PETITION TO DENY, OR IN THE ALTERNATIVE,  
REQUEST TO CONDITION APPROVAL OF APPLICATIONS TO TRANSFER  
CONTROL OF LICENSES AND AUTHORIZATIONS**

**I. Introductory Statement.**

Iowa Network Services, Inc., d/b/a Aureon Network Services (“Aureon”) submits this Petition to request the Federal Communications Commission (“FCC,” or “Commission”) to deny the applications of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, “Applicants”) to transfer control of certain licenses and authorizations in connection with Applicants’ proposed merger (“Applications”), or in the alternative, condition approval of the applications.<sup>1</sup> Aureon is concerned that – given Sprint’s prior unlawful actions – Sprint will utilize the merger process as a vehicle to attempt to avoid paying the significant monies that Sprint owes to Aureon for services that Aureon provided to Sprint at Sprint’s request. Therefore, Aureon requests that the FCC deny the Applications or, in the alternative, condition the approval on Sprint

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<sup>1</sup> See, *Public Notice*, T-Mobile US, Inc., and Sprint Corporation Seek FCC Consent to The Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held By Sprint Corporation and its Subsidiaries to T-Mobile US, Inc., and the Pro Forma Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held By T-Mobile US, Inc., and its Subsidiaries, WT Docket No. 18-197, DA 18-740 (rel. June 18, 2018).

and T-Mobile providing express assurances that (1) all current and potential liabilities and obligations of Sprint, including any liability of Sprint to Aureon that results from pending litigation or otherwise, will not be impaired in any way by reason of the merger, and (2) the surviving company will expressly assume and pay those liabilities.

**II. SPRINT’S REFUSAL TO PAY AUREON FOR SERVICES REQUESTED AND RECEIVED**

Sprint has, for years, refused to pay Aureon for services that Aureon provided to Sprint. Aureon’s payment dispute with Sprint dates back over a decade, to early 2008. Prior to that time, Sprint had requested, and paid for, “access service” from Aureon to enable Sprint to connect its long-distance calls with Aureon’s subtending local exchange carriers (“LECs”).<sup>2</sup> Aureon provided, and billed for, service to Sprint pursuant to its tariffs, which have been duly filed with the FCC and relevant state regulatory bodies.<sup>3</sup> The Commission has confirmed that the tariff rates billed Sprint were “deemed lawful” under Section 204(a)(3) of the Communications Act.<sup>4</sup>

On March 31, 2008, Sprint informed Aureon that it would no longer fully pay Aureon for its use of Aureon’s services as of February 2008.<sup>5</sup> Following that notice, Sprint continued to request, and receive, service from Aureon, but it refused to pay fully for that service even though Aureon’s Iowa tariff specifically provides that “the customer will, notwithstanding the continuing

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<sup>2</sup> Second Am. Compl., *Iowa Network Servs. v. Sprint Commc’ns Co., L.P.*, Case No. 4:10-CV-102, ¶¶ 30-40, 102 (D. Iowa Mar. 29, 2018) (“Second Am. Compl.”).

<sup>3</sup> *See id.* ¶¶ 87-90.

<sup>4</sup> *AT&T v. Iowa Network Services d/b/a Aureon Network Services*, Order on Reconsideration, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, FCC 18-116 ¶ 17 (rel. Aug. 1, 2018).

<sup>5</sup> *See* Second Am. Compl. ¶ 7.

existence of the dispute, pay the billed amount.”<sup>6</sup> Notably, Aureon cannot refuse to continue to provide service to Sprint notwithstanding Sprint’s refusal to pay for such service.<sup>7</sup>

To make matters worse, Sprint began to refuse to pay undisputed monies due to Aureon purportedly to reimburse itself for additional monies that it alleged it had overpaid to Aureon for invoices prior to February 2008. Sprint engaged in this unilateral self-help despite the state tariffs’ contrary mandate that customers must continue to pay disputed amounts pending resolution of the dispute. The U.S. Court of Appeals for the Fifth Circuit recently condemned Sprint for engaging in this very practice in another dispute, finding that:

Here, Sprint took the extraordinary measure of acting on its own to recoup money it had already paid without any judicial or administrative intervention. The parties’ stipulated facts establish that, for more than two years, Sprint withheld payments to CenturyLink for undisputed traditional-format-to-traditional-format calls until Sprint had recovered \$4.8 million. Moreover, Sprint’s utilization of one month’s worth of calls as applicable to all months during a two-year period, without adjustment for seasonal calling trends or other extrapolation, was not reasonable. Accordingly, Sprint’s retroactive claw-back against undisputed charges based on unreasonable estimates constitutes unlawful self help, in violation of 47 U.S.C. § 201(b).<sup>8</sup>

After trying to resolve the dispute with Sprint, Aureon filed a complaint in the United States District Court for the District of Kansas on July 24, 2009 seeking to collect the monies that Sprint had refused to pay it for Aureon’s provision of service.<sup>9</sup> On March 8, 2010, the case was

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<sup>6</sup> See *id.* ¶¶ 43-47, 52-56, 85, 95, 98-101 (quoting Aureon’s Iowa tariff and indicating that Nebraska tariff has similar provision).

