

**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)	
)	
For Consent to Transfer Control of Licenses and)	
Authorizations)	

**PETITION TO CONDITION OR DENY THE TRANSFER OF CONTROL OF
LICENSES AND AUTHORIZATIONS**

The Rural South Carolina Operators (“Rural Operators”),¹ by their attorneys and pursuant to the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby petition the Commission to condition or deny the grant of the above-captioned applications (“Applications”) to ensure the deployment of broadband services and broadband competition in rural portions of South Carolina.² Specifically, the Rural Operators urge the Commission to condition any grant of the proposed merger of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, the “Applicants” or “New T-Mobile”) on the requirement that the Applicants divest all of their 2.5 GHz spectrum holdings, both

¹ The Rural South Carolina Operators are Comporium Wireless LLC; Farmers Telephone Cooperative, Inc.; Home Wireless, Inc.; Horry Telephone Cooperative, Inc.; Palmetto Rural Telephone Cooperative, Inc.; Piedmont Rural Telephone Cooperative, Inc.; Sandhill Telephone Cooperative, Inc.; The Chester Telephone Company d/b/a TruVista Wireless; and West Carolina Communications, LLC.

² See *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, Public Notice, DA 18-740 (rel. July 18, 2018).

Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) in the state of South Carolina to local entities. Should the Commission not adopt this essential condition, it should deny the Applications to prevent the proposed merger. Without the condition requested in this Petition, the proposed merger of T-Mobile and Sprint is contrary to the public interest and should be denied by the Commission.

I. BACKGROUND AND STATEMENT OF INTEREST

The Rural Operators are small, local voice, broadband and wireless carriers that provide telecommunications services to consumers in rural areas throughout the state of South Carolina (the “Market”). The Rural Operators, many of which are telephone cooperatives owned by local residents, were formed for the sole purpose of providing reliable communications services to their rural communities that historically have been underserved by national carriers. The Rural Operators’ members, management, board members and employees live and work in the communities they serve throughout South Carolina. The Rural Operators serve their communities based on a deep, abiding sense of obligation and love of the area, not because of the upside economic opportunity represented by the area’s profile. While national carriers, like the Applicants, appear to be generally uninterested in serving rural communities, their monopoly on affordable spectrum continues to threaten the Rural Operators’ businesses. The Rural Operators submit this Petition out of grave concern that the spectrum aggregation caused by the proposed merger of the Applicants, two of the top four national carriers, will exacerbate that threat and ultimately lead to less broadband services to rural areas in South Carolina.

As explained in greater detail herein, South Carolina is unique in that Sprint currently leases a state-wide footprint of EBS licenses from the state’s public television service, known as “South Carolina Educational Television” or “ETV.” In addition, Sprint holds all available BRS

spectrum in the state. Unsurprisingly, however, Sprint’s 2.5 GHz build, especially in rural areas, is minimal and service is practically non-existent.

Further complicating the potential combination of Sprint and T-Mobile is the ongoing-*Transforming the 2.5 GHz Band* proceeding (“EBS Proceeding”, in which the Commission acknowledges the value of EBS spectrum and proposes to modernize the licensing framework.³ If the outcome of the EBS Proceeding is to expand the geographic coverage of existing licenses and to auction the remaining white space, the combined Sprint and T-Mobile will be able to acquire even more spectrum in portions of South Carolina that they will likely never serve. Instead of allowing a combined Sprint/T-Mobile to continue to expand its geographic footprint, the Commission should put critical EBS spectrum into the hands of local operators who are ready to deploy much-needed services in rural America.

II. DISCUSSION

Pursuant to Section 310(d) of the Communications Act of 1934, as amended (the “Act”), the Commission must determine whether the Applicants have demonstrated that approval of the proposed transaction would, on balance, serve “the public interest, convenience, and necessity.”⁴ Section 303(r) of the Act authorizes the Commission “to prescribe restrictions or conditions, not inconsistent with the law, which may be necessary to carry out the provisions of the Act.”⁵ In exercising this authority, the Commission generally prescribes conditions in order to “remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction.”⁶

³ *In re Transforming the 2.5 GHz Band, Notice of Proposed Rulemaking*, WT Docket No. 18-120 (rel. May 10, 2018) (“NPRM”).

⁴ 47 U.S.C. § 310(d).

⁵ 47 U.S.C. § 303(r).

