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December 3, 2018

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 29, 2018, Eric Graham (SVP, Strategic Relations), Ben 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, conferred with Rachael Bender, Wireless and International Legal Advisor to Chairman Ajit Pai.<sup>1</sup> During the meeting, 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 presentation was consistent with positions taken in the C Spire Petition filed August 27, 2018, the C Spire Reply filed October 31, 2018 and the C Spire *Ex Parte* submission filed November 8, 2018 in the above-referenced docketed proceeding.<sup>2</sup> In particular, C Spire emphasized, and expounds here on, the following points:

- C Spire, the nation’s largest privately-held facilities-based wireless operator, is a net payor of roaming revenue to the nationwide carriers. As a result, it favors robust competition in the wholesale market which serves to drive prices down for the benefit of consumers. The public interest will be best served by a denial of the Proposed Transaction which, if allowed, will remove Sprint, the acknowledged low cost provider of wholesale services, from the market.

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<sup>1</sup> Mr. Graham, Mr. Moncrief and Mr. McBride participated via teleconference.

<sup>2</sup> 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”); 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); Letter of Carl W. Northrop, Counsel to C Spire, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 (filed Nov. 8, 2018) (“C Spire Nov. 8 *Ex Parte*”).



- Despite T-Mobile’s misappropriated statements to the contrary in a November 19 *Ex Parte* filing,<sup>3</sup> C Spire has not made false or misleading statements to the Commission. Rather, as has been its custom during this proceeding, T-Mobile once again twisted the truth. Indeed, the T-Mobile *ex parte* actually confirms a number of C Spire’s claims: (1) T-Mobile has refused to meet with C Spire since C Spire’s Petition was filed in opposition to the transaction; (2) T-Mobile refuses to agree to reasonable, enforceable roaming and MVNO commitments; and (3) T-Mobile refuses to commit to a CDMA transition that will not harm rural customers and the public interest. T-Mobile’s *ex parte* is actually even more evidence of why this transaction should be denied. American consumers – especially rural Americans – cannot afford to have the transaction approved on T-Mobile’s hollow promise of “Trust Us.”
- C Spire’s serious concerns about the negative competitive impacts of the Proposed Transaction have been exacerbated by the refusal of T-Mobile to meet with C Spire in the period since the Petition was filed. In the T-Mobile Nov. 19 *Ex Parte*, T-Mobile confirmed that it ceased discussions with C Spire when C Spire “chose to file a petition to deny.”<sup>4</sup> T-Mobile seeks to justify its refusal to negotiate with C Spire because any post-petition agreement between T-Mobile and C Spire that resulted in the dismissal of the Petition would require FCC approval under Section 1.935 of the FCC rules. But, in truth, Section 1.935 does not prevent T-Mobile and C Spire from negotiating agreements or settling their differences.<sup>5</sup> The Commission routinely approves agreements between a petitioner and an applicant where the resulting agreement facilitates beneficial services to consumers. This is particularly true when the agreement addresses and thus renders moot the issues raised in a petition.<sup>6</sup> Consequently, T-Mobile’s reliance upon Section 1.935 is a mere pretense to justify freezing out and punishing C Spire for expressing valid concerns related to the Proposed Transaction’s impact on the wholesale marketplace. On information and belief, T-Mobile also has refused to negotiate wholesale agreements with other petitioners as well. This course of conduct belies the empty claims the Applicants make that the merged entity (“New T-Mobile”) will be a friend to rural roaming partners. Rather, it further confirms that the conditions proposed by C Spire are justified.
- T-Mobile’s Nov. 19 *Ex Parte* continues the false narrative that it has been a cooperative roaming partner. T-Mobile alleges that T-Mobile and C Spire have a “successful existing roaming agreement,” that C Spire is “among T-Mobile’s top five roaming traffic customers,” and that this is “confirming evidence that T-Mobile offers fair and competitive rates.”<sup>7</sup> The truth is that (1) T-Mobile persistently has refused to enter into meaningful one-on-one roaming negotiations with C Spire; (2) C Spire is only able to roam on T-Mobile by virtue of the generic offering that T-Mobile makes through the CCA roaming hub; (3) the rate T-Mobile offers for data roaming is orders of magnitude higher than the rate C Spire has negotiated with Sprint; and, (4) consequently, C Spire only roams on T-Mobile in areas where the Sprint network is unavailable. Indeed, C Spire only

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<sup>3</sup> Letter of R. Michael Senkowski, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 (filed Nov. 19, 2018) (“T-Mobile Nov. 19 *Ex Parte*”).

