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

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

REPLY COMMENTS OF THE FREE STATE FOUNDATION[*]

These reply comments are filed in response to the Commission's request for reply comments in opposition to the transfer of control of licenses in connection with the proposed acquisition of Sprint Corporation by T-Mobile US, Inc. The focus of these reply comments is fourfold. First, real-world evidence indicates Sprint might well not be a viable wireless competitor absent the merger. Second, the proposed T-Mobile/Sprint merger does not appear likely to raise anti-competitive concerns under the Commission's spectrum screen analysis. Third, low-income consumers likely would not be harmed by the proposed merger. And fourth, the proposed merger is not likely anti-competitive on account of any effects on reseller and prepaid services.

Although some commenters have argued that the proposed T-Mobile/Sprint merger would harm competition by reducing the number of nationwide mobile wireless providers from

[*] These reply comments express the views of Randolph May, President of the Free State Foundation and Seth Cooper, Senior Fellow. We acknowledge the assistance of FSF Research Associate Michael Horney. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

four to three,[1] competitive conditions in the market and facts specific to the merger support a contrary conclusion. Sprint's recent financial history and analysts' projections reveal that a standalone Sprint would likely be less competitive and perhaps not even viable in the 5G era. For example, as market analyst Craig Moffett explained in November 2017:

> Yes, it may well be the case that the structure of the industry would have been more hospitable had the industry shrunk from four to three. But there are real-world considerations that this theoretical proposition ignores. First, robbed of the prospect of a merger—at least for now—Sprint will now have to focus on sustainability. That means less, not more, promotionality. With less promotionality will come not only less pricing pressure, but probably also fewer net adds for Sprint… and hence more for everyone else.[2]

Sprint's $32 billion debt is substantial relative to its capitalization, assets, and cash flow.[3] It is conceded that Sprint "is the most highly leveraged company in the S&P 500."[4] Analysts point to Sprint's debt-to-equity ratios being higher than the rest of the industry.[5] Sprint appears to have lower profitability ratios and lower returns on investment compared to the rest of the industry.[6] A substantial portion of Sprint's debt will come due over the next few years.[7]

Although Sprint announced plans for capital expenditures of $5 to $6 billion in 2018, Mr. Moffett reacted: "To state the obvious, this is money that Sprint doesn't have."[8] Realistically, the odds are that Sprint lacks the financial resources for nationwide 5G network deployment.

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[1] *See, e.g.*, Petition to Deny of DISH Network Corporation, at 59-68; Petition to Deny of Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge & Writers Guild of America, West, Inc., at 1-6.
[2] Colin Gibbs, "Sprint faces 'treacherous' path in the wake of collapsed T-Mobile deal: MoffettNathanson, *FierceWireless* (November 27, 2017), at: https://www.fiercewireless.com/wireless/sprint-faces-treacherous-path-wake-collapsed-t-mobile-deal-moffettnathanson.
[3] *See* T-Mobile and Sprint, Public Interest Statement, WT Docket No. 18-197, at 3. *See also* Amanda McNally, "Sprint's Mountain of Debt," *Seeking Alpha* (April 10, 2017) ("On their balance sheet for 2016, [Sprint] reported approximately $30 billion in long-term debt and only $19 billion of equity").
[4] T-Mobile and Sprint, Public Interest Statement, WT Docket No. 18-197, at 97.
[5] *See, e.g.*, Reuters, "Sprint Corp. (S.N.) – Financial Highlights," at: https://www.reuters.com/finance/stocks/financial-highlights/S.N (last checked September 14, 2018). *See also* Amanda McNally, "Sprint's Mountain of Debt."
[6] Reuters, "Sprint Corp. (S.N.) – Financial Highlights."
[7] *See* Gibbs, "Sprint faces 'treacherous' path."
[8] Gibbs, "Sprint faces 'treacherous' path."