⁶ *See Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and*

A. The Proposed Transaction Will Result in an Undue Concentration of Spectrum Licenses in South Carolina.

Preventing “undue spectrum aggregation in particular geographic areas has long been a bedrock principle” of the Commission’s wireless policy.⁷ In analyzing the potential competitive harms of secondary market transactions like the instant transaction, the Commission applies a spectrum screen to identify local markets that may be of particular concern.⁸ The trigger for case-by-case competitive review is if the transaction results in the combined company holding 238.5 MHz or more of the spectrum available and suitable for mobile services in a particular area. In *all but one* county in South Carolina the New-T-Mobile exceeds that trigger. In Laurens County, S.C. and Calhoun County, S.C., for example, New T-Mobile would hold 342.5 MHz of low and mid-band spectrum – nearly *half* of all the spectrum available for mobile services in those counties. Tying half the spectrum to one provider would harm competition and be detrimental to the public interest.

Access to spectrum is already a problem for the Rural Operators and the proposed transaction threatens to make it worse. For example, the Rural Operators have long been excluded from the 2.5 GHz spectrum band. Sprint owns *all* of the active BRS spectrum licenses in South Carolina and leases the excess capacity from nearly *all* of the EBS spectrum licenses in South Carolina. In order to compete in the wireless broadband market and to provide much-needed broadband services to underserved and unserved portions of the state, carriers like the Rural Operators need access to spectrum. Consumers benefit when multiple providers have

Authorizations, *Memorandum Opinion and Order*, 26 FCC Rcd 10898, ¶ 26 (2011) (“*AT&T-Qualcomm Order*”).

⁷ See Policies Regarding Mobile Spectrum Holdings, *et al.*, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6137 ¶ 8.

⁸ *Id.*

access to spectrum, and, without a required divestiture of spectrum holdings in South Carolina, access to spectrum in South Carolina will be largely restricted to New T-Mobile.

B. Divestiture of Sprint’s Trove of 2.5 GHz Authorizations Would Remedy Anti-Competitive Effects of the Transaction and Serve the Public Interest.

The threat that this proposed merger poses to consumers in South Carolina calls for the Commission to directly address the potential for the merged New T-Mobile to use its combined spectrum holdings to engage in exclusionary behaviors that would harm the ability of small and rural providers to compete for customers, to gain access to affordable spectrum, or to offer broadband services at all. As such, Rural Operators urge the Commission to require Sprint and T-Mobile to divest all of its 2.5 GHz spectrum in the state of South Carolina to local entities who are motivated to build out and provide service to those rural communities. Without these appropriate safeguards, this proposed transaction will harm the public interest by allowing the merged New T-Mobile to combine its extensive spectrum portfolio without plans to build out and by continuing to allow swaths of 2.5 GHz to lie fallow in rural parts of South Carolina.

The most apparent and detrimental competitive harm will be Sprint/T-Mobile’s increased spectrum aggregation. As it currently stands, Sprint leases all of the EBS spectrum in the state of South Carolina. Sprint has held these authorizations for years and yet it has not built out large portions, namely the rural portions, of the geographic service areas of those licenses.

Furthermore, Sprint also has been unwilling to lease or sell any unused portion to local companies like the Rural Operators.⁹ Although the Applicants are motivated to add to their

⁹ In response to the Commission’s *Transforming the 2.5 GHz Band Notice of Proposed Rulemaking*, a number of commenters revealed a pattern of larger carriers holding spectrum and making EBS spectrum leases either unaffordable or unavailable. See Comments of Nez Perce Tribe, WT Docket No. 18-120 (filed Aug. 8, 2018) (stating that all of the 2.5 GHz spectrum that covers its lands is owned by Sprint-owned entity, who is not building or utilizing the spectrum and is unwilling to lease or making the spectrum leases unaffordable); Comments of Coeur

respective spectrum portfolios, there is little motivation for Sprint and T-Mobile to build out in sparsely populated areas, and if they were to build, they would likely use lower band spectrum held by T-Mobile. In fact, should the merger be approved, it is extremely unlikely that New T-Mobile would expand its 2.5 GHz band footprint in rural areas, when it would cost significantly less to use 600 MHz or Advanced Wireless Service (“AWS”) spectrum to build more rural portions of the state. While using lower-band spectrum would be more affordable for a rural build, the more likely result of the approval of this proposed transaction would be status quo – and no new service in rural South Carolina utilizing *any* spectrum. Accordingly, the Rural Operators request that Sprint divest all of its 2.5 GHz band spectrum, including its leased EBS spectrum, so that local operators can have a real chance at providing meaningful wireless broadband services to unserved portions of their home state.

