

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

In the Matter of)	
)	
Applications of T-Mobile US, Inc., and Sprint Corporation)	WT Docket No. 18-197
)	
For Consent to Transfer Control of Licenses and Authorizations)	
)	
Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time)	ULS File Nos. 0008741236, 0008741420 0008741603, 0008741789 et al. 0008741789 et al.

**OPPOSITION OF
T-MOBILE US, INC. AND SPRINT CORPORATION
TO UNION WIRELESS AND PIONEER PETITION FOR RECONSIDERATION**

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Pursuant to Section 1.106 of the rules of the Federal Communications Commission (“Commission”), T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint” and, collectively with T-Mobile, “Applicants”) submit this Opposition to the Petition for Reconsideration (“Petition”) filed by Union Telephone Company d/b/a Union Wireless (“Union Wireless”) and Cellular Network Partnership d/b/a Pioneer (“Pioneer”) (collectively, “Petitioners”) in the above-captioned proceeding.¹

Petitioners contend that the Commission should reconsider and reverse certain aspects of its Order approving the Applicants’ merger.² Specifically, Petitioners ask the Commission to (1)

¹ See Petition for Reconsideration of Union Telephone Company, dba Union Wireless and Cellular Network Partnership, an Oklahoma Limited Partnership, dba Pioneer, WT Docket No. 18-197 (filed Dec. 5, 2019) (“Petition”).

² See Applications of T-Mobile US, Inc. and Sprint Corporation, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, WT Docket No. 18-197, FCC 19-103 (Nov. 5, 2019) (“Order”).

adopt a different definition of “rural areas;”³ and (2) impose special roaming-related conditions.⁴ As demonstrated below, the Commission should dismiss or deny the Petition because it fails to meet the Commission’s procedural requirements and the Petitioners fail to demonstrate that granting the Petition would serve the public interest.

I. THE PETITION FOR RECONSIDERATION IS PROCEDURALLY DEFECTIVE AND SHOULD BE DISMISSED

The Commission should dismiss the Petition on the grounds that it is procedurally defective. Section 1.106 of the Commission’s rules makes clear that, in non-rulemaking proceedings (such as this), reconsideration is to be granted only sparingly and in carefully delineated situations.⁵ A petition for reconsideration “may be granted only under the following circumstances:”

- “[t]he petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or”⁶
- “[t]he petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;”⁷ or
- “[t]he Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.”⁸

³ See Petition at 14.

⁴ See *id.* at 23.

⁵ See 47 C.F.R. § 1.106(b)(2), (c).

⁶ See *id.* §§ 1.106(b)(2)(i), 1.106(c)(i). Note that a petition for reconsideration of a Commission action in a non-rulemaking proceeding, such as this, is governed by section 1.106(c) of the Commission’s rules, which cross-references the criteria set forth in section 1.106(b)(2) for determining when the requested relief may be granted.

⁷ See *id.* §§ 1.106(b)(2)(ii), 1.106(c)(i).

⁸ See *id.* § 1.106(c)(2).

Petitioners attempt to rely on these delineated circumstances but fall woefully short of making their case.⁹ Petitioners present no new or previously unknown facts or arguments and make no showing that the public interest requires reconsideration.

Petitioners argue that they did not have the opportunity to present their arguments in a timely fashion during the Commission’s nearly 17-month review of the merger.¹⁰ To support their surprising argument, Petitioners note that, although the record was open and many parties continued to file in the proceeding, the Commission did not issue a separate *Public Notice* specifically inviting comment on the Applicants’ May 20, 2019 *ex parte* filing.¹¹ In the May 20 filing, the Applicants, *inter alia*, bolstered their representation that they would build a nationwide 5G network, including in rural areas, by making it a binding commitment.¹² Petitioners need not have waited for a special invitation to comment on the May 20 filing. The record was open and the Commission’s rules expressly provide that participants in a permit-but-disclose proceeding, such as this, may supplement the record by providing oral and written *ex parte* presentations.¹³ Indeed, as Petitioners concede, a number of parties did in fact file *ex parte* presentations that specifically addressed the Applicants’ May 20 filing.¹⁴ Petitioners could have presented their arguments as well, but did not.

⁹ *See, e.g.*, Petition at 1 (asserting that “the facts and arguments upon which the Petitioners rely could not have been advanced during earlier opportunities for comment”).

¹⁰ *See id.* at 4.

¹¹ *See id.*

¹² *See* Letter from Nancy Victory, Counsel to T-Mobile, and Regina Keeney, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 at 2 (filed May 20, 2019) (“T-Mobile/Sprint May 20, 2019 Commitments Letter”).

