

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**PETITION TO DENY OF THE RURAL WIRELESS ASSOCIATION, INC.**

**RURAL WIRELESS ASSOCIATION, INC.**

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## SUMMARY

The Rural Wireless Association, Inc. opposes the merger of T-Mobile and Sprint because it is antithetical to the public interest and on balance will cause far more harm than good for all Americans, especially those living in and traveling through rural America.

Sprint has historically worked with rural wireless carriers to ensure rural Americans have access to mobile wireless service. Sprint has offered rural carriers reciprocal, strategic roaming agreements at commercially reasonable rates. Sprint has also leased its spectrum in rural areas to rural wireless carriers to build out networks that serve both rural Americans and those traveling in rural America. Given the difficulty that rural wireless carriers often have in accessing spectrum, these lease agreements are critical, but are likely to disappear if the proposed merger is consummated.

Meanwhile, T-Mobile has neglected rural America for over 20 years. T-Mobile has focused most of its energy on urban areas. Unlike Sprint's roaming agreements, T-Mobile's roaming agreements are one-sided. T-Mobile will frequently enter only into unilateral roaming agreements under which the rural carrier's subscribers can roam on T-Mobile's network, but with no possibility of T-Mobile's subscribers roaming on the rural carrier's network – even where T-Mobile's network is substandard or non-existent.

Moreover, T-Mobile's spectrum utilization policies are harmful to competition, and the new post-merger T-Mobile stands to continue those policies while holding amounts of spectrum that vastly exceed the FCC's spectrum screen. There are 37 states or territories (out of 57) where over half of the counties exceed the spectrum screen. In predominantly rural states, more than 80% of the counties in each state will exceed the 238.5 megahertz spectrum screen post-merger. Further, T-Mobile has neglected in any meaningful way to sell, lease, or enter into

joint-venture build-outs with rural carriers to make use of its valuable 600 MHz, 700 MHz, PCS, and AWS spectrum.

The harm T-Mobile has inflicted on its own customers is not restricted to denying them access to rural wireless networks -- it extends to denying those same customers access to rural landline telephone networks. T-Mobile's behavior regarding rural call completion issues shows a willingness to engage in illegal activity that is not in the public interest.

Finally, both Sprint and T-Mobile have significant ties to foreign carriers that are undergoing review by several U.S. government agencies to determine whether they pose a threat to national security. The FCC must consider the national security implications of the proposed transaction. In particular, the FCC should consider the supply chain issues at play in the proposed transaction, and do so with a heightened level of scrutiny given the passage of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Further, the FCC should defer a final decision on the national security implications of the proposed transaction until both the Committee on Foreign Investment in U.S. Companies and Team Telecom finish their review of the matter.

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**PETITION TO DENY OF THE RURAL WIRELESS ASSOCIATION, INC.**

Pursuant to Section 1.939 of the Federal Communications Commission’s (“FCC” or “Commission”) rules<sup>1</sup> and the *Public Notice* released July 18, 2018,<sup>2</sup> the Rural Wireless Association, Inc. (“RWA”)<sup>3</sup> files this Petition to Deny the Consolidated Application of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, “Applicants”) for consent to transfer control of certain licenses, authorizations, and spectrum leases. As discussed below, the proposed merger between T-Mobile and Sprint would be disastrous to the competitive health of the mobile wireless sector, is contrary to the public interest, and should be denied.

**I. STATEMENT OF INTEREST.**

RWA’s members consist of both independent wireless carriers and wireless carriers that are affiliated with rural telephone/broadband companies. Through their parent companies, many RWA carrier members have provided service in their respective rural communities for

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<sup>1</sup> 47 C.F.R. § 1.939.

<sup>2</sup> [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 (July 18, 2018).

<sup>3</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

more than 50 years. In addition to the numerous competitive and public interest harms that will impact all Americans should the deal proceed, the proposed merger will specifically harm RWA's members and its members' subscribers by increasing roaming rates, holding spectrum hostage in rural areas, and eliminating wireless coverage in rural markets. Accordingly, RWA, through its members, is a real party in interest in the above-captioned proceeding and has standing to file the instant petition.<sup>4</sup>

## II. THE PROPOSED TRANSACTION IS NOT IN THE PUBLIC INTEREST.

The standard of review employed by the Commission to determine whether to approve transactions such as the one proposed by the Applicants is whether the transaction will serve the public interest, convenience, and necessity.<sup>5</sup> In making this assessment, the Commission first assesses whether the proposed transaction complies with the specific

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<sup>4</sup> See 47 U.S.C. § 309(d)(1) and 47 C.F.R. § 1.939.

<sup>5</sup> 47 U.S.C. §§ 214(a), 310(d). See *In the Matters of Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, WT Docket No. 09-104, FCC 10-116 (released June 22, 2010) (“AT&T/Verizon Order”) at ¶ 22; *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258 (released November 10, 2008) (“ALLTEL/Verizon Merger Order”) at ¶ 26; *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, WT Docket No. 08-246, FCC 09-97 (released November 5, 2009) (“AT&T/Centennial Merger Order”) at ¶ 27; *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, File Nos. 0003155487, et al., WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (released August 1, 2008) (“Verizon/RCC Merger Order”) at ¶ 26; *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0003092368 et al., Memorandum Opinion and Order, WT Docket No. 07-153, FCC 07-196 (released November 19, 2007) (“AT&T/Dobson Merger Order”) at ¶ 10; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0001656065, et al., WT Docket No. 04-70, FCC 04-255 (released October 26, 2004) (“AT&T/Cingular Merger Order”) at ¶ 40.

provisions of the Communications Act of 1934, as amended (“the Act”), other applicable statutes and the Commission’s rules.<sup>6</sup> Assuming the proposed transaction does not violate any statute or rules, the Commission next considers whether the proposed transaction “could result in public interest harms.”<sup>7</sup> If the Commission finds that the transaction could result both in public interest harms and benefits, the Commission must “employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”<sup>8</sup> In all instances, it is the Applicants who “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.”<sup>9</sup> As discussed below, the public interest harms that would result from consummation of the proposed merger will dwarf any purported public interest benefits, and the Applicants have failed to meet their burden of proving that the proposed transaction is in the public interest.

**a. The Proposed Transaction Will Harm Competition.**

The Applicants spent nearly 700 pages in their “Description of Transaction, Public Interest Statement, and Related Demonstrations” attempting to convince the Commission that a merger (and the permanent removal of Sprint as a long-time, facilities-based nationwide LTE competitor) enhances competition. A major component of the Applicants’ argument is that Sprint simply cannot compete on its own and must be eliminated in order for the post-merger T-Mobile

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<sup>6</sup> See, e.g., *AT&T/Verizon Order* at ¶ 22; *ALLTEL/Verizon Merger Order* at ¶ 26; *AT&T/Centennial Merger Order* at ¶ 27; *Verizon/RCC Merger Order* at ¶ 26; *AT&T/Dobson Merger Order* at ¶ 10; *AT&T/Cingular Merger Order* at ¶ 40.

