

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of T-Mobile US, Inc. and Sprint)	WT Docket No. 18-197
Corporation, Consolidated Applications for)	
Consent to Transfer Control of Licenses and)	
Authorizations)	

REPLY TO OPPOSITION OF THE RURAL WIRELESS ASSOCIATION, INC.

RURAL WIRELESS ASSOCIATION, INC.

Caressa D. Bennet, General Counsel
Daryl A. Zakov, Assistant General Counsel
Erin P. Fitzgerald, Regulatory Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 857-4519

October 31, 2018

TABLE OF CONTENTS

SUMMARY.....i

I. THE PROPOSED MERGER WILL BE DETRIMENTAL TO THE ROAMING MARKET.....2

a. Allowing carriers with existing T-Mobile or Sprint roaming agreements to determine which rates will govern their relationship with New T-Mobile does not address RWA’s concerns regarding commercially reasonable roaming rates.....2

b. T-Mobile’s unwillingness to engage in bilateral roaming agreements harms consumers.....4

c. RWA members and other rural carriers are rightfully concerned that T-Mobile will take retaliatory measures against them.....6

II. T-MOBILE’S RURAL CALL COMPLETION ABUSES ARE INDICATIVE OF BEHAVIOR THAT IS DETRIMENTAL TO RURAL CONSUMERS...7

a. The *Joint Opposition* ignores the False Ring Tone Order and Consent Decree.....7

b. T-Mobile’s actions have negatively impacted commerce nationwide.....8

III. EXCEEDING THE SPECTRUM SCREEN IN THE VAST MAJORITY OF MARKETS MERITS A COMMISSION REVIEW AT THE NATIONAL LEVEL.....9

IV. THE PROPOSED MERGER WOULD ENABLE NEW T-MOBILE TO ALLOW ADDITIONAL SPECTRUM TO LIE FALLOW.....12

V. APPLICANTS’ RURAL BUILDOUT CLAIMS ARE UNSUPPORTED IN THE RECORD.....13

VI. THE PROPOSED MERGER WILL HARM THE ABILITY OF THE UNITED STATES TO CONTINUE ITS 5G LEADERSHIP AND WILL PUT THE U.S. BEHIND CHINA IN THE RACE TO 5G.....15

VII. CONCLUSION.....18

SUMMARY

RWA opposes the merger of T-Mobile and Sprint because it is contrary to the public interest and will cause far more harm than good for all Americans, especially those living in and traveling through rural America.

The FCC should deny the proposed transaction because it will be detrimental to the roaming market. Applicants' promise to allow carriers with existing T-Mobile or Sprint roaming agreements to determine which rates will govern their relationship with New T-Mobile does not address RWA's concerns regarding commercially reasonable roaming rates. Applicants' offer extends only to *existing* agreements that will expire, and thereafter, carriers will be subject to renegotiated rates. Meanwhile, if approved, the merger will have removed a facilities-based LTE carrier from the marketplace – the *only* nationwide carrier that offers anything approximating commercially reasonable roaming rates, terms, and conditions to rural carriers. Furthermore, this proposed solution does nothing for new entrants. RWA also remains concerned that T-Mobile frequently enters into unilateral roaming agreements under which the rural carrier's subscribers can roam on T-Mobile's network, but T-Mobile's customers may not roam on the rural carrier's networks – even where T-Mobile's own network is substandard or non-existent.

Further, the FCC should deny the proposed transaction because T-Mobile's rural call completion abuses are behavior that is detrimental to its own customers and rural consumers. T-Mobile has admitted to using "false ring tones" to frustrate millions of calls placed by T-Mobile customers attempting to call customers of rural landline telephone service providers. T-Mobile's illicit activity not only impacted T-Mobile customers, it caused economic harm to an untold number of small and rural telephone companies and potentially millions of American wireless and wireline consumers. Applicants insist that this behavior has no bearing on how New T-

Mobile will treat American consumers, but this behavior is relevant to this proceeding because it demonstrates the lengths to which T-Mobile will go to cut costs at the expense of not only its own customers, but potentially all American consumers.

The proposed transaction will result in excessive concentration of spectrum in the hands of New T-Mobile. Exceeding the spectrum screen in the vast majority of markets merits FCC review at the national level. While Applicants are correct that exceeding the spectrum requires only heightened review, the scope of the territory in which Applicants exceed the spectrum screen causes significant competitive problems and, combined with the fact that the country is losing a nationwide carrier, supports a finding of competitive harm.

Further, the proposed transaction would enable New T-Mobile to allow additional spectrum to lie fallow. The *Joint Opposition* confirmed that current Sprint spectrum leases would not be renewed after the merger. Given the difficulty that rural wireless carriers often have in accessing spectrum, these lease agreements are critical. T-Mobile's promise to "continue spectrum sales and leases where economically justified" offers no assurances to RWA members that T-Mobile will enter into such sale or lease arrangements. As RWA and others have explained – the secondary market for fallow spectrum in rural areas is broken and the merger would result in even more spectrum lying fallow.

