



cnorthrop@telecomlawpros.com
202.789.3113

November 8, 2018

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Communication
In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations – WT Docket No. 18-197

Dear Ms. Dortch:

On November 6, 2018, Eric Graham (SVP, Strategic Relations), Benjamin Moncrief (VP, Government Relations) and Charles McBride (General Counsel), all of Cellular South, Inc. d/b/a C Spire (“C Spire”), and Jessica Gyllstrom and Carl Northrop of Telecommunications Law Professionals PLLC, met with Kagan Despain, legal intern, and Erin McGrath, Wireless, Public Safety and International Legal Advisor to Commissioner O’Rielly; Umair Javeed, Wireless and International Legal Advisor to Commissioner Rosenworcel; the FCC Transaction Team (see Attachment A); and Will Adams, Legal Advisor to Commissioner Carr. During the meetings, the parties discussed the proposed merger transaction (the “Proposed Transaction”) between T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”), and C Spire’s interest and filings in the above referenced proceeding.

The presentations were consistent with positions taken in the C Spire Petition filed August 27, 2018 and the C Spire Reply filed October 31, 2018.¹ During the meetings, C Spire made, and expounds here, on several points:

- By way of introduction, C Spire indicated that it is the nation’s largest privately-held facilities-based wireless operator. C Spire offers state-of-the art mobile broadband services to consumers in Mississippi, southern Alabama, northwestern Florida and western Tennessee. Much of C Spire’s home service territory is rural and many of its subscribers live and work in rural areas. C Spire operates a diverse business in order to meet the ever-changing needs of the marketplace. In addition to providing wireless services, C Spire Fiber offers Internet, home phone and media

¹ Petition to Condition, or in the Alternative, Deny Any Grant of the Sprint/T-Mobile Application, Cellular South, Inc., d/b/a C Spire, WT Docket No. 18-197 (filed Aug. 27, 2018) (“C Spire Petition”), and Reply of Cellular South, Inc. d/b/a C Spire to the Joint Opposition of T-Mobile US, Inc. and Sprint Corp., WT Docket No. 18-197 (filed Oct. 31, 2018) (“Reply”).



services and C Spire Business offers advanced connectivity, cloud, software, hardware, communications, professional services, cybersecurity, business continuity, and technology services.

- The public interest will be best served by a denial of the Proposed Transaction. In this regard, C Spire finds the economic analyses offered by DISH and its expert economists to be compelling.² The post-merger structure of the wireless market will adversely affect competition. Three dominant carriers of roughly equal size will have the ability and the incentive to coordinate prices in both the retail and wholesale markets, particularly because the wireless market is mature and the demand for wireless services is inelastic. T-Mobile has admitted that the primary goal of New T-Mobile will be to maximize its profits and shareholder value. Economic theory compels the conclusion that it can best accomplish this goal by engaging in parallel conduct as to retail and wholesale pricing rather than by competing aggressively by lowering its prices.
- If for any reason the Commission is inclined to grant the applications, the C Spire Petition seeks alternative relief -- the imposition of explicit conditions to protect the ability of competitive carriers to receive fair and reasonable wholesale roaming and MVNO agreements from the merged entity (“New T-Mobile”). It is critically important to C Spire for its customers to have access to wireless service nationwide. Unlike some competitive carriers, C Spire’s wireless business is a net payor of roaming charges to other carriers because its substantial customer base travels extensively outside of the C Spire footprint.³ Consequently, C Spire favors roaming agreements that promote – not penalize – consumers for accessing the networks of roaming partners. C Spire has roaming agreements with some of the nationwide carriers and has had discussions with all of the nationwide carriers, but has found Sprint to be, far and away, the most reasonable carrier with which to deal on wholesale arrangements.
- C Spire is very concerned about the long-term impact of allowing T-Mobile to remove Sprint from the wholesale market. If the Proposed Transaction is approved, the elimination of Sprint from the marketplace as a prospective nationwide roaming partner will result in an undeniable increase in roaming rates due to decreased competition. Moreover, New T-Mobile will be in a position to deny competitive carriers an essential business input. New T-Mobile also will have little if any incentive to negotiate fair roaming agreements with regional carriers. C Spire understands that the Commission is interested in protecting competition, not competitors. C Spire is willing and able to compete against New T-Mobile as long as it is able to compete on a level playing field. However, a level playing field will not exist if the Commission allows the merged company to deny C Spire’s customers a fair ability to roam.
- The Applicants concede the importance and competitive benefits of promoting roaming and MVNO agreements. Nonetheless, T-Mobile’s conduct, both before and after the Proposed Transaction was announced, belies the claim that New T-Mobile will offer competitive carriers long-term roaming access and MVNO arrangements on favorable, industry-leading terms. A

