

December 20, 2017

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: 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 December 18, 2017, Phillip Berenbroick and Charlotte Slaiman of Public Knowledge; Joshua Stager and Amir Nasr of New America’s Open Technology Institute; Matt Wood, Gaurav Laroia, and Leo Fitzpatrick of Free Press; Yosef Getachew of Common Cause; Matthew Buck of Open Markets Institute; Jonathan Schwantes of Consumer Reports; and Mike Forscey representing Writers Guild of America, West (collectively, “Competition Advocates”) met with members of the Federal Communications Commission’s (“FCC” or “Commission”) Transaction Team to discuss matters in the above-captioned proceeding.

The Competition Advocates explained that the proposed combination of Sprint and T-Mobile does not serve the public interest, convenience and necessity,¹ and should be designated for a hearing in accordance with Section 309(d) and (e) of the Communications Act.² Further, the transaction is presumptively unlawful under Section 7 of the Clayton Act.³ The proposed merger is a classic horizontal merger in an already “highly concentrated” market. It is likely to dramatically reduce wireless market competition and harm consumers, leaving the wireless market with higher prices, less variety in products and services, reduced innovation, and poorer service quality and customer service than would exist absent the merger. As a Rewheel research report recently found, U.S. consumers already pay the highest prices for mobile broadband among the 41 European Union and Organisation for Economic Co-operation and Development countries, and mobile wireless markets that have recently consolidated from four firms to three have seen less aggressive price competition.⁴ Consummation of the proposed Sprint/T-Mobile merger is likely to follow this pattern, leading to even higher prices for U.S. consumers.⁵

¹ 47 U.S.C. § 309(a).

² 47 U.S.C. § 309(d), (e).

³ 15 U.S.C. § 18.

⁴ Rewheel, Digital Fuel Monitor: Monitoring Mobile Connectivity Competitiveness 2 (2018), available at

http://research.rewheel.fi/downloads/The_state_of_4G_pricing_DFMonitor_10th_release_2H2018_PUBLIC.pdf.

⁵ See Andy Meek, *Study: US consumers pay more for wireless data than just about anywhere else*, BGR, Dec. 13, 2018, <https://bgr.com/2018/12/13/wireless-data-plans-us-more-expensive/>.

The Competition Advocates explained that low-income customers and customers in the pre-paid market are especially likely to be harmed by the merger. Sprint and T-Mobile are the dominant providers of mobile services to low-income persons, particularly in urban areas. According to a recent survey, customers of Sprint and T-Mobile, and their pre-paid brands in particular, are disproportionately low-income. For example, 30 percent of T-Mobile-owned Metro’s customers, and 34 percent of Sprint-owned Boost Mobile’s customer, have annual incomes below \$25,000 – more than three times the number for AT&T and Verizon.⁶

This transaction is a “four to three” merger in several potential product and geographic markets, but essentially “three to two” in the facilities-based pre-paid market, with AT&T’s Cricket the only other option. The pre-paid market is particularly important to low-income users because plans are often substantially less costly, offer both unlimited and cheaper metered options, and typically don’t require credit checks that can deny people access to post-paid service plans. This merger also would drastically reduce the quality and affordability of Lifeline, which is dependent on a healthy wholesale market – with Sprint not only a key provider of that wholesale capacity but also the only remaining national, facilities-based wireless carrier that offers a “free” wireless Lifeline plan. T-Mobile abandoned its Lifeline wireless offerings in the last few years.

The Sprint/T-Mobile combination would leave the wireless market overall with only three nationwide providers, drastically reducing choices for consumers and eliminating the incentives for “maverick” firms like T-Mobile and Sprint to challenge their two nationwide rivals (and one another) by aggressively cutting prices, introducing innovative service plans, and prioritizing quality and customer service. The proposed merger’s harm is especially acute because Sprint and T-Mobile not only challenge and compete for customers with AT&T and Verizon, but they are also each other’s closest competitors both for pre-paid customers and overall. Both companies (and their affiliates) exert pricing discipline on each other (and on their larger rivals). As record evidence conclusively shows, T-Mobile and Sprint take customers from each other’s flagship brands and pre-paid affiliates by offering more valuable data packages and lower prices too.⁷

Further, not only would permitting the merger drastically reduce current competition in the wireless market, it also would raise the already high barriers to entry, making new market entry and competition even more unlikely. The Commission, the Department of Justice, and entities looking to enter the wireless market have long reported that the high costs of spectrum acquisition, network deployment, backhaul, roaming, and wholesale access create prohibitive barriers to entry. The proposed transaction would drastically exceed the Commission’s spectrum screen in nearly all major U.S. markets and the majority of counties, and significantly consolidate the wholesale⁸ and data roaming markets – making it even more difficult and expensive for new

⁶ See Matt Wood, S. Derek Turner, Free Press, “The T-Mobile/Sprint Merger Is Bad News. Here’s Why” (May 1, 2018), <https://www.freepress.net/our-response/expert-analysis/insights-opinions/t-mobilesprint-merger-bad-news-heres-why>.

