



**MEMORANDUM**

**February 8, 2019**

**To: Subcommittee on Communications and Technology Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Hearing on “Protecting Consumers and Competition: An Examination of the T-Mobile and Sprint Merger”**

On **Wednesday, February 13, 2019, at 10 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled “Protecting Consumers and Competition: An Examination of the T-Mobile and Sprint Merger.”

**I. BACKGROUND**

On April 29, 2018, T-Mobile US, Inc. (T-Mobile) announced a definitive agreement to purchase the Sprint Corporation (Sprint).<sup>1</sup> The combined company (New T-Mobile), with an enterprise value of \$146 billion, would bring the number of nationwide wireless carriers from four to three. Under the Communications Act of 1934, as amended, the Federal Communications Commission (FCC) is reviewing the merger to ensure it promotes “the public interest, convenience, and necessity.”<sup>2</sup> The U.S. Department of Justice and state attorneys general are also reviewing the transaction pursuant to their respective authorities.<sup>3</sup>

**A. T-Mobile**

T-Mobile US, Inc. is a communications network operator that offers retail and wholesale wireless services nationwide.<sup>4</sup> The company’s largest shareholder is German telecommunications company, Deutsche Telekom AG, and the company is headquartered in

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<sup>1</sup> T-Mobile, *T-Mobile and Sprint to Combine, Accelerating 5G Innovation & Increasing Competition*, Press Release (Apr. 29, 2018).

<sup>2</sup> 47 U.S.C. §310(d).

<sup>3</sup> *See Exclusive: U.S. Justice Department Probes T-Mobile-Sprint Merger Effect on Smaller Wireless Companies*, Reuters (June 7, 2018); *New York Attorney General Amps Up T-Mobile, Sprint Investigation*, New York Business Journal (Oct. 29, 2018).

<sup>4</sup> T-Mobile 2017 SEC Form 10-K (Feb. 8, 2018).

Bellevue, Washington.<sup>5</sup> T-Mobile offers wireless communications services, such as voice, data, and messaging, and also sells a range of devices, including handsets, tablets, and accessories. The chief executive officer (CEO) of T-Mobile is John Legere. In the first quarter of 2018, T-Mobile had nearly 80 million subscribers.<sup>6</sup> Based on revenue, T-Mobile has the third-largest market share among nationwide wireless carriers. T-Mobile is the most popular carrier among customers making less than \$75,000 per year.

## **B. Sprint**

Sprint Corporation is a communications network operator offering retail and wholesale services nationwide.<sup>7</sup> Sprint's largest shareholder is Japanese communications company SoftBank Group Corporation, and the company is headquartered in Overland Park, Kansas. Sprint offers wireline and wireless services to retail, wholesale customers, including government and businesses, in all fifty states and Puerto Rico. The CEO of Sprint is Michael Combes. Marcelo Claure served as Sprint's CEO from 2014 until May 2018, and he now serves as Sprint's executive chairman. In the first quarter of 2018, Sprint had 54.6 million subscribers. Based on revenue, Sprint has the fourth-largest market share among nationwide wireless carriers.

## **II. MERGER**

During the merger review process, several issues have been central to the debate. The arguments made by both those supporting and opposing the merger are summarized below.

### **A. Consumer Prices**

T-Mobile and Sprint claim that as a result of their merger, "American consumers will pay less and get more." According to the companies, the increased capacity will mean lower marginal costs per customer, enabling the New T-Mobile to provide service at a lower cost.<sup>8</sup>

Opponents of the merger have expressed skepticism about these claims. They argue that T-Mobile and Sprint have been innovative in pricing and offerings, as head-to-head competitors, resulting in benefits to consumers, and that a combination of the carriers will remove this incentive to innovate and aggressively compete for customers.<sup>9</sup> Moreover, merger opponents

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<sup>5</sup> *Id.*

<sup>6</sup> T-Mobile SEC Form 8-K (January 9, 2019).

<sup>7</sup> Sprint Corporation 2017 10-K (May 24, 2018).

<sup>8</sup> T-Mobile and Sprint Corporation's Description of Transaction, Public Internet Statement, and Related Demonstrations, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (June 18, 2018) (T-Mobile Public Internet Statement).

<sup>9</sup> See, e.g., Petition to Deny of the American Antitrust Institute, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Aug. 27, 2018) (AAI Petition).

claim that economic experts, retained by T-Mobile and Sprint, appeared to concede that the merger could lead to higher prices for consumers.<sup>10</sup> T-Mobile argues that these claims mischaracterize its own experts' findings. In addition, some rural wireless companies have expressed concern that with one fewer wireless nationwide carrier offering roaming agreements, their costs could increase as well as the rates they charge to their customers.<sup>11</sup>

On February 4, 2019, T-Mobile and Sprint offered a commitment that the New T-Mobile will "make available the same or better rate plans as those offered by T-Mobile or Sprint" for three years following the merger, or until better plans that offer a lower price or more data are made available, whichever comes first.<sup>12</sup> Opponents of the merger argue this commitment includes loopholes that would, nevertheless, allow the companies to raise rates and prices. It is unclear whether the FCC or DOJ would be willing to condition the merger on the commitments and how they would be implemented and enforced.