² See DISH Reply to Joint Comments, WT Docket No. 18-197 (filed Oct. 31, 2018).

³ In response to a question posed by the Transaction Staff on which C Spire promised to report back, although there is seasonality to roaming, there are multiple months each year when over 60 % of C Spire’s customers incur off-network roaming charges.



broad cross-section of competitive carriers has indicated that Sprint has been the market leader in terms of working cooperatively with competitive carriers to fashion sustainable wholesale arrangements. In contrast, T-Mobile has been largely uncooperative and non-responsive, and its intransigence has increased of late. For example, despite having announced a willingness to meet individually with competitive carriers since the announcement of the Proposed Transaction to discuss inter-carrier arrangements, T-Mobile has refused to meet with C Spire and, on information and belief, other carriers who share the common trait of having commented on the Proposed Transaction. By its conduct, T-Mobile is signaling its intention to use its control of a “must-have” network to deny competitive carriers wholesale access on reasonable terms.

- The conditions that C Spire has proposed in the event of a grant are transaction-specific, narrowly-tailored and consistent both with Commission precedent and positions previously advocated by T-Mobile when it was seeking to protect its ability to secure reasonable roaming arrangements from AT&T and Verizon. In stark contrast, the representations made by the Applicants regarding the steps New T-Mobile is willing to take to protect the wholesale market are vague and unenforceable. C Spire is seeking meaningful, concrete commitments that will prevent New T-Mobile from harming competition by limiting access to critical inputs needed by all regional and rural carriers to provide competitive services to consumers, including allowing for access to nationwide service on reasonable terms. If the Proposed Transaction is approved, the Commission must expressly adopt specific quantifiable conditions, rather than accept the Applicants’ indefinite representations. This is particularly true given the inconsistent and shifting positions the Applicants have taken depending on the venue and audience. The unwillingness of T-Mobile to even meet with C Spire to discuss possible wholesale arrangements provides further significant evidence that the purported “assurances” provided by the Applicants cannot be relied upon to protect the public interest given the numerous anti-competitive incentives detailed by C Spire and others resulting from the Proposed Transaction. The Commission cannot trust New T-Mobile to do what is best for consumers if doing so is contrary to its best financial interests.
- C Spire’s potential loss of access to the Sprint CDMA network without a definite and sufficient transitional period will harm wireless consumers who have CDMA-only handsets for voice services. This is a major concern. Prior to the Proposed Transaction, C Spire was in the process of migrating customers with CDMA-only handsets to more advanced technologies over a glide path that coincided with Sprint’s plans and timetable concerning the evolution of its nationwide CDMA network. But, as a direct result of the Proposed Transaction, New T-Mobile is planning to dismantle the legacy Sprint CDMA network on an accelerated timetable. The Applicants have told the Commission that the decommissioning of CDMA sites is “expected” to commence in January 2021 which would put C Spire and other CDMA roaming partners of Sprint in an untenable position. The claim by the Applicant’s that New T-Mobile will honor Sprint roaming agreements is of little or no value if Sprint dismantles the technically compatible network on which customers need to roam.
- The concern is heightened by representations T-Mobile has made to the investment community in which it has touted plans to dismantle the CDMA network “as soon as possible” using experience it gained from a similar MetroPCS network transition that it accomplished “ahead of schedule.” This means that the C Spire customers and customers of other carriers who rely upon the CDMA



network face the prospect of losing nationwide CDMA roaming at an even earlier date, and one that is completely indeterminate. This makes it impossible for competitive carriers to offer their customers the same orderly transition that the Applicants have assured the Commission they will provide to the Sprint CDMA-only customers. This identified harm is transaction specific -- it would not occur but for the Proposed Transaction.

