

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Application of)	MB Docket No. 18-197
)	
T-Mobile and Sprint Corporation)	
)	
For Consent to Transfer Control of)	
Licenses and Authorizations)	

**PETITION TO DENY OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”) hereby submits this petition to deny the license transfers proposed in the Applications of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (together “The Applicants”). The proposed transaction would be harmful to competition, to the detriment of consumers and contrary to the public interest.

The Commission should consider the competitive impacts of this transaction in terms of a combined mobile telephony and broadband market, and not a broader market based on anticipated or hoped for changes in technology and/or consumer behavior. T-Mobile has not traditionally focused on rural consumers and markets and the loss of Sprint as a competitor and partner as a result of this transaction could be devastating. Several rural providers rely on their roaming and spectrum use relationships with Sprint to offer a seamless mobile broadband product to rural consumers. There are no assurances that New T-Mobile will honor and extend current Sprint agreements or enter into future spectrum use agreements or reciprocal roaming arrangements that permit its customers to roam on rural providers’ networks. If this transaction

is approved, to the extent that New T-Mobile would be willing to work with additional rural providers, it would have the ability and incentive to use its market power to extract unfavorable agreements to the detriment of rural consumers.

Furthermore, T-Mobile has previously engaged in patterns of behavior with respect to call routing and traffic exchange that are contrary to the public interest. New T-Mobile stands to gain a significant number of new customers as a result of this transaction, generating more traffic and creating more incentive to engage in questionable behavior for financial gain. Issues could re-emerge and/or be exacerbated if this transaction is approved. New T-Mobile would also hold an excessive concentration of spectrum in many areas.

The Applicants have failed to meet their burden in showing that the proposed transaction is in the public interest.

II. STATEMENT OF INTEREST

NTCA is a national association of more than 850 members. All of NTCA's members are rural incumbent local exchange carriers, many of whom also provide video, wireless and broadband services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless to consumers and businesses. The vast majority of NTCA's members are situated in or in close proximity to the communities they serve, offering local storefronts and personal customer service. Historically, rural carriers have been first-to-market with all stages of wireless technologies just like rural-first landline carriers that were the first to deploy telephone service and fiber-to-the-home. Entities focused on local communities provide higher quality, earlier availability, and local service presence while the large carriers can be decades away from even

partial deployment. This has been a fragile ecosystem that has been critical in closing the communication gap in rural areas.

From a mobile service perspective, some NTCA members compete directly with T-Mobile and/or Sprint for subscribers in at least a portion of these serving areas or have roaming, spectrum leasing or other relationships with one or both of the merging entities. A merger that has adverse effects on the long-term health of rural-first carriers, will negate any real or perceived benefit of the transaction at issue. NTCA's members and the rural consumers they serve will be substantially and irreparably harmed if this transaction is approved.

III. THE TRANSACTION SHOULD BE CONSIDERED IN THE CONTEXT OF THE CURRENT MARKETPLACE AND NOT A THEORETICAL FUTURE

The appropriate product market for the Commission's competitive review is a combined mobile telephony/broadband market as was the standard in recent mergers.¹ Market definition "focuses on the customer and its ability to and willingness to switch to a different product in response to an increase in price or reduction in quality."² The relevant product market includes "all products reasonably interchangeable by consumers for the same purposes."³ The market does not include products, services or consumer behaviors that are expected or hoped for at some future date.

¹ See, e.g., *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 26 FCC Rcd 17589, (2011) ("*AT&T-Qualcomm Order*").

² *ATT-Qualcomm Order*, ¶32, See also e.g., Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 4 ("2010 DOJ/FTC Horizontal Merger Guidelines") available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>

³ *ATT-Qualcomm Order*, ¶ 32, see also, *United States v. E.I. du Pont de Nemours & Co.* 351 U.S. 377, 395 (1956) (The relevant product market is composed of products that have reasonable interchangeability); *United States v. Microsoft*, 253 F.3d 34, 52 (D.C. Cir. 2001), cert. denied, 122 S. Ct. 350 (2001).