## **B. Low-Income Consumers**

T-Mobile and Sprint assert that New T-Mobile will continue to act as a "maverick" among the national wireless carriers, continuing its "Un-carrier movement" focused on aggressively courting consumers in all market segments.<sup>13</sup> The companies have also committed to continue to participate to the same extent in the FCC's Lifeline program. Opponents of the merger claim that contraction in both the wholesale and prepaid markets following the merger will harm low-income customers and further exacerbate the digital divide. Individually, T-Mobile and Sprint are competitors in the prepaid market, mostly populated by low-income consumers and those with poor credit, and each company has a significant share of the market.

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<sup>10</sup> See DISH Network Corporation's Comments in Response to Public Notice regarding Cornerstone Report, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Dec. 4, 2018).

<sup>11</sup> See Petition to Deny of the Rural Wireless Association, Inc., *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Aug. 27, 2018) (RWA Petition); Free Press Petition at 25-27; Dish Petition at 57; T-Mobile/Sprint Merger Will Bring Higher Prices, Small Carriers Tell FCC, *Ars Technica* (Aug. 30, 2018).

<sup>12</sup> See T-Mobile and Sprint Ex Parte Presentation, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Feb. 4, 2018).

<sup>13</sup> T-Mobile Public Interest Statement, *supra* note 10.

Combined, New T-Mobile could have more than half of market share of the prepaid wireless services market.<sup>14</sup>

### **C. Wholesale Access**

Both companies offer wireless service in the wholesale market, which can be purchased and resold to individual customers by competitive mobile network virtual operators (MVNOs). Consumer advocates argue that New T-Mobile will have greater power in the wholesale market, allowing it to raise prices that will be passed on to MNVOs' customers<sup>15</sup> and further restricting the number of viable competitors in the wireless market.<sup>16</sup> Among other things, T-Mobile and Sprint argue that their MVNOs have long terms contracts with T-Mobile and Sprint that will continue to allow them to flourish and gain new customers for the term of the contracts.

### **D. Jobs**

According to T-Mobile and Sprint, New T-Mobile will create thousands of new jobs, as new employees will be needed to integrate the two networks and build out for fifth-generation (5G) technology.<sup>17</sup> On January 30, 2019, the companies announced plans to build five new "customer experience centers" that will create an average of 1,000 new jobs each.<sup>18</sup> In contrast, opponents assert that the merger will result in the loss of as many as 30,000 jobs due to the elimination of duplicative work and the closure of retail stores.<sup>19</sup>

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<sup>14</sup> See Petition to Deny of Common Cause, Consumers Union, New American's Open Technology Institute, Public Knowledge & Writers Guild of America, West, Inc, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Aug. 27, 2018) (Common Cause Petition); *Will T-Mobile's Megamerger Hurt Lower-Income Customers?*, Tara Lachapelle, Bloomberg Opinion (Oct. 2, 2018).

<sup>15</sup> See, e.g., Petition to Deny of Common Cause, Consumers Union, New American's Open Technology Institute, Public Knowledge & Writers Guild of America, West, Inc, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197 (Aug. 27, 2018) (Common Cause Petition).

<sup>16</sup> See *AAI Petition*; *supra* note 11 at 10-11.

<sup>17</sup> T-Mobile Public Interest Statement, *supra* note. 10, at ii.

<sup>18</sup> *T-Mobile and Sprint Announce Post-Merger Plans to Build Five New T-Mobile Customer Experience Centers That Will Create Thousands of New American Jobs*, T-Mobile Press Release (Jan. 20, 2019).

<sup>19</sup> *T-Mobile Customer Center Announcement "Does Not Come Close To Offsetting" 30,000 Lost Jobs From Proposed Merger*, Communication Workers of America (Press release) (Jan. 31, 2019).

**E. 5G Technology**

The companies argue that their combined spectrum holdings will allow New T-Mobile to compete with other larger wireless companies, particularly in building a robust 5G technology network, with broad coverage and sufficient capacity that neither company could build on its own.<sup>20</sup> Merger opponents dispute the assertion, noting that both companies have represented to investors that they are, separately, both on track to deploying 5G technology.<sup>21</sup>

**III. WITNESSES**

The following witnesses have been invited to testify:

Mr. John Legere  
Chief Executive Officer and President  
T-Mobile US

Mr. Marcelo Claure  
Executive Chairman  
Sprint Corp.

Mr. Chris Shelton  
President  
Communications Workers of America

Mr. Doug Brake  
Director, Broadband and Spectrum Policy  
Information Technology and Innovation Foundation

Mr. Phillip Berenbroick  
Senior Policy Counsel  
Public Knowledge

Ms. Carri Bennet  
General Counsel  
Rural Wireless Association, Inc.

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<sup>20</sup> T-Mobile Public Interest Statement. *See supra* note 14, at 18-28.

<sup>21</sup> Common Cause Petition, *supra* note 17, at 32-36.