The public interest is served when there are viable competitors for broadband services. In many of the rural areas in South Carolina that the EBS spectrum covers, Sprint may be the only provider. In their *Public Interest Statement*, Applicants claim not to be “genuine competitors” in any of the relevant markets to necessitate competitive review.¹⁰ However, as stated above, the combined spectrum holdings of the Applicants in South Carolina trigger the spectrum screen of 238.5 in all but one county in South Carolina. It is possible that Sprint and T-

d’Alene Tribe, WT Docket No. 18-120 (filed Aug. 8, 2018) (warning against the hoarding of licenses by national telecom companies that do not build out to serve the rural communities); Comments of Bad River Band, WT Docket No. 18-120 (filed Aug. 8, 2018) (requesting the Commission to change its rules to prevent existing licensees from holding all available EBS channels but not providing service).

¹⁰ See Description of Transaction, Public Interest Statement, and Related Demonstrations, appended as Exhibit B to Joint Application of Sprint Corporation and T-Mobile US, Inc., for Consent to Transfer Control of International and Domestic Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, WT Docket No. 18-197, at 135-136 (June 18, 2018).

Mobile can claim not to be genuine competitors because they are not building out in these areas, despite possessing the licenses, and therefore, not truly competing. Thus, to ensure the public interest goal is met, it is critical that the Rural Operators and other small, rural service providers are able to access spectrum. The proposed merger transaction would solely serve to help Sprint/T-Mobile's dominant spectrum position, leaving carriers other than larger players such as AT&T and Verizon unable to compete. If rural operators are unable to compete with these larger broadband providers, rural operators will be forced out of the broadband services market, leaving consumers residing in rural areas without broadband.

III. CONCLUSION

In light of the aforementioned public interest concerns raised by the proposed transaction, the Rural Operators request that the Commission condition approval of the Applications on agreement by Sprint and T-Mobile to divest all the 2.5 GHz spectrum holdings in South Carolina band to local entities or deny the Applications. Should the Commission not condition approval of the T-Mobile and Sprint merger on divestiture of 2.5 GHz band spectrum, as requested herein, the proposed merger is contrary to the public interest and should be denied by the Commission.

Respectfully Submitted,

The Rural Operators

By:  _____

Donald L. Herman, Jr.
Clare Liedquist
Molly O'Conor
Herman & Whiteaker, LLC
6720B Rockledge Drive
Suite 150
Bethesda, MD 20817

Its Attorneys

Date: August 27, 2018

DECLARATION OF F. BRADLEY ERWIN

I, F. Bradley Erwin, do hereby declare that to the best of my knowledge and under penalty of perjury that the foregoing is true and correct:

1. I am the Chief Executive Officer of Farmers Telephone Cooperative, Inc.
2. I have read the foregoing Petition to Condition or Deny the Transfer of Control of Licenses and Authorizations dated August 27, 2018. I have personal knowledge of the facts set forth therein, and I believe them to be true and accurate to the best of my knowledge.



F. Bradley Erwin
Chief Executive Officer
Executed on: August 27, 2018

CERTIFICATE OF SERVICE

I, Colleen von Hollen, hereby certify that, on this 27th day of August, 2018, a copy of the foregoing Petition to Condition or Deny was served via First Class, U.S. Mail, or via email where indicated, on the following:

Regina M. Keeney*
Lawler, Metzger, Keeney & Logan, LLC
1717 K Street, NW, Suite 1075
Washington, DC 20006
(202) 777-7720
gkeeney@lawlermetzger.com
Counsel for Sprint Corporation

Nancy J. Victory*
DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
(202) 799-4216
nancy.victory@dlapiper.com
Counsel for T-Mobile US, Inc.

Kathy Harris *
Mobility Division
Wireless Telecommunications Bureau
kathy.harris@fcc.gov

Linda Ray *
Broadband Division
Wireless Telecommunications Bureau
linda.ray@fcc.gov

Kate Matraves *
Competition and Infrastructure Policy
Division
Wireless Telecommunications Bureau
catherine.matraves@fcc.gov

Jim Bird *
Office of General Counsel
TransactionTeam@fcc.gov

David Krech *
Telecommunications and Analysis Division
International Bureau
david.krech@fcc.gov

* *electronic mail service only*

/s/ Colleen von Hollen

Colleen von Hollen