While the Applicants do not specify the appropriate product market they believe should be considered for competitive review in the Commission’s analysis, they request that the Commission “consider that changes in the ways mobile broadband is used are being made at an accelerating pace”⁴ and the “massive consumer welfare benefits that will cascade from New T-Mobile’s 5G network.”⁵ While we may or may not be “on the brink” of major wireless technology transformation with the introduction of 5G,⁶ any predictions about technological advances, deployment strategies, consumer adoption or consumer behavior are merely speculative and not a basis for competitive review.

5G networks are still years away from being deployed as fully-realized commercial services.⁷ Standards for 5G were only identified months ago, and we remain far from finalizing the specifications and building out the hardware and infrastructure.⁸ While 5G networks promise less latency and greater capacity, contrary to the assertions of Applicants, some analysts believe the 5G networks may represent only a minor improvement to 4G LTE.⁹ Furthermore, 5G has meant different products and services over time and different deployment plans and spectrum will be used. Some carriers may deploy 5G using millimeter wave spectrum.¹⁰ Other carriers -

⁴ Application, p. 13.

⁵ *Id.*

⁶ *Id.*

⁷ Dexter Johnson, 5G Poised for Commercial Rollout by 2020, IEEE Spectrum (May 2, 2018), <https://spectrum.ieee.org/tech-talk/telecom/wireless/5g-is-meeting-its-targets-for-2020-commercial-rollout>

⁸ See Monica Allevan, 3GPP puts finishing touch on Standalone version of 5G standard, FierceWireless (June 14, 2018), <https://www.fiercewireless.com/wireless/3gpp-puts-finishingtouch-standalone-version-5g-standard>

⁹ See Dave Burstein, 5G NR Only 25% to 50% Faster, Not Truly a New Generation, Wireless One, <http://wirelessone.news/10-r/1036-5g-nr-only-25-to-50-faster-not-truly-a-new-generation> (April 2018)

¹⁰ See Colin Gibbs, AT&T quietly acquires FiberTower for 24, 39 GHz spectrum, FierceWireless (Feb. 1, 2017), <https://www.fiercewireless.com/wireless/at-t-quietly-acquires-fibertower-for-24-39-ghz-spectrum>.

like New T-Mobile should this transaction be approved - may deploy 5G primarily using a combination of mid-band and low-band spectrum. Given the limiting characteristics of millimeter wave and higher band spectrum, many rural consumers may not see the promise of 5G for decades, if at all. 5G is likely to have a broad range of functionalities across multiple spectrum bands and consumers will receive varying degrees of service.

Moreover, fixed broadband and mobile broadband, whether 5G or 4G, are not interchangeable or substitutable from a consumer's point of view. As the Commission recently found, "fixed and mobile broadband are often used in conjunction with one another and, as such, are not functional substitutes."¹¹ Mobile broadband today lacks the speed and capacity of fixed broadband and will always be subject to variables such as weather, physical obstacles, and spectrum limitations that make it less reliable than fixed broadband. Furthermore, mobile broadband usage is often subject to data caps and usage restrictions and is purchased according to pricing plans that are dissimilar to fixed products. The consumer experiences with the products are not interchangeable. The services serve different, complementary needs and should be treated as distinct product markets when assessing competition.

T-Mobile and Sprint engaged in this transaction to obtain spectrum to expand capacity for mobile broadband services and compete more favorably with other existing mobile broadband providers. There is nothing unique or different about this transaction that justifies a

¹¹ *Inquiry Concerning the Deployment of Advanced telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 669 ¶ 24 (2016) ("2016 Broadband Report"); *see also*, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Progress Report, 33 FCC Rcd 1660, ¶ 18 (2018). (finding that mobile services are not full substitutes for fixed services).

variance from considering the appropriate market to be mobile telephony and broadband. The Commission should consider this merger in today's competitive market and in the context of the Applicants' imagined and hoped for future.