- C Spire is not asking the Commission to cause New T-Mobile to maintain the Sprint CDMA network indefinitely. Rather, it has picked a reasonable transition period (5 years) that will enable C Spire to complete the ongoing migration of its CDMA-only customers to more advanced technologies according to the reasonable expectations it had based upon business discussions with Sprint. Nor does C Spire seek to forestall the 5G transition that is in process. C Spire is evolving to 5G, has conducted numerous 5G tests⁴, and also has tested certain 5G services in unlicensed bands. Thus, C Spire supports the Commission's efforts to accelerate the proliferation of 5G services.
- Protecting the legitimate interests of competitive carriers to receive wholesale services on fair terms will promote service to rural areas. C Spire finds the Applicants' lofty claims about the proposed extent of their rural buildout to be illusory. T-Mobile has ample spectrum today to initiate facilities-based service in the C Spire markets but has failed to do so. There is nothing about the Proposed Transaction that changes the challenging economics of doing a green field build in rural areas such as the C Spire markets that already are well-served by three established carriers. The real challenge in offering 5G service in less populated markets is securing reliable, affordable backhaul and there is nothing about the Proposed Transaction that solves or addresses this problem. Since New T-Mobile has made no binding commitment to build out any particular rural areas in any particular timeframe, the Commission should not base its decision on the alleged benefits of improved service to rural areas.
- Lastly, C Spire was asked by the Transaction Team to expound on its claim that the Proposed Transaction would result in the loss of not one but two "mavericks." C Spire explained that Sprint is the maverick in the wholesale market since it is the low-cost provider of wholesale services and the company most willing to explore creative arrangements that were beneficial to competitive carriers. Since T-Mobile does not share these attributes, the loss of Sprint would have an immediate negative effect. Moreover, T-Mobile has been the maverick when it comes to taking aim at AT&T and Verizon with its "Uncarrier" strategy. But the Proposed Transaction portends putting New T-Mobile on an equal footing with AT&T and Verizon; T-Mobile no longer would be the underdog. The elimination of low-cost competitor Sprint would remove the downward pressure on wholesale prices provided by Sprint's presence in the market. And, the downward pressure on retail prices previously provided by T-Mobile's presence in the market when it was acting as an underdog would be eliminated. The net effect would be to create a third dominant carrier with the economic incentive to increase its profitability and shareholder value by coordinating prices, not lowering them. This is of particular concern since the former monopolist

⁴ See *C Spire tests leading edge 5G technology for first time in Mississippi today*, CISION PRNEWSWIRE, Feb. 20, 2018, <https://www.prnewswire.com/news-releases/c-spire-tests-leading-edge-5g-technology-for-first-time-in-mississippi-today-300601222.html>.



Ms. Marlene H. Dortch
November 8, 2018
Page 5

Deutsche Telekom (which is approximately 32% controlled by the German government) will control almost 70% of New T-Mobile if this transaction is approved.

Kindly refer any questions in connection with this matter to the undersigned.

Sincerely,

Carl W. Northrop
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

Attachment

cc (via email): Erin McGrath
Umair Javeed
FCC Transaction Team (Attachment A)
Will Adams
Linda Ray
Kate Matraves
Jim Bird
David Krech

Attachment A

David Lawrence, Task Force
Charles Mathias, Task Force/WTB
Kathy Harris, WTB
Kirk Arner, WTB
Chris Smeenk, WTB
Monica DeLong, WTB
Stacy Ferraro, WTB
Jonathan Campbell, WTB
Dana Shaffer, WTB
Ronald Repasi, OET
Aleks Yankelevich, OSP
William Dever, OGC
Max Staloff, OGC
Tom Tran, WTB (via teleconference)