<sup>7</sup> See *id.* ¶ 108.

<sup>8</sup> See *CenturyTel of Chatham, LLC v. Sprint Commc’ns Co., L.P.*, 861 F.3d 566, 577-78 (5th Cir. 2017) (emphasis added).

<sup>9</sup> See Compl., *Iowa Network Servs., Inc. v. Sprint Commc’ns Co., L.P.*, Civil Action No. 09-CV-2392 CM/KGS, ¶ 1 (D. Kan. July 24, 2009).

transferred to the U.S. District Court for the Southern District of Iowa, where it remains pending.<sup>10</sup> As of March 29, 2018, Sprint owed Aureon over \$25.5 million plus attorneys' fees and tariffed late payment interest (which is compounding daily).<sup>11</sup>

### **III. SPRINT'S PATTERN OF NON-PAYMENT IN OTHER CASES**

Sprint's pattern of nonpayment is not confined to Aureon. Rather, there are a host of cases where Sprint or one or more of its affiliates has been sued for non-payment. Notably, these cases even include at least two lawsuits where Sprint was sued for failing to honor its payment obligations following a merger, which heightens Aureon's concern in connection with the current contemplated merger. In addition to the CenturyTel case referenced above, Sprint or one or more of its affiliates has been accused of nonpayment in at least the following cases, which are illustrative – but by no means exhaustive.

In a class action lawsuit, Sprint was accused of failing to pay certain commissions owed to various retail store employees after a merger.<sup>12</sup> That case ultimately settled.<sup>13</sup> Similar claims were raised in another class action lawsuit, where certain business channel employees of Sprint “alleged that when Sprint acquired Nextel, it failed to properly integrate the companies’ payroll systems and routinely failed to pay commissions plaintiffs had earned.”<sup>14</sup> That case also settled.<sup>15</sup>

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<sup>10</sup> See Mem. and Order, *Iowa Network Servs., Inc. v. Sprint Commc'ns Co., L.P.*, Civil Action No. 09-CV-2392 CM/KGS, at 9 (D. Kan. Mar. 9, 2010).

<sup>11</sup> Second Am. Compl. ¶ 109.

<sup>12</sup> See *Sibley v. Sprint Nextel Corp.*, 254 F.R.D. 662, 669 (D. Kan. 2008) (“Plaintiffs assert that since the merger, defendants have not fully paid the commissions due under the commission agreements.”).

<sup>13</sup> See Mem. and Order, *Sibley v. Sprint Nextel Corp.*, Civil Action No. 08-2063-KHV, at 3 (D. Kan. Aug. 1, 2018).

<sup>14</sup> See Mem. and Order, *Harlow v. Sprint Nextel Corp.*, Civil Action No. 08-2222-KHV, at 1-2 (D. Kan. June 4, 2018).

<sup>15</sup> See *id.* at 418.

In yet another case accusing Sprint of non-payment, a CLEC that had entered into interconnection agreements (“ICAs”) with Sprint that “required Sprint to pay certain charges for so-called Voice-over Internet Protocol (“VoIP”) telephone calls” sued Sprint for refusing to pay those charges.<sup>16</sup> The court emphatically rejected Sprint’s defenses, finding that:

Quite frankly, Sprint’s justifications for refusing to pay access on VoIP-originated traffic, and its underlying interpretation of the [Interconnection Agreements] ICAs, defy credulity. The record is unmistakable: Sprint entered into contracts with the Plaintiffs wherein it agreed to pay access charges on VoIP-originated traffic. Sprint’s defense is founded on post hoc rationalizations developed by its in-house counsel and billing division as part of Sprint’s cost-cutting efforts, and the witnesses who testified in support of the defense were not at all credible.<sup>17</sup>

The court entered judgment for the plaintiffs and against Sprint, finding that “[b]y refusing to pay the Plaintiffs’ access charges as billed, Sprint violated the terms of the ICAs.”<sup>18</sup> The court’s decision was affirmed on appeal.<sup>19</sup>

Sprint also was accused of willfully failing to pay certain of its employees their overtime wages, and that case was conditionally certified as a collective action under the Fair Labor Standards Act. *See Hunter v. Sprint Corp.*, 346 F. Supp. 2d 113, 116, 122 (D.D.C. 2004). Again, the case settled.<sup>20</sup>

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<sup>16</sup> *See Central Tel. Co. of Va., v. Sprint Commc’ns Co. of Va., Inc.*, 759 F. Supp. 2d 789, 791-92 (E.D. Va. 2011), *aff’d*, 715 F.3d 501 (4th Cir. 2013).