According to one capital adviser firm, Sprint's "limited free cash flows and low amount of capital spending don't support a company in a strong financial picture to compete in the shift to 5G."[9]

Evidence indicates Sprint's role as a market disruptor has been overstated. For instance: "Sprint's share of mobile subscribers steadily declined from 23.0 percent in Q3 2016 to 12.0 percent in Q3 2017."[10] Also, Sprint's "[s]ervice revenues for the year ended March 31, 2018 decreased $464 million, or 23%, compared to the year ended March 31, 2017."[11] And its "[s]ervice revenues for the year ended March 31, 2017 decreased $339 million, or 14%, compared to the year ended March 31, 2016."[12]

The Commission should reject any artificial rule demanding four nationwide mobile wireless providers. Post-merger, consumer choices will still include three nationwide mobile service providers, plus regional providers, and hybrid Wi-Fi/cellular service providers Charter Communications and Comcast. "New T-Mobile" would likely be a stronger competitor. And the proposed merger would provide New T-Mobile an accelerated pathway for nationwide 5G network coverage that neither provider would have by themselves.

Certain commenters have claimed the proposed merger would trigger the Commission's spectrum screen in certain geographic markets.[13] But the spectrum screen is only an analytical tool and not a "hard cap" on spectrum holdings. Even if New T-Mobile would hold over one-third of the suitable and available spectrum in one or more local markets, market conditions identified above and facts specific to the proposed merger weigh against findings of potential

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[9] Stone Fox Capital, "Sprint: Not Good Enough," *Seeking Alpha* (February 4, 2018), at: https://seekingalpha.com/article/4142948-sprint-good-enough.
[10] T-Mobile and Sprint, Public Interest Statement, Appendix G: Declaration of David S. Evans, Ph.D., at 125.
[11] Sprint Corporation, Annual Report (Form 10-K), at 47 (May 24, 2018), at: http://d18rn0p25nwr6d.cloudfront.net/CIK-0000101830/f87fb089-cbf4-415a-accf-2122a5b0323f.pdf.
[12] Sprint, Form 10-K, at 47.
[13] *See, e.g.*, Petition to Deny of DISH Network Corporation, at 68-74.

harm. For starters, T-Mobile and Sprint rank a distant third and fourth in the mobile wireless market. Plus, regional providers, recent entrants, and potential entrants provide competitive counterbalances. But even if the Commission finds the screen is triggered in a specific area, and a factual marketplace analysis validates any competitive concerns, the agency ought to apply a targeted condition to address such concerns rather than block the proposed merger.

Some commenters speculate Sprint would exit the Lifeline program post-merger, giving consumers one less facilities-based choice for Lifeline service.[14] Of course, the merging parties have stated: "New T-Mobile will also continue the Lifeline services currently provided by T-Mobile and Sprint."[15] Moreover, the Lifeline-related arguments made by commenters are premised on the Commission's proposal to restrict program eligibility to facilities-based carriers. In this sense, it is the Commission's proposal to eliminate reseller eligibility for Lifeline that poses the most direct harm to low-income consumers – a high percentage of which presently receive Lifeline service from resellers. As explained in comments submitted to the Commission by FSF President Randolph May:

> The reality is that, today, almost 70% of Lifeline subscribers are served by resellers. As the Commission has recognized, many of these are minorities who rely primarily or exclusively on wireless services, including wireless broadband services, for access to communications. There is no dispute that wireless resellers, like TracFone, have focused their marketing on reaching Lifeline-eligible low-income consumers, and, this, in turn, has increased awareness of the program. In any event, the reality today is that facilities-based providers currently are serving only a minority of Lifeline subscribers, so that discontinuing support for resellers would be very disruptive to the program.[16]

[14] *See, e.g.*, Petition to Deny of Common Cause, *et al*., at 29.
[15] T-Mobile and Sprint, Public Interest Statement, Docket No. 18-197, at 51, n.177.
[16] Comments of Randolph J. May, President, the Free State Foundation, Bridging the Digital Divide for Low Income Consumers, *et al*., WC Docket Nos. 17-287, 11-42, and 09-197 (February 21, 2018), at 5; at http://www.freestatefoundation.org/images/FCC_Lifeline_Initial_Comments_-_February_21,_2018.pdf. While Mr. May opposed restricting Lifeline support to facilities-based carriers in light of the unique circumstances relating to present carrier participation in the program and Lifeline's mission, he emphasized the Commission's efforts to root out fraud and abuse should continue unabated.