<sup>7</sup> See, e.g., *AT&T/Verizon Order* at ¶ 22; *ALLTEL/Verizon Merger Order* at ¶ 26; *AT&T/Centennial Merger Order* at ¶ 27; *Verizon/RCC Merger Order* at ¶ 26; *AT&T/Dobson Merger Order* at ¶ 10; *AT&T/Cingular Merger Order* at ¶ 40.

<sup>8</sup> See, e.g., *AT&T/Verizon Order* at ¶ 22; *ALLTEL/Verizon Merger Order* at ¶ 26; *AT&T/Centennial Merger Order* at ¶ 27; *Verizon/RCC Merger Order* at ¶ 26; *AT&T/Dobson Merger Order* at ¶ 10; *AT&T/Cingular Merger Order* at ¶ 40.

<sup>9</sup> See, e.g., *AT&T/Verizon Order* at ¶ 22; *ALLTEL/Verizon Merger Order* at ¶ 26; *AT&T/Centennial Merger Order* at ¶ 27; *Verizon/RCC Merger Order* at ¶ 26; *AT&T/Dobson Merger Order* at ¶ 10; *AT&T/Cingular Merger Order* at ¶ 40.



(“New T-Mobile”) to be made stronger.<sup>10</sup> If the Applicants’ dire warnings about Sprint’s short shelf-life sound familiar, it is because AT&T said the same things about T-Mobile in 2011. Specifically, AT&T argued in 2011 that T-Mobile had a “declining market share[] and no clear path to Long Term Evolution (LTE).”<sup>11</sup> AT&T also claimed that once combined, the two parties “would deploy LTE to 95% of the U.S. population.”<sup>12</sup>

Today, less than seven years removed from the failed AT&T/T-Mobile merger, and without any of the purported “synergies” of the merger, AT&T provides LTE coverage to 317 million Americans (out of 325 million) with LTE, which is over 97.5% of the U.S. population.<sup>13</sup> Meanwhile, according to its most recent quarterly report, “T-Mobile now covers 323 million people with 4G LTE – targeting 325 million people by year-end 2018.”<sup>14</sup> This means T-Mobile’s current LTE coverage currently surpasses AT&T’s LTE coverage - - which is ironic considering that AT&T claimed in 2011 that T-Mobile had no clear path to LTE! In fact, T-Mobile tripled its LTE coverage between 2015 and 2018.<sup>15</sup>

If nothing else, T-Mobile’s tremendous success since 2011 demonstrates that it has the track-record to compete effectively without merging with Sprint and has been a critical market disrupter, and that any claims regarding Sprint’s imminent demise should be viewed with a healthy dose of skepticism. T-Mobile’s recent success goes well beyond just merely increasing

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<sup>10</sup> See generally *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, [Description of Transaction, Public Interest Statement, and Related Demonstrations](#), WT Docket No. 18-197 (June 18, 2018) (“*Transaction Description*”)

<sup>11</sup> “Acquisition of T-Mobile USA, Inc. by AT&T Inc., Description of Transaction, Public Interest Showing and Related Demonstrations.” (2011) (“*AT&T-TMUS Public Interest Statement*”).

<sup>12</sup> AT&T-TMUS Public Interest Statement at n. 3.

<sup>13</sup> AT&T, [AT&T Has the Nation’s Largest and Most Reliable Network](#) (last visited Aug. 26, 2018).

<sup>14</sup> [T-Mobile Investor Factbook](#), Q2 2018 (last visited Aug. 26, 2018).

<sup>15</sup> T-Mobile Press Release, [Customers Have Spoken: T-Mobile’s Network is Tops – Again](#) (Jan. 22, 2018).

the percentage of the country's population covered by LTE; T-Mobile also consistently proclaims that it has a better network (*i.e.*, network availability, download speeds, latency, etc.) than both AT&T and Verizon.<sup>16</sup> The events since 2011 also show that when a nationwide carrier is less focused on horizontal mergers and more focused on winning over and retaining customers, good things follow.

Earlier in 2018, before it announced its intent to merge, Sprint touted various successful achievements as part of its turn-around strategy.<sup>17</sup> For example, Sprint reported its “highest retail net additions in nearly three years with postpaid net additions of 256,000 and prepaid net additions of 63,000.”<sup>18</sup> Additionally, Sprint “reported its eighth consecutive quarter of operating income and highest fiscal third quarter adjusted EBITDA in 11 years.”<sup>19</sup> On the network operations front, Sprint saw a “60 percent year-over-year increase in its average download speed” according to Ookla Speedtest Intelligence, and forecast that it would “[a]dd more small cells – including Sprint Magic Boxes, mini-macros and strand mounts to densify every major market and significantly boost capacity and data speeds – and leverage the recent strategic agreements with Altice and Cox.”<sup>20</sup> Sprint also publicized that it “has already deployed more than 80,000 Sprint Magic Boxes in approximately 200 cities across the country and plans to deploy more than 1 million as part of its multi-year roadmap.”<sup>21</sup>

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<sup>17</sup> [Sprint Q4 2017 Press Release, Quarterly Report, and Transcript](#) (rel. Feb. 2, 2018).

<sup>18</sup> [Sprint Q4 2017 Press Release](#) (rel. Feb. 2, 2018).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

On August 23, 2018, Sprint also announced another round of its innovative consumer friendly “Kickstart” retail program.<sup>22</sup> Under this retail offering, Sprint provides unlimited talk, text, and data for \$25 per month to any new customer who brings his or her own phone, or buys a new phone at full price. This kind of innovative retail pricing is great for consumers and enhances competition. Removing Sprint from the equation through further industry consolidation will result in less competition which will drive prices higher for consumers, and would be decidedly contrary to the public interest.

The primary question facing the FCC is whether the elimination of Sprint as an independent, nationwide 4G LTE carrier will harm overall competition. The answer is an unqualified yes. The elimination of Sprint will not only remove a facilities-based LTE carrier supporting its own well-known Sprint and Boost retail operations, but it will completely remove a nationwide LTE roaming option for small rural carriers and a wholesale network available to MVNOs, M2M and other IoT service providers. The proposed consolidation from four to three carriers was bad for America in 2011 and it remains bad for America in 2018. Moreover, the synergies the companies are seeking in the 5G arena can be accomplished without a full scale merger. By working together on network buildout to expand their respective coverage footprints and entering into network sharing and roaming agreements, the Applicants can keep their retail operations separate and competitive while lowering 5G capital and operational expenses. This will result in a win for both consumers and Applicants alike.

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<sup>22</sup> Eli Blumenthal, [\*Sprint Brings Back ‘Kickstart’ Promo, Offering Unlimited Data for \\$25 a Month if you Switch\*](#), USA Today.com (Aug. 23, 2018).

**b. The Proposed Transaction Will Harm Consumers by Removing a Partner Critical to the Provision of Mobile Wireless Service in Rural America.**

The proposed transaction, if approved, will result in particular harm to American consumers who travel to, work in, or reside within rural markets. Sprint has historically worked with rural wireless carriers to ensure rural Americans have access to robust mobile wireless service.<sup>23</sup> Sprint has offered rural carriers, including RWA members, reciprocal, strategic roaming agreements at commercially reasonable rates, offering rural carriers important pro-consumer benefits and significant flexibility, in contrast to those offered by other nationwide carriers.<sup>24</sup> While carriers cannot publicly disclose agreement specifics, RWA understands from its members that the Sprint agreements do not incentivize either carrier to throttle data usage because roaming rates are commercially reasonable, thereby providing a better experience for their respective customer bases. RWA members are concerned that the terms in their roaming agreements with Sprint will not be included in any roaming agreements with the New T-Mobile, and that the New T-Mobile has no plans to allow its customers to roam on rural carrier networks – even in areas where its own network is substandard or nonexistent.