⁷ See Petition to Deny of Free Press, WT Docket No. 18-197, at 28, 38 (filed Aug. 27, 2018); Free Press, Reply to Opposition. WT Docket No. 18-197, at 2, 19, 22-27 (filed Oct. 31, 2018)

⁸ See *id.* at 26.

carriers to enter the wireless market and for existing smaller firms to grow, expand, and offer consumers a competitive alternative.⁹

The Competition Advocates also explained that the benefits claimed by the parties – namely, deployment of a nationwide 5G mobile broadband network and increased broadband service in unserved or underserved rural areas – are non-merger specific (in the case of 5G) and speculative and entirely unsupported by evidence in the record and the basic economics of network deployment (in the case of increased rural deployment, and with respect to claims that the merged firm would price its services lower owing solely to increases in capacity applicants cite as a benefit of the transaction).

With regards to 5G deployment, both Sprint and T-Mobile have long touted their commitment to build competing standalone nationwide 5G networks.¹⁰ The claims by the parties that they are unable to deploy nationwide 5G networks without this transaction are belied by their oft-repeated statements to the contrary to shareholders, investors, consumers, the general public, and regulators. In fact, just this week Sprint CTO John Saw detailed the investments and progress Sprint made in 2018 toward rolling out its 5G network in 2019.¹¹

Additionally, claims by the parties that the post-merger company would offer lower prices due to its greater supply are contradicted by the basic economic reality that firms do not lower prices when they do not face sufficient competitive pressure to do so. In fact, firms may restrict output, and will do so when that behavior is profitable – no matter what their supposed “DNA” or “uncarrier” marketing materials say. Moreover, as applicants’ own experts admit, ***bottom-line prices would likely go up as a result of the deal***, leaving only the flimsy and unavailing argument that people who seek out and depend on lower-priced service today would gladly pay more each month in exchange for some speculative yet exceedingly small increases in capacity or speed.¹²

⁹ See e.g., Petition to Deny of The Rural Wireless Association, Inc., WT Docket No. 18-197, at 6-15 (filed Aug. 27, 2018).

¹⁰ See, e.g., See Alex Scroxtton, MWC 2018: 5G Collaboration Dominates Agenda at Annual Mobile Fair, Computer Weekly.com (Feb. 28, 2018), <https://www.computerweekly.com/news/252435888/MWC-2018-5G-collaboration-dominates-agenda-at-annual-mobile-fair> (quoting T-Mobile CTO Neville Ray boasting “T-Mobile will be the first to give customers the truly transformative, nationwide 5G network they deserve[.]”); Transcript, *Sprint’s Management Presents at Deutsche Bank 2018 Media, Telecom & Business Services Conference* (Mar. 7, 2018), <https://seekingalpha.com/article/4154284-sprints-s-management-presents-deutsche-bank-2018-media-telecom-and-business-services?page=2> (quoting Sprint President and CFO Michael Combes touting “[Sprint] will have the first national wireless 5G network in 2019.”).

¹¹ See Dr. John Saw, CTO Sprint Corporation, “Celebrating a Year of Sprint Network Milestones on Our Path to 5G”, Dec. 18, 2018, <https://newsroom.sprint.com/2018-milestones-on-path-to-5g.htm>.

¹² See DISH Network Corporation, Comments in Response To Public Notice Regarding Cornerstone Report, WT Docket No. 18-197, at 17-18 (filed Dec. 4, 2018) (“Even setting aside the debilitating flaws of the Cornerstone Report, and even without correcting the willingness to pay calculations, Cornerstone *still* finds that this transaction would lead to price increases.”)

While rural areas have been on the wrong side of the digital divide for far too long, Sprint and T-Mobile have provided no evidence that rural communities will benefit from their transaction in any cognizable way. In fact, the significant consolidation of the data roaming and wholesale markets that would result from the proposed combination makes it likely that service in rural areas will become more expensive. Further, neither Sprint nor T-Mobile has previously demonstrated any consistent commitment to serving rural and sparsely populated areas of the U.S., focusing instead (in beneficial ways) on offering lower-priced service to wireless users concentrated in urban areas. The merger does not change the basic economics that serving rural areas is challenging, expensive, and often does not provide sufficient return on investment for large, publicly held broadband providers. Other than paying lip service to the Commission's mission of closing the digital divide and promoting universal service, the parties provide no support for their assertion that the transaction would provide any benefit to those living in rural communities.

The Competition Advocates explained that because the proposed Sprint/T-Mobile combination is very likely to significantly reduce competition and harm consumers, and there is scant evidence of any cognizable merger-specific benefit, the Commission should conclude that the transaction does not serve the public interest, convenience, and necessity and designate the parties' application for a hearing.

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Sincerely,

/s/ Phillip Berenbroick

Senior Policy Counsel
Public Knowledge

cc: David Lawrence
Jim Bird
Joel Rabinovitz
Monica DeLong
Chris Smeenk
Aalok Mehta
Bill Dever
Charles Mathias

(emphasis in original). As DISH explained, a review of the parties' latest economic study "shows that the absurdly high valuations it assigns to small service quality improvements are as wrong as they sound." *Id.* at 3.

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