IV. THE TRANSACTION IS NOT IN THE PUBLIC INTEREST

The proposed license transfers associated with the proposed combination Sprint and T-Mobile into the "New T-Mobile" are subject to the Commission's review pursuant to the standard found in Section 301(d) of the Communications Act, as amended (the "Act").¹² Pursuant to Section 310(d) of the Communications Act, the Commission must determine whether Applicants have demonstrated that a proposed assignment of licenses will serve the public interest, convenience, and necessity.¹³ In making this assessment, the Commission considers whether the proposed transaction complies with the specific provisions of the Communications Act,¹⁴ other applicable statutes, and the Commission's rules.¹⁵ If the transaction does not violate a statute or rule, the Commission consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.¹⁶ It then weighs the transaction specific harms of the

¹² 47 U.S.C. § 310(d).

¹³ 47 U.S.C. § 310(d).

¹⁴ Section 310(d) requires that we consider the application as if the proposed assignee was applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g., AT&T Inc.- Qualcomm Order at 17598 ¶ 23.*

¹⁵ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17598 ¶ 23, *Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 ¶ 22 (2010) ("*AT&T-Verizon Wireless Order*").

¹⁶ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

transaction¹⁷ against the transaction specific benefits.¹⁸ The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction will serve the public interest.¹⁹

The Commission's competitive analysis, which is a part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²⁰ If the Commission is unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, it will designate the application(s) for hearing.²¹

Under this standard of review, the transaction must be denied.

A. T-Mobile Has Not Traditionally Focused on Rural Consumers or Markets

The Applicants claim that after the merger, New T-Mobile will be positioned to accelerate and expand T-Mobile's plans to bring broadband competition to rural America "for

¹⁷ The Applicants erroneously state at p. 11 that a weighing test is not employed, citing to a footnote in a previous merger approval that in truth states that the harms and benefits, or remediation measures, must be transaction specific. *See, Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, n. 36. (2017).

¹⁸ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

¹⁹ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

²⁰ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

²¹ 47 U.S.C. § 309(e); *see also News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp. Transferee, for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3277 ¶ 22 (2008) ("Liberty Media-DIRECTV Order"); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) ("EchoStar-DIRECTV HDO").

the first time.”²² Such claims that now is the time when things will change fly in the face of a track record of substandard focus upon and performance in rural areas.

T-Mobile has held valuable spectrum for many years and has had ample time to build out rural areas or make efforts to sell, lease or enter into joint venture arrangements with rural carriers to make use of its 600 MHz, 700 MHz, PCS or AWS spectrum, spectrum that is well suited for rural applications.²³ T-Mobile’s facilities based coverage is clearly focused on cities, towns and the highways that connect them and it has not to date demonstrated a rural commitment.²⁴ Vague statements about the transaction “for the first time” making it “easier to justify” rural investment,²⁵ offer nothing to support the assertion that this transaction would benefit rural consumers or competition.

B. Losing Sprint as a Partner would be Harmful to Rural Consumers

Small, rural providers are doing an admirable job of serving rural communities but must rely on roaming partners to offer the regional and nationwide calling plans expected by consumers and offered by the larger providers. The larger providers can create “rural carve outs” where they neither offer service on their own nor allow their subscribers to roam, as these gaps have minimal overall impact on their nationwide or large regional business. However, rural providers rely significantly on roaming partners. This unequal lack of bargaining power is

²² Application, p. 65.

²³ Moreover, the Applicants’ public interest statement is contradictory. It points out that standalone Sprint anticipates providing 5G wireless service to only limited areas, noting at Figure 12 that it is constrained “as a result of limited 2.5 GHz propagation characteristics.” Yet, the Applicants argue that New T-Mobile’s acquisition of 2.5 spectrum will allow it to deliver improved, broader service to rural areas. Application at 65.