Sprint has also leased its spectrum in rural areas to rural wireless carriers to build out networks that serve both rural Americans and those traveling to rural America. Given the difficulty that rural wireless carriers often have in accessing spectrum, these lease agreements are critical, but may disappear if the proposed merger is consummated. Specifically, RWA members

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<sup>23</sup> Marina Lopes and Alina Selyukh, [Sprint Grabs Lifeline With Rural U.S. Roaming Deals](#), Reuters.com (Aug. 29, 2014) (discussing 12 “mutual” roaming agreements with rural and regional carriers and stating “Sprint’s...CEO Marcelo Claure said that the networks of rural carriers ‘are really important in places where we haven’t and don’t intend to build our network.’”)

<sup>24</sup> *See id.*

are concerned their spectrum leases with Sprint will not be renewed by the New T-Mobile which would mean rural carriers losing coverage and consumers going without service.

Meanwhile, T-Mobile has neglected rural America for over 20 years. As the “urban hipster” carrier, T-Mobile has focused most of its energy on urban areas. T-Mobile’s retail presence in rural America is virtually non-existent,<sup>25</sup> presumably because it has little or no coverage in rural America. After all, there is no point in having a rural retail store if there is no coverage in the area. The lack of retail stores came to light during the FCC’s Mobility Fund Phase II Challenge Process when rural carriers sought to obtain T-Mobile devices to challenge alleged 4G LTE coverage in the rural area. RWA members often had to drive two or more hours each way (over 250 miles round trip) to purchase T-Mobile devices at the closest T-Mobile retail store to participate in the Challenge Process. The experience of RWA members is that when T-Mobile does extend service to a “rural county,”<sup>26</sup> it typically builds a cell in the county seat, covers major state and federal roadways, and ignores the rest of the county. In short, T-Mobile is not focused on rural Americans. Moreover, as discussed below, it does not seem to care whether

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<sup>25</sup> Mike Dano, [T-Mobile Retail Footprint Grows from 3,600 to 5,300 Stores – and Isn’t Stopping There](#), FierceWireless (Apr. 12, 2018) (noting that in December 2015, T-Mobile had the fewest retail stores out of the four nationwide carriers); *see also* Adam Levy, [New Stores are a Key to T-Mobile’s Growth](#), The Motley Fool (Mar. 6, 2018) (noting that, while retail locations have grown, T-Mobile Chief Financial Officer Braxton Carter still estimates there are 100 million people that the company is not reaching with its retail distribution footprint).

<sup>26</sup> RWA uses the definition of rural county as one with a population density of 100 persons or fewer per square mile. *See Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Inventive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rule and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, [Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order](#), WT Docket Nos. 14-170; 05-211, GN Docket No. 12-268, RM-11395, FCC 15-80, at ¶ 104 (rel. July 21, 2015) (“*Competitive Bidding Order*”).

its own customers have access to rural networks when T-Mobile's own network fails to provide coverage.

Unlike Sprint's roaming agreements, T-Mobile's roaming agreements are one-sided.<sup>27</sup> While T-Mobile is required by the Commission's rules to allow the customers of other carriers to roam on its network,<sup>28</sup> T-Mobile is not required to allow its customers to roam on other carriers' networks – even where its own network is substandard or non-existent. T-Mobile will frequently enter only into unilateral roaming agreements under which the rural carrier's subscribers can roam on T-Mobile's network, but with no possibility of T-Mobile's subscribers roaming on the rural carrier's network. In such cases, T-Mobile has simply determined that it is better for its business to do without any coverage in rural areas rather than pay the rural carrier for network access. As discussed below, the cost of accessing the rural carrier's network is determined by T-Mobile so T-Mobile's argument that the cost to use a rural carrier's network is too expensive is baseless and self-serving. Accordingly, loss of Sprint as a roaming partner and replacement with New T-Mobile will harm rural consumers and consumers traveling through rural America.

**c. T-Mobile's Behavior Regarding Rural Call Completion Issues Shows a Willingness to Engage in Illegal Activity That is Not in the Public Interest.**

The harm T-Mobile has inflicted on its own customers is not restricted to denying them access to rural wireless networks -- it extends to denying those same customers access to rural landline telephone networks. On April 16, 2018, the Commission announced that it had "reached 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

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<sup>27</sup> RWA has heard from numerous members regarding the one-sided nature of T-Mobile's roaming agreements. *See also* Marina Lopes and Alina Selyukh, [Sprint Grabs Lifeline With Rural U.S. Roaming Deals](#), Reuters.com (Aug. 29, 2014) (noting that "[w]hile T-Mobile has offered some roaming agreements," the company's offerings are not comparable to Sprint's).

<sup>28</sup> 47 C.F.R. § 20.12(d).

consumers and whether it violated the FCC rule that prohibits providers from inserting false ring tones with respect to hundreds of millions of calls.”<sup>29</sup> That same day, the Commission released a *Settlement Order*<sup>30</sup> which adopted a *Consent Decree*<sup>31</sup> entered into between the Commission and T-Mobile. In the *Consent Decree*, T-Mobile admits that it inserted “false rings tones” into perhaps hundreds of millions of telephone calls placed each year by T-Mobile customers around the country.<sup>32</sup> The intended recipients of these telephone calls were landline customers of a still unknown number of rural local exchange carriers (“LECs”). Instead of terminating these placed calls, T-Mobile injected “false ring tones”, leading the T-Mobile customer to think the rural LEC customer was not picking up the landline telephone. In reality, the call was passed to an intermediate provider – an inter-exchange carrier (“IXC”) -- where it was then placed in a never-ending loop or transferred to one or more additional IXCs, where the call eventually dropped or the T-Mobile customer eventually hung up. T-Mobile’s actions were extremely harmful to both its own wireless customers and landline customers served by rural LECs across the country, and T-Mobile did nothing to curb this behavior for years until enough rural LEC complaints and consumer complaints were lodged with the FCC, resulting in FCC enforcement actions.

Aside from blatantly breaking the law, T-Mobile’s actions may have severely hindered rural consumers from running their businesses; communicating important and critical information to family and friends; and reaching emergency service personnel, medical professionals, and law enforcement in affected rural areas. The callous behavior engaged in by

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<sup>29</sup> FCC Press Release, [FCC Reaches \\$40 Million Settlement with T-Mobile for Rural Call Completion Violations](#) (rel. Apr. 16, 2018).

<sup>30</sup> *In the Matter of T-Mobile USA, Inc.*, [Order](#), File No.: EB-IHD-16-00023247, Acct. No.: 201832080003, FRN 0004121760, DA 18-373 (released April 16, 2018) (“*T-Mobile Order*”).