¹³ *See* 47 C.F.R. § 1.1206(a).

¹⁴ Petition at 4 n.12.

Moreover, the Applicants’ plans to provide robust 5G coverage to rural areas were repeatedly raised in the record from the proceeding’s inception. The Applicants’ Public Interest Statement described New T-Mobile’s plans to offer expanded and improved wireless coverage to rural areas, including “increasing outdoor wireless coverage to reach ... 95.8 percent of the estimated 62 million rural residents” and “delivering mobile broadband service with download speeds of at least 10 Mbps or greater to ... 74 percent of rural residents.”¹⁵ The Applicants’ Joint Opposition elaborated on how the merged company’s combination of 600 MHz and 2.5 GHz spectrum “will allow for deeper and better broadband services to rural areas than either company could provide on its own.”¹⁶ In addition, the Applicants submitted a detailed network build plan into the record.¹⁷ Petitioners present no valid explanation to support their claim that they were unable to raise the arguments they now belatedly wish to assert.

Nor have Petitioners shown that reconsideration of their roaming arguments “is required in the public interest.”¹⁸ During the course of the proceeding, Petitioners, along with various other commenters, asked for roaming conditions.¹⁹ The Commission specifically rejected those

¹⁵ See *Applications of T-Mobile USA, Inc., and Sprint Corporation for Consent To Transfer Control of Licenses and Authorizations*, ULS File No. 0008224209 (Lead Application) (filed June 18, 2018, amended July 5, 2018), Exh.1—Description of the Transaction, Public Interest Statement, and Related Demonstrations at 66 (“PIS”).

¹⁶ See *Joint Opposition of T-Mobile USA, Inc., and Sprint Corporation* at 96 (filed Sept. 17, 2018) (“Joint Opposition”).

¹⁷ See, e.g., Letter from Nancy Victory, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 (filed Aug. 1, 2018).

¹⁸ Petitioners claim that the Order fails to take sufficient account of issues that would be faced by small rural carriers in the absence of roaming conditions. They claim further that the Commission’s consideration of the facts and arguments relied on in their Petition is required in the public interest. See *Petition* at 5.

¹⁹ See, e.g., *Altice USA, Inc. Petition To Condition or Deny* at 19 (filed Aug. 27, 2018); *Union Telephone Company, Cellular Network Partnership, an Oklahoma Limited Partnership, Nex-*

requests.²⁰ Nevertheless, Petitioners contend that reconsideration is warranted because “taking the actions advocated by Petitioners is necessary to ensure that the rural 5G network conditions are effective” to help “clos[e] the digital divide” and promote Universal Service policies.²¹ The Commission, however, already concluded that the transaction—subject to the conditions imposed—will accomplish those goals.²²

II. IN ANY EVENT, THE PETITION FOR RECONSIDERATION LACKS MERIT

If, despite the fatal procedural defects of the Petition, the Commission nevertheless chooses to address the merits of Petitioners’ request for reconsideration, the Petition should be denied.

First, Petitioners’ argument regarding the definition of “rural area” wholly lacks merit. Petitioners urge the Commission on reconsideration to “adopt a narrower definition” of “rural areas”²³ in order “to make a finding that the proposed transaction serves the public interest.”²⁴ Specifically, Petitioners ask the Commission to adopt a definition of “rural areas” used in two prior Commission reports.²⁵ Petitioners offer no persuasive reason, however, for why their preferred definition *must* be controlling here. Indeed, Petitioners acknowledge that the

Tech Wireless, L.L.C., SI Wireless, LLC (Union Telephone Company et al.), Petition To Deny at 40 (filed Aug. 27, 2018); The Greenlining Institute Petition To Deny at 14 (filed Aug. 27, 2018).

²⁰ See, e.g., Order ¶¶ 295 n.1018, n.1020-21, 296 n.1022.

²¹ Petition at 5.

²² See, e.g., Order ¶ 7 (“Rural communities will see especially large benefits from such 5G connectivity” and “the transaction will help to ensure that 5G will close the digital divide.”).

²³ Petition at 14.

²⁴ *Id.* at 6.

²⁵ *Id.* at 17 (citing Communications Marketplace Report, et al., GN Docket No. 18-231, et al., Report, 33 FCC Rcd 12558 (2018); 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. 17-126, Twentieth Report, 32 FCC Rcd 8968 (2017)).