²⁴ See, e.g., Rebecca Armstrong, T-Mobile is a good cell provider if you live in a metropolitan area, Top Ten Review, T-Mobile Review (April 20, 2018).

<https://www.toptenreviews.com/mobile/phones/best-cell-phone-providers/t-mobile-review/>

²⁵ Application at 65.

exacerbated as mid-sized providers are absorbed into or become larger providers. The largest providers control the roaming market and specific to this transaction, the loss of Sprint as a roaming competitor would prove devastating in rural markets.

Sprint has worked previously with rural providers to enable greater rural coverage in certain areas. NTCA's members report that they have reciprocal roaming agreements with Sprint that contain commercially reasonable rates and terms. This is a mutually beneficial relationship that permits Sprint subscribers to have coverage as they travel across rural areas and enables rural consumers' access to the Sprint network as they travel outside of their home network. These roaming agreements have thus enabled rural wireless providers to offer subscribers seamless, high quality connectivity similar to what is offered to urban subscribers. However, NTCA's members report that the Applicants have provided no firm and clear commitment with respect to honoring and extending the arrangements that Sprint currently has with rural providers. In contrast to Sprint, NTCA members indicate that T-Mobile roaming agreements are more one-sided, permitting the subscribers of NTCA's members to roam on T-Mobile's network, but preventing T-Mobile's subscribers from roaming on the rural providers' networks. NTCA's members also report that the one-sided roaming arrangements with T-Mobile and other nationwide providers come at costs multiple times higher than what Sprint offers.

Moreover, some NTCA members state that they have spectrum leasing agreements with Sprint which allow rural providers to offer wireless service where they lack spectrum. These arrangements are especially important given the difficulty small providers have in obtaining spectrum at auction. When combined with the roaming effects described above, the potential loss of or substantial modification to such agreements as a result of the transaction could undermine mobile service offerings in rural areas.

C. T-Mobile has Previously Engaged in Patterns of Behavior With Respect to Call Routing and Traffic Exchange that are Contrary to the Public Interest that Could Re-Emerge and/or be Exacerbated by the Transaction

T-Mobile has previously engaged in behavior that is contrary to the public interest. This transaction would not only afford New T-Mobile more power to engage in such practices, but would also increase its market share, the amount of traffic its network carries, and the resultant harm such practices could inflict on other providers and the public.

On April 16, 2018, the Commission announced a “settlement concluding its investigation into whether T-Mobile USA, Inc. violated the Communications Act when it failed to correct ongoing problems with delivery of calls to rural consumers and whether it violated the FCC rule that prohibits providers from inserting false ring tones with respect to hundreds of millions of calls.”²⁶ In the Consent Decree between T-Mobile and the Commission, T-Mobile admits that it inserted “false ring tones” into calls placed by T-Mobile customers. These calls were intended for customers of rural local exchange carriers. In other words, T-Mobile knowingly and intentionally caused its own customers to believe that their loved ones and businesses located in rural areas were not answering the phone, when in fact the calls were never delivered.

T-Mobile’s failure to deliver the calls and instead insert false ring tones directly and negatively impacted personal relationships, public safety and businesses. T-Mobile’s customers could not reach loved ones or make calls to medical professionals. Rural businesses that had no relationship with T-Mobile lost sales and customers. Rural carriers spent significant time tracking down the source of the problem and lost good will with their own customers who mistaking placed the blame with their own carriers. While T-Mobile’s Consent Decree

²⁶ *In the Matter of T-Mobile*, Order & Consent Decree, File No.: EB-IHD-16-00023247 Acct. No.: 201832080003 FRN: 0004121760, DA 18-373 (April 16, 2018).

establishes a baseline of conduct going forward, it is unclear whether and to what degree Sprint's current traffic would be subject to the same practices or what practices the newly combined entity might use to ensure call completion and mitigate ongoing concerns with respect to calls failing to reach rural America.