<sup>31</sup> *In the Matter of T-Mobile USA, Inc.*, [Order](#), File No.: EB-IHD-16-00023247, Acct. No.: 201832080003, FRN 0004121760, DA 18-373 (released April 16, 2018) (“*T-Mobile Consent Decree*”).

<sup>32</sup> *T-Mobile Consent Decree* at ¶ 12.

T-Mobile to save money on terminating rural calls underscores the fact that T-Mobile's attitude towards rural consumers is at best neglectful and at worst anticompetitive. T-Mobile's actions in the context of the rural call completion issue, combined with its behavior in the context of roaming and spectrum management (discussed below), demonstrates that T-Mobile has a general disregard for rural consumers and rural carriers. RWA believes that T-Mobile's destructive behavior will continue, perhaps even more aggressively, once its rival Sprint is eliminated.

**III. A T-MOBILE/SPRINT MERGER THREATENS THE ABILITY OF RURAL CONSUMERS TO ROAM, AND WILL DENY NEW T-MOBILE CUSTOMERS THE ABILITY TO ACCESS RURAL MARKETS NOT SERVED BY THE NEW T-MOBILE.**

Rural American consumers absolutely depend upon reliable access to advanced mobile services. This desire to access 4G (and soon 5G) services does not end when rural consumers leave their homes and jobs in rural America. Through inter-carrier roaming, rural consumers still need the capability to access mobile wireless services in non-rural U.S. markets where their local hometown carrier does not provide service. This has been true for decades and will remain true for decades to come. Likewise, wireless customers in urban and suburban U.S. markets should have access to the critical coverage provided by RWA carrier members, who in many cases operate the only network in the rural area. This mutual dependency makes bilateral, inter-carrier voice and data roaming critical from both a commercial and public safety perspective. Reciprocal roaming keeps urban, suburban, and rural America connected. Yet, T-Mobile refuses to enter into reciprocal roaming agreements with RWA members.

With the consolidation of mobile carriers, three problem areas have surfaced regarding the roaming marketplace, and elimination of Sprint's independent LTE network will make these problems worse for consumers. The first problem is that despite FCC changes between 2007 and 2011 to implement rules to mandate just and reasonable, or commercially



reasonable, voice and data roaming rates, the only nationwide carrier willing to offer such rates on commercially reasonable terms is Sprint. The second problem is that T-Mobile has been slow or unwilling to adopt Voice-over-LTE (VoLTE) roaming agreements with small, rural carriers. The third problem is that T-Mobile has a history of turning off outbound roaming for its own customers, thereby not only degrading their overall experience but also making the rural carriers over-reliant upon universal service funding to maintain critical rural coverage. As discussed in detail below, these three problems are emblematic of the public interest harms that will only increase if Sprint is removed from the market.

**a. T-Mobile's Roaming Rates are not Commercially Reasonable.**

Before examining T-Mobile's reluctance to allow its customers to roam on rural carriers' networks, and its reluctance to extend VoLTE roaming agreements to rural carriers, the Commission needs to be aware of a common misperception in the roaming marketplace. The perception is that rural carriers dictate the rates, terms and conditions of roaming deals, and these rates, terms, and conditions are commercially reasonable. This perception is false. Of the four nationwide carriers, Sprint is the only one that offers anything approximating commercially reasonable roaming rates, terms, and conditions to rural carriers. T-Mobile does not want rural carriers to have affordable access to its nationwide network. If a rural carrier had such access, the rural carrier could offer its rural customers not only robust rural coverage on its network but also affordable coverage when the rural customer leaves the rural carrier network (i.e., affordable *nationwide* service). When a rural carrier's customer regularly travels outside the rural area, the cost to support that rural customer accessing T-Mobile's network through a roaming agreement can be astronomical. Similarly, as discussed below, if the rural customer purchases a T-Mobile

handset and plan, T-Mobile denies access to the rural carrier's network so that the device does not work when the T-Mobile customer is in the rural carrier's service area.

Sprint on the other hand has not blocked access, throttled data usage, or established unreasonable commercial roaming rates. In fact, RWA members have reported that the voice and data roaming rates they currently pay to Sprint are one-twentieth (1/20<sup>th</sup>) of what they pay for comparable coverage and service to T-Mobile. If Sprint disappears and T-Mobile's rates are adopted, roaming rates could go up by 1,900%, jeopardizing the ability of rural carriers to offer outbound roaming. Without outbound roaming, rural carriers cannot offer a compelling retail product to rural consumers and without that capability will be forced to exit the business, leaving untold number of Americans without any access to mobile wireless communications in rural America. Loss of coverage in rural America is not in the public interest and is a harmful anticompetitive effect of the proposed merger.

RWA believes that a New T-Mobile has zero incentive to provide commercially reasonable roaming rates, terms, and conditions to RWA members. Without access to nationwide roaming (at per-megabyte or per-minute bilateral rates that are *lower* than each carrier's existing retail rates, or even each carrier's wholesale/MVNO rates), rural carriers cannot offer nationwide rate plans at levels that are competitive to the nationwide carriers and this puts them at a competitive disadvantage. Specifically, because the flow of roaming traffic is one-way (*i.e.*, only rural to T-Mobile), the wholesale roaming rates paid by rural carriers are often inflated because T-Mobile entered into negotiations knowing that it would never allow outbound (*i.e.*, T-Mobile to rural) roaming. Higher roaming rates mean that rural carriers are either forced to raise their own retail rates or absorb the roaming charges, which comes out of the rural carrier's profits. If rates were lower and traffic was reciprocal (or even bill-and-keep), it would alleviate the high

costs for rural carriers and improve their profitability. When rural carriers pay higher roaming rates, they are forced to reduce the extent of network buildout and reduce the funds available for other operating expenses, resulting in denigrated service in rural areas. In these instances, rural consumers and rural carriers lose.

**b. The Removal of Sprint Threatens VoLTE Roaming Between Rural Carriers and Nationwide Carriers.**

RWA members are having difficulty finalizing and executing VoLTE roaming agreements that are required before testing VoLTE services, and ultimately launching commercial VoLTE services with T-Mobile. This same delay is also taking place with AT&T and Verizon. A merger of Sprint and T-Mobile would further threaten VoLTE roaming by removing one potential VoLTE roaming partner (Sprint) who actually has expressed interest in working with rural carriers, and leave as potential VoLTE roaming partners only three nationwide carriers who have not expressed such interest.

It is a foregone conclusion that in the very near future packet-switched transmissions will completely replace circuit-switched voice transmissions, but unfortunately, those packet-switched transmissions do not retain the same legal protections as their circuit-switched predecessors.<sup>33</sup> While Sprint announced in February 2018, even before the T-Mobile merger announcement, that it was planning to launch VoLTE for its subscribers by fall of 2018,<sup>34</sup> and even after the merger was announced, re-affirmed this timeline by saying it remained “on track

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<sup>33</sup> See generally [Can You Hear Me Now? Good: Roaming, VoLTE, and Why We Needed to Update Wireless Data Regulations](#), COLORADO TECHNOLOGY LAW JOURNAL, Bill Gillespie (Vol 14, Issue 1) (2015).