To the extent there is any legitimate concern about the impact of the proposed merger on Lifeline services – and we do not necessarily agree there is – the Commission's proposal to restrict resellers' eligibility for Lifeline exacerbates such concern. The Commission can alleviate this concern by abandoning its proposal, which has received widespread opposition, or at least deferring consideration of the proposal for a few years.

Commenters have claimed that the merger could harm the "markets" for resellers and prepaid services by prompting wholesale and retail price increases.[17] But as pointed out in the Free State Foundation's initial comments in this proceeding, Commission precedents define "mobile telephony/broadband services" as the relevant product market for analysis.[18] This product market includes differentiated services, devices, and pricing options offered by rival service providers. Such differentiation is a vital form of competition that is likely to hold future price increases in check. Moreover, Commission precedents expressly reject narrower product market definitions for reseller and prepaid services. The Commission's analysis therefore should consider the proposed merger's effects on the market as a whole, and not myopically focus on any one or two specific types of offerings or pricing options.

Furthermore, *Wireless Competition Reports* and other outlets have observed pricing declines according to metrics such as ARPU, CPI, and per-megabit costs.[19] Recently, the

[17] *See, e.g.*, Petition to Deny of Common Cause, et al., at 26-29; Petition to Deny of DISH Network Corporation, at 53-57.

[18] *See* Comments of the Free State Foundation, at 18-21, and authorities cited therein, at: https://www.fcc.gov/ecfs/filing/10827911127134.

[19] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 17-69, *Twentieth Report* (rel. September 27, 2017), at ¶¶ 58-59 (citing data that Average Revenue per User (ARPU) fell 7%, from $44.65 to $41.50 in 2016, and that between 2012 and 2016, the annual Wireless Telephone Services consumer price index (CPI) decreased 8% while the overall CPI rose 4.5%). CTIA, "The State of Wireless 2018" (July 2018) (estimating year-end 2017 ARPU dropped to $38.66), at: https://api.ctia.org/wp-content/uploads/2018/07/CTIA_State-of-Wireless-2018_0710.pdf.

wireless market has been the ground for "price wars."[20] Price reductions or steep pricing breaks for certain pricing options and service plans should not always be expected to continue unabated into the foreseeable future.[21] Amidst this backdrop of price reductions, service provider experimentation with unlimited data and "free data" plans, as well as network upgrades to 4G LTE and 5G networks, the possibility that prices for particular service offerings or pricing plans might increase post-merger does not necessarily mean that the merger is anti-competitive. And future 5G data capacity increases likely will put downward pressure on per-megabit prices.

Additionally, and for reasons already explained, estimates about future price increases for reseller or prepaid services presume too much in treating Sprint as a viable standalone future competing wholesaler and prepaid services provider. What is important is that competition checks price levels, post merger. Equally important is the likelihood that rapid 5G deployment and other merger benefits outweigh any potential harm from overall price increases.

Despite the claims of commenters who oppose the merger, there is strong evidence that the proposed T-Mobile/Sprint merger, if approved, would benefit consumers and enterprises by enabling faster mobile broadband speeds, higher data capacity, and reduced per-megabit prices. New T-Mobile will be able to rapidly deploy a nationwide 5G network and provide stronger competition against the market's leaders. In all, the proposed merger appears to satisfy the public interest standard.

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[20] *See, e.g.*, Adam Levy, "The Cost of Wireless Service is Plummeting as Price War Rages On," *The Motley Fool* (June 11, 2017), at https://www.fool.com/investing/2017/06/11/the-cost-of-wireless-service-is-plummeting-as-pric.aspx; Trefis Team, "U.S. Wireless Price Wars Having a Big Impact On Consumers," *Forbes* (June 27, 2017), at: https://www.forbes.com/sites/greatspeculations/2017/06/27/u-s-wireless-price-wars-having-a-big-impact-on-consumers/#285f988060ca.

[21] *See, e.g.*, Jayson Aycock, "A pause in wireless wars, as prices make rare tick up," *Seeking Alpha* (July 13, 2018), at: https://seekingalpha.com/news/3370050-pause-wireless-wars-prices-make-rare-tick.

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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