There are further allegations that T-Mobile is engaging in or complicit in behavior that prevents T-Mobile customers from reaching called destinations.²⁷ As alleged, T-Mobile entered into a contract for voice interconnection at the time that T-Mobile was actively promoting its unlimited calling and data plans. When that interconnection agreement failed to generate the financial performance as expected, the parties engaged in action to reduce the number of calls made by T-Mobile customers to certain numbers. As detailed in the *RCC ex parte letter* to the FCC, actions considered to reduce the traffic destined for rural markets and thus increase the profitability of the interconnection contract included T-Mobile inserting a "whisper message" that the number is not in the callers calling plan, advising that a per minute rate will apply, and actively blocking calls to conference bridges. The *RCC ex parte letter* also details a number of call routing schemes which shifted costs to and harmed small businesses that receive many incoming calls, but few outgoing calls (*i.e.*, doctor's office, retail store, a call center). Seemingly related allegations have been raised as well that T-Mobile compels interconnection in inefficient ways through its single preferred provider that increase the costs of and steps involved in exchanging traffic, which may in turn affect the routing and possible failure of calls to rural areas.²⁸

²⁷ See, Letter from Stephen Wald to Marlene Dortch, FCC, In the Matter of Rural Call Completion, WC Docket No. 13-39 (filed August 7, 2018) ("*RCC ex parte letter*")

²⁸ See, Comments and Reply Comments of Peerless Network, Inc., *et. al*, WC Docket No. 10-90, CC Docket No 01-92 (filed Oct. 26, 2017 and Nov. 20, 2017, respectively)

New T-Mobile stands to gain a significant number of new customers as a result of this transaction, generating more traffic and creating more incentive to engage in questionable behavior for financial gain. This financial gain comes at a significant price to rural consumers, multiple businesses, Sprint and T-Mobile's own customers and the public interest.

V. THE TRANSACTION WOULD RESULT IN EXCESSIVE SPECTRUM BEING HELD BY ONE PROVIDER

The FCC considers the competitive effects of increased spectrum aggregation when evaluating transactions that involve spectrum holdings.²⁹ In 2014, it set the spectrum screen at 194 MHz out of an available pool of 580.5 MHz, or 1/3 of the suitable and available spectrum.³⁰ Due to spectrum being made available in the intervening years, Applicants request that the spectrum trigger be increased to 238.5 MHz. However, T-Mobile would exceed its own defined spectrum screen in the vast majority of counties, including more than a third of the counties identified as rural.

T-Mobile has held spectrum for many years in rural areas and as described more fully, *infra*, it has neglected rural build out, and not sought out or worked cooperatively with rural partners to ensure rural service. At the same time, small providers with a legitimate interest in serving rural areas have been stymied in their efforts to obtain usable spectrum to serve rural consumers. New T-Mobile now seeks additional spectrum covering rural areas. This spectrum concentration, combined with the failure of the transactions surviving entity historic failure to provide meaningful coverage, is not in the public interest.

²⁹ *In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, WT Docket No. 12-269, ¶ 251. (rel. June 2, 2014).

³⁰ *Id.*

VI. CONCLUSION

The transaction specific harms arising out of the combination of Sprint and T-Mobile are likely to outweigh any potential benefits for American consumers as a whole and for rural Americans in particular. The combined entity would have the ability and incentive to exercise its market power to control markets, while offering rural consumers little commiserate benefit. T-Mobile has not traditionally focused on rural consumers and markets and the loss of Sprint as a competitor and partner as a result of this transaction could be devastating. T-Mobile has previously engaged in patterns of behavior with respect to call routing and traffic exchange that are contrary to the public interest that could re-emerge and or be exacerbated if this transaction is approved. New T-Mobile would also hold an excessive concentration of spectrum in many areas. The proposed transaction is thus a threat to diversity, competition and the future viability of smaller competitors.

Sprint and T-Mobile have failed to meet their burden of demonstrating that this transaction is in the public interest. For the foregoing reasons, NTCA urges the Commission to deny the proposed transaction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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