Commission has adopted the 2010 U.S. Census definition of “rural area”—the same definition used in the Order—on several occasions.²⁶ The Commission explained that it “previously has relied on the U.S. Census definition of rural at times, and we find it a reasonable, administrable approach to identifying rural areas for purposes of the rural 5G network conditions, as well.”²⁷

In reaching this conclusion, the Commission reasonably rejected an alternative definition of rural areas similar to the one Petitioners now propose. The Commission explained that it was not persuaded by the Rural Wireless Association’s (“RWA”) argument that “the data on Rural Population—based on 2010 U.S. Census data updated by Pitney Bowes—is unreliable.”²⁸ Like Petitioners now, RWA had proposed a definition based on non-metropolitan counties.²⁹ But, the Commission considered and appropriately rejected that request, concluding that “RWA does not justify—nor are we persuaded—that [their proposed framework] would somehow represent a conceptually superior approach to defining rural areas and rural population for our purposes.”³⁰ The Commission found that the U.S. Census definition best furthers the Commission’s objectives in the Order and ensures compliance with New T-Mobile’s commitments.³¹

²⁶ *See id.* at 18 (“Finally, the Petitioners acknowledge that the Commission has adopted the 2010 U.S. Census definition of “rural area” in other cases, which it cites in the Order.”); *see also* Order ¶¶ 269, 276 (citing prior usage).

²⁷ Order at ¶ 276.

²⁸ *Id.*

²⁹ *See id.* at n.947.

³⁰ *Id.* at ¶ 276.

³¹ *See id.* Given the Applicants’ legally binding commitments, backed up by the Commission’s “robust verification and enforcement mechanism,” Order ¶ 272, there is no basis for Petitioners’ speculative concerns about “whether the in-home broadband conditions will result in performance improvements for rural consumers.” Petition at 13. As the Commission found, based on an extensive record, the benefits of the transaction “will be particularly significant for rural areas, where the conditions require robust broadband services deployment well beyond what the Applicants would otherwise deliver in the absence of the transaction.” Order ¶ 384; *see also id.* ¶ 284 (“As with their other 5G deployment commitments, our acceptance of Applicants’

Second, Petitioners' call for special roaming-related conditions similarly misses the mark. Petitioners dispute the Commission's determination that new roaming-related conditions are unnecessary given the generally applicable roaming rules that are already in effect.³² However, Petitioners present no legal or factual basis that substantiates its assertion that the Commission erred.

As the Commission explained, the Applicants are already subject to roaming requirements under the Commission's rules.³³ The Commission also concluded that conditions relating to roaming rates, reciprocal agreements, and other terms proposed by commenters are not narrowly tailored to remedy purported harms arising out of this transaction.³⁴ In reaching these well-reasoned conclusions, the Commission considered and rejected roaming arguments raised in the proceeding and now reiterated by Petitioners.³⁵ Because the Petition merely

in-home broadband commitments as conditions to our approval of the proposed transaction is accompanied by a robust enforcement mechanism.”).

³² *See, e.g.*, Petition at 6.

³³ Order at ¶ 297. In any event, the Applicants have committed to maintain or extend roaming agreements with small rural carriers on commercially reasonable terms. *See, e.g.*, PIS at 69 (“New T-Mobile will offer to become the Preferred Roaming Partner for rural carriers, providing long-term roaming access to the robust New T-Mobile network at industry-leading terms. This will include a roaming program that offers carriers with existing roaming rates with either T-Mobile or Sprint to determine which rates will govern their relationship with New T-Mobile after the transaction closes.”); Joint Opposition at 98 (“New T-Mobile will implement a seamless transition plan to migrate CDMA customers on the New T-Mobile network, most likely through the availability of VoLTE service. In addition, New T-Mobile will work with rural carriers as part of that process so that Sprint’s CDMA roaming customers can be accommodated as part of the transition.”); Joint Opposition at 100 (“New T-Mobile will maintain T-Mobile’s and Sprint’s existing roaming arrangements and offer new long-term roaming access to small rural carriers.”); Letter from R. Michael Senkowski, Counsel to T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 at 2 (filed Nov. 19, 2018).

³⁴ Order at ¶ 297.

³⁵ *See* Petition at 24-25.

rehashes arguments considered and rejected in the Order, the request provides no grounds for reconsideration.

III. CONCLUSION

For the foregoing reasons, the Commission should dismiss the Petition for Reconsideration of the Commission's Order or, in the alternative, deny it.

Respectfully submitted,

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December 16, 2019

CERTIFICATE OF SERVICE

I, Ariel Diamond, certify that on this 16th day of December, 2019, I have served copies of the foregoing Opposition on Petitioner and parties to the proceeding:

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