<sup>34</sup> Monica Allevan, [Sprint Expects to Deploy VoLTE Starting This Fall](#), FierceWireless.com (Feb. 14, 2018).

to begin commercial deployment of VoLTE starting this fall,”<sup>35</sup> rural carriers have been attempting, unsuccessfully, to enter into VoLTE roaming agreements with T-Mobile to no avail. Were T-Mobile to eliminate Sprint and retain its own way of “doing business” with rural carriers, it will not only hurt customers of RWA members, but will also hurt New T-Mobile customers who need VoLTE roaming services and eventually 5G roaming services in rural America.

Once the nationwide carriers completely shut-down their circuit-switched voice networks, the only way to communicate through “traditional” mobile telephone calls will be through VoLTE.<sup>36</sup> If the Commission does nothing soon in its roaming docket to protect access to VoLTE roaming, customers served by RWA members run the risk of not being able to make voice calls when traveling to adjacent markets as well as throughout the United States. Likewise, customers of the nationwide carriers will not be able to make voice calls, including 911 calls, on rural carrier networks. Eliminating Sprint as a possible VoLTE roaming partner will only exacerbate the problem.

**c. T-Mobile Denies Its Own Customers Roaming on Rural Carrier Networks.**

T-Mobile has a long history of not just deliberately avoiding the build-out of rural markets, but of also not utilizing rural carrier networks to allow T-Mobile customers to access rural coverage where T-Mobile has no coverage. This business decision harms both T-Mobile customers and rural carriers and their customers. T-Mobile’s customers are harmed because they are unable to access an available wireless network in a rural or remote area. This means an

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<sup>35</sup> Monica Allevan, [Sprint’s Roaming Agreement with T-Mobile Doesn’t Impact VoLTE Rollout](#), FierceWireless.com (May 1, 2018).

<sup>36</sup> Mike Dano, [Verizon Stops Activating CDMA 3G Devices as Network Shutdown Looms](#), FierceWireless.com (July 17, 2018); *see also* Colin Gibbs, [AT&T Confirms It Shut Down Its 2G Network Jan. 1](#), FierceWireless.com (Jan. 17, 2017).

inability to conduct business, contact friends or loved ones, get directions, determine logistics, and get roadside assistance, among other things. For rural carriers and their customers, this means the loss of roaming revenue that would normally flow from T-Mobile's customers' use of the rural carriers' networks would typically offset the cost of operating the rural networks. That revenue source, in turn, would allow further buildout in rural areas and/or offset the need for as much universal service support.

In addition T-Mobile's preclusion of its own customers from accessing rural carriers' networks, either by blocking by location area codes ("LAC") or denying the exchange of reciprocal roaming traffic, makes rural carriers *more* reliant on USF funding. RWA emphasizes that many of these LAC restrictions and roaming denials are not in markets where T-Mobile has its own network - - they are in markets where T-Mobile simply refuses to allow roaming access where it has no reliable coverage of its own. If T-Mobile allowed its customers to access those networks and paid the rural carriers for use of their networks, the rural carriers would have revenue to support the network, reducing reliance on universal service support subsidies. RWA notes that T-Mobile collects a universal service fee from its own customers to support these high cost networks and then turns around and denies its customers access to them.

Sprint, on the other hand, is very willing to allow its customers to roam off-network. Accordingly, if T-Mobile is allowed to merge with Sprint and continues to block access to rural carriers' network, then tens of millions of existing Sprint customers will also experience a reduction in roaming coverage availability, which is clearly not in the public interest.

**IV. T-MOBILE’S SPECTRUM UTILIZATION POLICIES ARE HARMFUL TO COMPETITION, AND NEW T-MOBILE STANDS TO CONTINUE THOSE POLICIES WHILE HOLDING AMOUNTS OF SPECTRUM THAT VASTLY EXCEED THE COMMISSION’S SPECTRUM SCREEN.**

Spectrum is the lifeblood of all wireless networks, but excessive concentration of this valuable and finite resource is a significant threat to marketplace competition. Indeed, the Commission has a duty, under Section 309(j) of the Act, to avoid “excessive concentrations of licenses” and to disseminate licenses “among a wide variety of applicants.”<sup>37</sup> If approved, the proposed transaction will result in New T-Mobile holding spectrum in amounts that exceed the Commission’s current spectrum screen, the Commission’s adjusted spectrum screen, and even T-Mobile’s proposed spectrum screen. Regardless of the spectrum screen used, this hyper-concentration of spectrum in markets is harmful to the public interest. Additionally, T-Mobile has a history of warehousing spectrum that it does not use (as opposed to leasing it to rural carriers) and others, and when it does build-out spectrum, it historically and consistently focuses on urban and suburban markets, neglecting rural markets.

**a. New T-Mobile’s Spectrum Holdings Will Greatly Exceed Whatever Spectrum Screen is Applied by the FCC.**

In evaluating secondary market spectrum transactions, the Commission utilizes a spectrum screen.<sup>38</sup> In 2014, the Commission re-visited the issue of what constituted an acceptable level of spectrum aggregation, setting the spectrum screen at 194 megahertz (out of

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<sup>37</sup> 47 U.S.C. § 309 (j).

<sup>38</sup> *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, [Report and Order](#), WT Docket No. 12-269, FCC 14-63, at ¶ 251 (rel. June 2, 2014) (“*2014 Spectrum Screen Order*”). When it comes to reviewing secondary market transactions, the Commission reiterated that it was in the public interest to review prospective deals on its use of an initial spectrum screen -- and then a subsequent case-by-case analysis to evaluate the likely competitive effects of increased spectrum aggregation through secondary market transactions.

an available and suitable pool of 580.5 megahertz).<sup>39</sup> The trigger of 194 megahertz is approximately one-third of the suitable and available spectrum in any given market. If T-Mobile and Sprint were to merge, the resulting New T-Mobile would exceed the FCC's existing spectrum screen in the vast majority of the country's counties (or county equivalents).

For the purposes of the proposed transaction, the Applicants believe that the proper amount of suitable and available spectrum is now 715.5 megahertz due to the closing of the 600 MHz auction and the "clearing [of] the AWS-3 band."<sup>40</sup> Therefore, the Applicants now ask that the spectrum screen "trigger" be increased to 238.5 megahertz. As is discussed in greater detail below, even using the Applicants' liberalized screen, the New T-Mobile would still exceed it in over 63% of counties in the United States and its territories -- including 100% of the Top 130 most populous counties. Given that the Applicants exceed the screen amount in 2,061 of 3,230 counties analyzed by RWA -- nearly two thirds of all U.S. counties even under the Applicants' more liberal spectrum screen -- the burden of proof is on the Applicants to overcome the presumption that the transaction is anticompetitive -- a burden the Applicants have failed to meet.

There are 37 states or territories (out of 57) where over half of the counties exceed the spectrum screen. In predominantly rural states, more than 80% of the counties in each state will exceed the 238.5 megahertz spectrum screen post-merger. The chart below illustrates those states where at least 60% of the counties will exceed the spectrum screen.

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<sup>39</sup> *2014 Spectrum Screen Order* at ¶ 251.

<sup>40</sup> *Transaction Description* at p. 133.