<sup>4</sup> T-Mobile Nov. 19 *Ex Parte* at note 3.

<sup>5</sup> 47 C.F.R. Section 1.935.

<sup>6</sup> See, e.g., *Wireless Telecommunications Bureau Approves Settlement Agreement and Dismissal of Pleadings*, 32 FCC Rcd. 6732 (2017).

<sup>7</sup> T-Mobile Nov. 19 *Ex Parte* at 1-2.



roams on T-Mobile because of the lack of a reasonable alternative in the respective geographic area, not because the T-Mobile offering is fair and competitive.

- If, as T-Mobile claims, C Spire is among T-Mobile's top five roaming partners, this only serves to confirm that the number of competitive choices for wholesale services is alarmingly small. C Spire's roaming data shows that the amount of roaming traffic it sends to Sprint is orders of magnitude higher than the volume sent to T-Mobile. The truth is that C Spire has a "successful existing roaming arrangement" with Sprint, not T-Mobile, and T-Mobile now is seeking to remove Sprint from the wholesale market.
- If the Commission nonetheless elects to approve the Proposed Transaction, the Commission must, at the very least, impose explicit conditions to protect the ability of competitive carriers to receive fair and reasonable wholesale roaming and MVNO agreements from New T-Mobile, and better ensure that these carriers may compete on an equal playing field with the large nationwide providers. The conditions that C Spire seeks are narrowly tailored, transaction-specific and consistent with relief T-Mobile itself sought when it had concerns that the acquisition of smaller wireless carriers by a nationwide carrier would harm competition in the wholesale market. The Commission cannot accept the vague, unenforceable claims of the Applicants about the accommodations they will make to competitive carriers. As it has done in the past, the Commission must impose explicit concrete conditions on any grant that competitive carriers are entitled to invoke and enforce.
- 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 Applicants' that New T-Mobile will honor Sprint roaming agreements is of less value if Sprint dismantles a technically compatible network on which C Spire 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 is particularly harmful to rural consumers, who make up the overwhelming majority of competitive carriers' subscribers and who likely do not have comparably easy access to the VoLTE devices that could survive a CDMA shutdown.



This identified harm is transaction specific, as 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 and other competitive carriers 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 tests<sup>8</sup>, 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.
- Contrary to the claim in the T-Mobile Nov. 19 *Ex Parte*, C Spire does not misstate at all the Applicants' plans for transitioning customers from the CDMA network. The C Spire Petition, the C Spire Reply and the C Spire Nov. 8 *Ex Parte* set forth the precise language that the Applicants have used in their FCC filings and in other public forums with respect to the plan to decommission the CDMA network. The result is that competitive carriers such as C Spire lack the certainty they need to provide a smooth transition for their customers.
- C Spire noted that "New T-Mobile," the moniker that the Applicants have given to the merged Sprint/T-Mobile entity, already has begun to be prominently identified in the trade press as the "sponsor" of various articles. *See, e.g.*, Politico's Morning Tech, November 30, 2018 "presented by New T-Mobile." This is a presumptuous effort to imbue the Proposed Transaction with an air of inevitability, while effectively treating the important FCC public interest review process as a mere rubber stamp. C Spire's Petition expressed the concern that the Proposed Transaction, if approved, would result in New T-Mobile having the same sense of entitlement that led Verizon and AT&T to disadvantage competitive carriers in the wholesale market. T-Mobile's sense of entitlement appears to have blossomed already.
- Lastly, C Spire expressed serious concern that, if the Proposed Transaction is approved, the former monopolist Deutsche Telekom (which is approximately 32% controlled by the German government) will control almost 70% of New T-Mobile.

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<sup>8</sup> *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>.



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

Sincerely,

Carl W. Northrop  
TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc (via email): Rachael Bender  
Kathy Harris  
Linda Ray  
Kate Matraves  
Jim Bird