<sup>17</sup> *Id.* at 792.

<sup>18</sup> *Id.* at 809.

<sup>19</sup> *See Central Tel. Co. of Va. v. Sprint Commc’ns Co. of Va., Inc.*, 715 F.3d 501, 520 (4th Cir. 2013).

<sup>20</sup> *See Mem. Op., Hunter v. Sprint Corp.*, Civil Action No. 04-0376 (JDB), at 1 (D.D.C. Sept. 22, 2006) (observing that Sprint had “reach[ed] a settlement agreement with all plaintiffs other than Price”); J. Mot. To Dismiss, *Hunter v. Sprint Corp.*, Civil Action No. 04-0376 (JDB), at 1 (D.D.C. Jan. 16, 2007) (observing that “Price, the only remaining plaintiff in this matter, and defendant [Sprint] have entered into a confidential settlement agreement which resolves all of the claims of the plaintiff Price”).

Sprint even was accused of engaging in the same wrongful “self-help” measures that it has used with Aureon, but this time to charge a customer without her consent rather than to withhold payment. Specifically, a plaintiff brought a class action lawsuit against Sprint’s affiliates alleging that they had wrongfully and without permission charged the plaintiff’s credit card on a recurring basis without the plaintiff’s knowledge or permission after the plaintiff was offered a “free” tablet and told that she would only have to pay a one-time \$5 “activation fee.”<sup>21</sup> Again, that case was settled.<sup>22</sup>

Sprint has demonstrated a sustained and systemic practice of failing to pay amounts that it undisputedly owes to other carriers, and it has engaged in illicit self-help measures for corporate gain. There is no indication that Sprint intends to change course even after the merger with T-Mobile. Accordingly, Aureon needs assurances that Sprint and/or the surviving company post-merger will pay amounts owed to Aureon so that residents in Iowa are not further victimized by Sprint’s unlawful actions.

#### **IV. THE ASSURANCE THAT AUREON SEEKS**

The service that Aureon provided to Sprint enabled Sprint’s customers to connect to residents living in Iowa. Iowa residents are directly and negatively impacted by Sprint’s non-payment because Sprint has not paid Aureon millions of dollars owed for such service, and Aureon does not have the revenues from Sprint to upgrade and improve Aureon’s network. It would not be in the public interest to permit Sprint to siphon off monies that it owes Aureon to effectuate its proposed merger with T-Mobile, and then continue to refuse to pay undisputed amounts owed to

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<sup>21</sup> See First Am. Compl., *Moore v. Sprint Commc’ns, Inc.*, Case No. 2:17-cv-00188-DMG-FFM, ¶¶ 14-29 (C.D. Cal. Mar. 22, 2017).

<sup>22</sup> See Notice of Settlement, *Moore v. Sprint Commc’ns, Inc.*, Case No. 2:17-cv-00188-DMG-FFM (C.D. Cal. May 1, 2017).

Aureon in violation of Aureon's "deemed lawful" tariffs and Section 204(a)(3) of the Communications Act.

Sprint and its affiliates' pervasive pattern of attempting to avoid payment – including specifically in situations following a merger – have given Aureon no confidence whatsoever that Sprint, through the surviving companies, would not try once again to evade its payment obligation to Aureon by reason of the merger. For that reason, Aureon respectfully requests that the Commission deny the Application or, in the alternative, require explicit assurances from Applicants that the surviving company will assume and pay Sprint's liabilities, including to Aureon, post-merger and will not in any way seek to avoid such liabilities, even if those liabilities are not adjudicated and quantified until after the merger.

**V. CONCLUSION**

For the foregoing reasons, Aureon respectfully requests that the Commission deny the merger unless the surviving company provides the requested assurances.

Respectfully submitted,

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Date: August 27, 2018

## CERTIFICATE OF SERVICE

I, Amanda A. James, do hereby certify that on this 27th day of August, 2018, copies of the foregoing Petition to Deny of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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