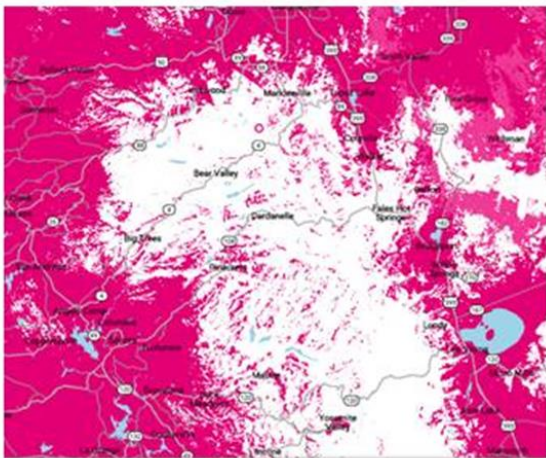
<b>Counties Within a State Exceeding Spectrum Screen</b>			
State	Number of Counties Exceeding Spectrum Screen	Number of Total Counties	Percent
CT	8	8	100.0%
DC	1	1	100.0%
DE	3	3	100.0%
NJ	21	21	100.0%
PR	78	78	100.0%
RI	5	5	100.0%
IN	91	92	98.9%
SC	45	46	97.8%
AL	65	67	97.0%
LA	61	64	95.3%
FL	63	67	94.0%
CA	52	58	89.7%
NY	54	62	87.1%
IL	87	102	85.3%
WA	33	39	84.6%
GA	132	159	83.0%
PA	55	67	82.1%
NC	82	100	82.0%
TN	77	95	81.1%
HI	4	5	80.0%
OH	70	88	79.5%
MD	19	24	79.2%
VA	105	133	78.9%
AR	59	75	78.7%
MA	11	14	78.6%
OK	60	77	77.9%
MS	63	82	76.8%
MN	65	87	74.7%
AZ	10	15	66.7%
NV	11	17	64.7%
TX	162	254	63.8%
KY	73	120	60.8%

In states like Washington, Georgia, North Carolina, and California, with a significant number of rural counties, 84.6%, 83.0%, 82.0%, and 89.0% of the counties, respectively, will exceed the 238.5 megahertz spectrum screen post-merger. In four states (Connecticut, Delaware, New



Jersey, and Rhode Island), the District of Columbia, and Puerto Rico *every* county (or county-equivalent) will exceed the spectrum screen!

Even some of the most sparsely populated counties in America face the prospect of a New T-Mobile holding an aggregated amount of spectrum that vastly exceeds the liberalized spectrum screen. For example, in Alpine County, CA, population 1,175, New T-Mobile will exceed the 238.5 megahertz screen by nearly 80 megahertz.

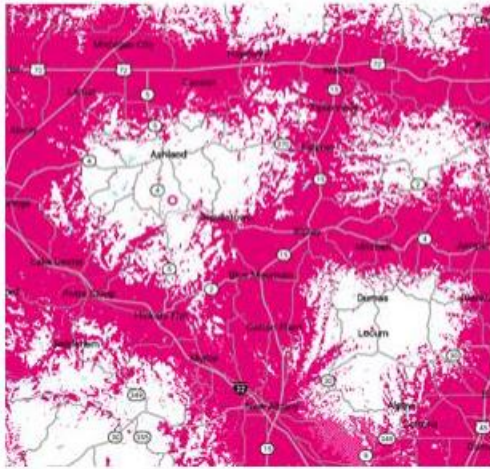


T-Mobile coverage Alpine County, CA.

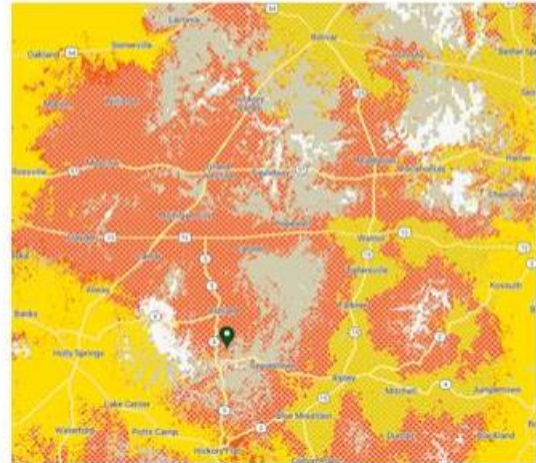


Sprint coverage Alpine County, CA.

Yet, if you look at the coverage maps of both T-Mobile and Sprint, neither company offers any meaningful coverage in Alpine County, let alone 4G/LTE coverage. On the other side of the country, in Benton County, MS, population 8,729, the story is the same: post-merger New T-Mobile would hold 310.5 megahertz of spectrum, well over the 238.5 megahertz spectrum screen. In the case of T-Mobile, it has massive coverage holes off the highways with zero access to any roaming, and in the case of Sprint, what roaming there is in Benton County is not 4G/LTE.



**T-Mobile coverage Benton County, MS.**



**Sprint coverage Benton County, MS.**

RWA notes that it is still examining the spectrum concentration across the country and unfortunately has only had the time to obtain and collect the data necessary to do its analysis in the past week due to the difficulty in obtaining the spectrum data in a usable format.<sup>41</sup>

Regardless, spectrum concentration at these levels, combined with carriers failing to build-out any meaningful coverage, is not in the public interest.

When examining the issue of a spectrum screen in a light most favorable to Applicants, and using Applicants' own desired standard of review, it is abundantly clear that the Applicants have a high hurdle to clear. Curiously, the Applicants attempted to bury from public scrutiny just how much low-band and mid-band spectrum New T-Mobile would hold post-merger, knowing full well that in over sixty percent of the country's counties the combined entity would exceed the spectrum screen. To the best of its ability, and given the limited amount of information the Applicants included in their applications, RWA has attempted to calculate how

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<sup>41</sup> The data provided by the Applicants is not in a format that could be readily used to make the determinations necessary to adequately respond in the time frame allocated by the FCC and RWA's motion for an extension of time was denied. *See Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, Order*, WT Docket No. 18-197, DA 18-870 (rel. Aug. 22, 2018). Accordingly, RWA will supplement the record with additional examples of harm at a later time.

spectrum aggregation will look nationwide were the companies to merge. The Appendix to this Petition to Deny shows a listing of every county (or county equivalent) in each U.S. jurisdiction and notes whether the county is a rural county defined as “a county with a population density of 100 persons or fewer per square mile.”<sup>42</sup> It is RWA’s hope that this data presented in this format will allow the public, State Attorneys General, consumer advocates, Congress, and the FCC to understand more clearly the huge impact the transaction will have in concentrating U.S. spectrum in the hands of one company – a company that, as discussed below, is likely to be heavily influenced by German and Japanese ownership interests.