Applicants' rural buildout claims are not supported in the record. Applicants' own filings show that the New T-Mobile would only provide marginally better broadband options than standalone T-Mobile in much of rural America. In fact, for the great majority of rural Americans, the level of coverage and capacity would be similar for New T-Mobile as it would be for standalone T-Mobile. Further, the data in the *Transaction Description* demonstrates that even six years after a T-Mobile/Sprint merger, most of New T-Mobile's rural customers would be

forced to settle for a service that has significantly lower performance than the urban and suburban parts of the network. As such, the digital divide is likely to worsen, not improve, post-merger.

Finally, the proposed merger will harm the ability of the United States to continue its 5G leadership and will put the United States behind China in the race to 5G. Softbank and Deutsche Telekom, the respective parent companies of Sprint and T-Mobile, are not just openly partnering with China-based companies to bring 5G to Japan and Germany, the companies are actively involved in bringing artificial intelligence and other next-generation technologies directly to China to help them reach 5G first. By allowing the proposed merger between Sprint and T-Mobile to proceed and, in the process, allow the parent companies Softbank and Deutsche Telekom to realize billions of dollars in cost savings, the U.S. government would tacitly allow the parent companies of the two U.S. carriers to re-allocate capital and operational savings and funnel it directly into the purchase of 5G equipment developed by Chinese-based equipment companies in Asia and Europe, and further aid 5G and Artificial Intelligence technological developments in China. To the extent the U.S. wants to position itself to be the leader in 5G, it cannot simultaneously provide a government-approved conduit by which revenue earned off the backs of American consumers is then re-appropriated by Germany and Japan to help bolster the 5G prospects of numerous other countries, including China.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of T-Mobile US, Inc. and Sprint Corporation, Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations)	WT Docket No. 18-197
)	
)	

REPLY TO OPPOSITION OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”) files this Reply to T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation’s (“Sprint”) (collectively, “Applicants”) *Joint Opposition*¹ to RWA’s Petition to Deny² the Consolidated Application of T-Mobile and Sprint for consent to transfer control of certain licenses, authorizations, and spectrum leases. As discussed in RWA’s Petition to Deny and below, the proposed merger between T-Mobile and Sprint would be disastrous to the competitive health of the mobile wireless sector, is contrary to the public interest, and should be denied. Specifically, the Commission should deny the proposed transaction because: (1) it would be detrimental to the roaming market; (2) T-Mobile’s rural call completion abuses are indicative of future behavior that is anti-consumer; (3) it would enable New T-Mobile to allow additional spectrum to lie fallow; and (4) the proposed merger will harm the ability of the United States to continue its 5G leadership edge, putting the U.S. behind China in the race to 5G.

¹ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorization*, [Joint Opposition of T-Mobile Inc. and Sprint Corporation](#), WT Docket No. 18-197 (Sept. 17, 2018) (“*Joint Opposition*”).

² *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorization*, [Petition to Deny of the Rural Wireless Association, Inc.](#), WT Docket No. 18-197 (Aug. 27, 2018) (“*Petition to Deny*”).

I. THE PROPOSED MERGER WILL BE DETRIMENTAL TO THE ROAMING MARKET.

The Applicants have not adequately addressed RWA's concerns regarding the proposed transaction's effect on the national roaming marketplace. The *Joint Opposition* provides that "New T-Mobile will continue the T-Mobile and Sprint traditions of working with rural carriers to serve rural America."³ Applicants go on to state that "New T-Mobile will offer to be the preferred roaming partner for rural carriers and to provide long-term roaming access to the robust New T-Mobile network on industry-leading terms."⁴ However, that has not been the experience that RWA members have had in their dealings with the Applicants. To the contrary, T-Mobile has demonstrated that it is unwilling to work with small rural carriers to develop fair and equitable roaming agreements. Because the proposed transaction would remove Sprint – a valued roaming partner for rural wireless carriers – RWA is gravely concerned with the impact of such removal on the roaming marketplace.

- a. Allowing carriers with existing T-Mobile or Sprint roaming agreements to determine which rates will govern their relationship with New T-Mobile does not address RWA's concerns regarding commercially reasonable roaming rates.**

RWA's Petition to Deny explained that, in its members' experience, Sprint is the only one of four nationwide carriers that offers anything approximating commercially reasonable roaming rates, terms, and conditions to rural carriers. Further, RWA explained that T-Mobile charges rates 20 times more than the rates that Sprint charges for voice and data roaming. If Sprint disappears and T-Mobile's rates are adopted, roaming rates could go up by 1,900%, jeopardizing the ability of rural carriers to offer outbound roaming. Without outbound roaming,

³ *Joint Opposition* at p. 93 (further stating that this "will take the form of roaming and technical assistance that benefits rural consumers and partnering through attractive roaming agreements").

⁴ *Id.* at p. 98.

rural carriers cannot offer a compelling retail product to rural consumers and will be forced to exit the business, leaving an untold number of Americans without any access to mobile wireless communications in rural America.