**b. T-Mobile Has Traditionally Warehoused Spectrum in Rural Markets and T-Mobile Will Continue to Focus on Urban Markets with its 600 MHz LTE Deployments**

RWA agrees with the Applicants that legacy carriers AT&T and Verizon had a “head start” in wireless deployments with their cellular spectrum. But T-Mobile and Sprint, which came into being in the mid-1990s, have had well over 20 years to deploy 2G, 3G and 4G coverage using PCS spectrum in markets beyond just urban centers, interstates and highways. The fact remains that T-Mobile has focused its capital expenditure on urban and suburban markets and has mostly neglected America’s rural markets. Moreover, T-Mobile has neglected in any meaningful way to sell, lease, or enter into joint-venture build-outs with rural carriers to make use of its valuable 600 MHz, 700 MHz, PCS, and AWS spectrum. T-Mobile is arguing that with the 600 MHz spectrum it recently acquired during the FCC’s incentive auction, it now finally aspires to become a rural-focused carrier and deliver 5G services to forgotten corners of

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<sup>42</sup> *Competitive Bidding Order* at ¶ 104 (noting that the Commission has used a “baseline” definition of rural as a county with a population density of 100 persons or fewer per square mile). Counties in bold will exceed even T-Mobile’s self-described spectrum screen of 238.5 megahertz and counties highlighted in yellow have a population density of 100 persons or fewer per square mile, which RWA characterizes as rural.

the United States. T-Mobile may claim that it intends to change its stripes, but the last twenty years provide ample evidence of a T-Mobile buildout strategy that neglects rural markets.

**V. THE PROPOSED TRANSACTION MAY HARM NATIONAL SECURITY.**

Both Sprint and T-Mobile have significant ties to foreign carriers that are undergoing review by several U.S. government agencies to determine whether they pose a threat to national security. The Commission must consider the national security implications of the proposed transaction. In particular, RWA urges the Commission to consider the supply chain issues at play in the proposed transaction, and to do so with a heightened level of scrutiny given the passage of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (“NDAA”).<sup>43</sup> Further, the Commission should defer a final decision on the national security implications of the proposed transaction until both the Committee on Foreign Investment in U.S. Companies (“CFIUS”)<sup>44</sup> and Team Telecom<sup>45</sup> finish their reviews of the matter.

**a. The Commission Should Consider the Impact of 5G Supply Chain Issues Related to the Proposed Transaction.**

The Commission has long been involved in communications security matters – its Communications Security, Reliability and Interoperability Council (CSRIC) has been charged with providing recommendations to ensure the security and reliability of the nation’s

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<sup>43</sup> John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232.

<sup>44</sup> T-Mobile US, Inc. [Form 8-K](#) (April 30, 2018) (stating that the proposed transaction is conditioned upon, among other things, “favorable completion of review by the Committee on Foreign Investments in the United States”) (“*T-Mobile Form 8-K*”).

<sup>45</sup> [Letter](#) from Debbie Wheeler, Telecommunications Analyst, National Security Division, U.S. Department of Justice, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-197 (July 25, 2018) (a letter from Team Telecom requesting that the FCC defer action on the proposed Sprint/T-Mobile transaction due to the fact that it has not completed its review of the matter for national security, law enforcement, and public safety concerns) (“*Team Telecom Letter*”).

communications systems, including telecommunications, media, and public safety networks.<sup>46</sup>

The Commission established CSRIC V in 2016. CSRIC V specifically charged its Working Group 6 with providing “recommended capabilities to better ensure the security of the supply chain for critical communications infrastructure.”<sup>47</sup> Working Group 6 provided guidance on these supply chain security issues in March and September 2016 reports adopted by CSRIC V.<sup>48</sup>

In April 2018, the Commission released a Notice of Proposed Rulemaking in which it proposed and sought comment on a rule to prohibit, going forward, the use of universal service funds to purchase equipment or services “from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.”<sup>49</sup> The Commission stated that such action was “intended to ensure” that universal service support was not used to purchase equipment that “undermines or poses a threat to our national security.”<sup>50</sup> While the proposed rule text did not specifically refer to Huawei or ZTE, the *National Security NPRM* discussed the companies in detail<sup>51</sup> and left little doubt that, if adopted, the rule would prohibit Universal Service Fund (“USF”) recipients from using USF funds to purchase equipment or services from either company.

On August 13, 2018, the NDAA became law. The new law prohibits the use of USF funds to purchase prohibited telecommunications equipment manufactured by Huawei or ZTE.

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<sup>46</sup> See FCC, Communications Security, Reliability and Interoperability Council, <https://www.fcc.gov/aboutfcc/advisory-committees/communications-security-reliability-and-interoperability-council-0>.

<sup>47</sup> CSRIC V, [Working Group Descriptions and Leadership](#) at p. 6 (Dec. 2016).

<sup>48</sup> CSRIC V, [Secure Hardware and Software: Security-By-Design Working Group 6: Final Report](#) (March 2016) (“*March Report*”); CSRIC V, [Secure Hardware and Software: Security-By-Design Working Group 6: Final Report](#) (September 2016) (“*September Report*”).

<sup>49</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, [Notice of Proposed Rulemaking](#), WC Docket No. 18-89, FCC 18-42 (rel. Apr. 18, 2018) (“*National Security NPRM*”).

<sup>50</sup> *Id.* at ¶ 3.

<sup>51</sup> *Id.* at ¶¶ 4-6.

Section 889 of the NDAA provides that the “head of an executive agency may not obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain” covered telecommunications equipment or services – telecommunications equipment or services from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). This prohibition will take effect two years after enactment.

RWA has expressed concerns regarding both the *National Security NPRM* and the NDAA, noting that they will (1) irreparably damage existing rural wireless broadband networks; (2) inhibit future wireless broadband deployment in many rural and remote areas throughout the country; and (3) fundamentally fail to effectively protect national security.<sup>52</sup> These concerns remain. Nonetheless, Congress has deemed the use of Huawei and ZTE equipment to be of such significant concern that it is willing to prohibit the use of universal service support to purchase it. As discussed below, both Sprint and T-Mobile have significant ties to Huawei related to 5G. If the use of Huawei equipment is of such significant concern in the universal service context, it must be similarly treated as a concern in the proposed transaction. This is particularly true given the Commission’s focus on the race to 5G,<sup>53</sup> and promises made by Sprint and T-Mobile regarding their nationwide 5G network roll out, which is inextricably connected to their ties to Huawei.<sup>54</sup>

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<sup>52</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, [Reply Comments of the Rural Wireless Association, Inc.](#), WC Docket No. 18-89 (July 2, 2018).

<sup>53</sup> Federal Communications Commission Chairman Ajit Pai, [Scoring a Victory for 5G](#), FCC Blog (June 20, 2018).

<sup>54</sup> *Transaction Description* at pp. 15-50.

**i. Sprint is Majority Owned by its Japanese Parent Company, Softbank Group Corp., which has Significant Ties to Huawei Related to 5G.**

Sprint is majority owned by SoftBank Group Corp. (“SoftBank”), which indirectly holds approximately 84 percent of Sprint’s stock.<sup>55</sup> SoftBank is based in Tokyo, Japan, and provides mobile and fixed-line services in Japan through SoftBank Corp., its telecommunications subsidiary.<sup>56</sup> Softbank has important ties to Huawei related to 5G. In September 2017, SoftBank “teamed with Huawei to demonstrate potential 5G use cases for its enterprise partners, as part of a push to launch the technology in 2020.”<sup>57</sup> The demonstration included real-time UHD video transmission using ultra-high throughput, remote control of a robotic arm using ultra-low latency transmission and remote rendering via a GPU server using edge computing.<sup>58</sup> Further, China’s Huawei Technologies Co. and ZTE Corp. are both suppliers to SoftBank, according to supply-chain data compiled by Bloomberg.<sup>59</sup> Softbank’s significant ties to Chinese manufacturers of 5G technology equipment and services bear scrutiny in light of the federal government’s concerns

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<sup>55</sup> *Transaction Description* at p. 3.

<sup>56</sup> *Id.*

<sup>57</sup> [Sprint, T-Mobile Deal Under Fire for China Links](#), Mobile World Live (July 4, 2018); *see also* [SoftBank, Huawei Testing 5G for Enterprise](#), Mobile World Live (Sept. 8, 2017).

<sup>58</sup> *See* SoftBank Corp. Press Release, [SoftBank and Huawei Demonstrate 5G Use Cases](#) (Sept 8, 2017); *see also* Ken Moriyasu, [SoftBank’s Links to Huawei Questioned by US Congress](#), Nikkei Asian Review (July 4, 2018) (stating that “SoftBank has been deepening ties with Huawei in the run-up to the launch of 5G technology and the internet of things” and citing the September 2017 demonstration); *see also* Huawei Press Release, [SoftBank and Huawei’s Wireless X Labs Sign Connected Robot MoU to Explore New Cloud Robotics](#) (Nov. 24, 2017) (stating that “SoftBank and Huawei Wireless X Labs recently signed a memorandum of understanding (MoU) regarding connected robots” and that “SoftBank plans to offer Cube and Kibako (automated cube robots), while Huawei provides 5G wireless networks. Joint efforts will be conducted to implement 5G-based smart service robots by 2018”); *see also* Brian Perez, [Japan’s SoftBank to Boost Orders for 5G-ready Equipment From ZTE, Huawei](#), South China Morning Post (Dec. 19, 2016) (stating that “SoftBank Corp...subsidiary of Japanese conglomerate SoftBank Group Corp, plans to raise its orders of advanced, 5G-ready mobile equipment from Chinese suppliers ZTE and Huawei Technologies under an aggressive nationwide infrastructure roll-out next year.”).

<sup>59</sup> David McLaughlin and Melissa Mittelman, [SoftBank Chairman Risks U.S. Security Shackles With T-Mobile](#), Bloomberg.com (May 17, 2018).

about the race to 5G and trade war with China, in addition to the federal government's national security concerns.

**ii. T-Mobile is Majority Owned by its German Parent Company, Deutsche Telekom AG, which has Significant Ties to Huawei 5G Technology.**

T-Mobile is majority owned by Deutsche Telekom AG (“Deutsche Telekom”), which indirectly holds approximately 62 percent of T-Mobile’s stock.<sup>60</sup> Deutsche Telekom is based in Bonn, Germany, and provides fixed broadband and wireless services to customers in more than 50 countries around the world.<sup>61</sup> According to Huawei press releases, Deutsche Telekom and Huawei have “collaborated to achieve the world’s first 5G interoperability and development testing (‘IODT’) based on the 3GPP R15 Standard with a commercial base station.”<sup>62</sup> This work continues, with additional collaboration to complete the world’s first multi-cell high millimeter waves field tests of 5G mobile communications with 73GHz mmWave technology.<sup>63</sup> Huawei notes that “these tests build on the work started by Deutsche Telekom and Huawei in 2016 in the 5G:haus innovation lab, when the partners showed the world’s first mmWave prototype operating at 73 GHz in a lab environment.”<sup>64</sup> The significance of Deutsche Telekom’s 5G rollout utilizing Huawei equipment in possibly 50 countries around the world – countries in which the U.S. is interconnected and exchanges voice and data traffic -- cannot be overlooked when reviewing this transaction. In sum, by allowing a Japanese-influenced company and German-influenced company to merge when both have significant 5G ties to Huawei appears to run

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<sup>60</sup> *Transaction Description* at p. 2.

<sup>61</sup> *Id.*

<sup>62</sup> Huawei [Press Release](#), *Deutsche Telekom, Intel and Huawei Achieve World's First 5G NR Interoperability* (Jan. 25, 2018).

<sup>63</sup> Huawei Press Release, [Deutsche Telekom and Huawei Complete World's First 5G High mmWave Technology over-the-air Field Tests](#) (Feb. 28, 2018).

<sup>64</sup> *Id.*



counter to U.S. national security concerns and could impact the U.S.'s ability to compete effectively on the global 5G stage. In addition, the concentration of spectrum the merged entity would hold, spectrum that ultimately belongs to the American people, requires a heightened level of scrutiny.

**b. The Commission Should Defer a Final Decision on the National Security Implications of the Proposed Transaction Until Both CFIUS and Team Telecom Finish Their Review of the Matter.**

In addition to considering the supply chain issues at play in the proposed transaction with the same level of concern that it has in other contexts, the Commission should defer a final decision on the national security implications of the proposed transaction until both CFIUS and Team Telecom finish their review of the matter. RWA echoes the Department of Justice's request that the Commission defer action on the proposed merger "until such time as Team Telecom notifies the Commission of the completion of its review and based on the results of such review, requests appropriate action by the Commission."<sup>65</sup>

T-Mobile has acknowledged that "consummation of the Transaction" is "subject to the satisfaction" of certain other conditions, including "favorable completion of review by [CFIUS]."<sup>66</sup> While the CFIUS process is not public, there have been no indications that the Committee has completed its review of the instant transaction. In the race to 5G, an attempted merger between a nationwide carrier heavily influenced by Germany and a nationwide carrier heavily influenced by Japan, each of which is promoting 5G on the international stage through Huawei, a company that has fallen under scrutiny by the U.S. government for national security concerns, demands to be further investigated. RWA urges the Commission to defer a final decision on the national security implications of the proposed transaction until both CFIUS and

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<sup>65</sup> *Team Telecom Letter* at p. 1.

<sup>66</sup> *T-Mobile Form 8-K* at p. 3.

Team Telecom have concluded their review and the Commission has access to such information. Only then will the Commission be able to make a determination of whether the proposed transaction is in the public interest.

## **VI. CONCLUSION.**

T-Mobile's proposed takeover of Sprint will not serve the public interest. The transaction will harm competition and consumers. The elimination of Sprint will not only remove a facilities-based LTE carrier supporting its own well-known Sprint and Boost retail operations, but it will completely remove a nationwide LTE roaming option for small rural carriers and a wholesale network available to MVNOs, M2M and other IoT service providers. In addition, the proposed transaction will harm consumers by removing a partner critical to the provision of mobile wireless service in rural America. Further, the Commission should consider the supply chain issues at play in the proposed transaction, and to do so with a heightened level of scrutiny in light of the NDAA and the global impact of the U.S.'s 5G interests. For the foregoing reasons, RWA respectfully requests that the Commission deny the above-referenced applications outright or, in the alternative, designate them for hearing pursuant to Section 309(e) to determine whether the proposed acquisition of Sprint by T-Mobile serves the public interest.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

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## Certificate of Service

I, Linda Braboy, certify that on this day of August 27, 2018, copies of the foregoing Petition to Deny of the Rural Wireless Association, Inc. were sent via electronic mail to the following:

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