The *Joint Opposition* provides that “New T-Mobile will...provide long-term roaming access to the robust New T-Mobile network on industry-leading terms.”⁵ Applicants do not deny the tremendous disparity between rates offered by T-Mobile and those offered by Sprint, but instead state that New T-Mobile would provide “a roaming program that offers carriers with existing roaming agreements with either T-Mobile or Sprint [the choice as to] which rates will govern their relationship with New T-Mobile”⁶ and contend that this offer “completely address[es]” RWA’s concern that Sprint’s rates are 1/20th of T-Mobile’s roaming rates.”⁷

The Applicants are mistaken. This offer *does not* address RWA’s concerns regarding the effect that the proposed merger would have on the roaming market. While Applicants plan to *initially* allow carriers with *existing* roaming agreements with either T-Mobile or Sprint to pick which rates will govern their relationship with New T-Mobile, this offer extends only to *existing* agreements. Moreover, those existing agreements will eventually expire (in most cases in less than three years) and thereafter subject carriers will have to negotiate new rates. Meanwhile, if approved, the merger will have removed a facilities-based LTE carrier from the marketplace – the *only* nationwide carrier out of the four that offers anything approximating commercially reasonable roaming rates, terms, and conditions to rural carriers. Promising that rural roaming partners will have the ability to choose the less expensive rate option for a short period of time does nothing to alleviate the harms (discussed below) resulting from rural carriers being denied

⁵ *Joint Opposition* at p. 98.

⁶ *Id.* at pp. 98-99.

⁷ *Id.* at p. 99, n.369.

access to reasonable roaming rates. After the term expires, New T-Mobile will raise rates and RWA's members will no longer have the Sprint option. Furthermore, this proposed solution does nothing for new entrants that do not have existing roaming agreements with either Sprint or T-Mobile.

b. T-Mobile's unwillingness to engage in bilateral roaming agreements harms consumers.

RWA remains concerned that T-Mobile frequently enters into unilateral roaming agreements under which the rural carrier's subscribers can roam on T-Mobile's network, but T-Mobile's customers may not roam on rural carriers' networks – even where T-Mobile's own network is substandard or non-existent. In such cases, T-Mobile has anti-competitively determined that it is better for its customers to go without any coverage in rural areas than pay the rural carrier for network access and allow T-Mobile customers to roam.

In response to RWA's concerns about T-Mobile's unwillingness to enter into bilateral roaming agreements, the *Joint Opposition* argues that “[w]here a facilities-based carrier has built out its network, there is no reason to permit its customer to roam on another network...”⁸ While this may be true, Applicants' response is predicated on a situation wherein the facilities-based carrier (*i.e.*, T-Mobile) *has built out its network* – a situation that, in the majority of rural America, simply does not exist. By the Applicants' own admission, “T-Mobile's and Sprint's networks do not cover many small towns and rural areas of the country,”⁹ and “neither T-Mobile nor Sprint has much of a presence today” in “rural areas and small towns.”¹⁰ Given that, by its own admission, T-Mobile has built out little of rural America, that it has been reluctant to enter into bilateral roaming agreements in order to grant its customers access to rural wireless

⁸ *Joint Opposition* at p. 100.

⁹ *Id.* at p. 94.

¹⁰ *Id.* at p. 95.

networks that have been built out largely with universal service support, and that rural buildout of the size and scope the Applicants plan to undertake is likely to take *years* to occur (if it ever does)¹¹ – RWA’s concerns remain.

Applicants argue that “in a competitive environment where New T-Mobile will be competing vigorously with... Verizon and AT&T, there is no need for...a [bilateral roaming] requirement because New T-Mobile is motivated to provide quality service to its customers.”¹² A post-transaction New T-Mobile may compete with Verizon and AT&T, but is likely to do so only where Verizon and AT&T have coverage – along highways and in county seats where profits can be maximized. While Verizon and AT&T’s rural coverage is more extensive than that of Sprint and T-Mobile’s, it is by no means ubiquitous. RWA expects the New T-Mobile would build out the profitable rural county seats and major roadways extensively and leave the rest unserved – as AT&T and Verizon have done.¹³ This type of buildout fails to adequately serve very rural and Tribal communities,¹⁴ or meet the needs of industries like energy and agriculture production that are situated outside of population centers and away from major thoroughfares.

¹¹ See discussion of rural buildout, *supra* Section V.

¹² *Joint Opposition* at p. 101.

¹³ See e.g. [Ex Parte Letter](#) to Ms. Marlene H. Dortch, Secretary, FCC, from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc. and Erin P. Fitzgerald, Regulatory Counsel, Rural Wireless Association, Inc., WT Docket No. 10-208, WC Docket No. 10-90, at [Attachment C](#) (Apr. 20, 2018) (explaining that RWA member Panhandle Telecommunication Systems, Inc. has 38 cell sites in the Oklahoma Panhandle whereas Verizon Wireless has only 9).

¹⁴ Rural and Tribal areas continue to lag behind urban areas in mobile broadband deployment. Although evaluated urban areas saw an increase of 10 Mbps/3 Mbps mobile LTE from 81.9% in 2014 to 90.5 % in 2016, such deployment in evaluated rural and Tribal areas remained flat at about 70% and 64%, respectively. Approximately 14 million rural Americans and 1.2 million Americans living on Tribal lands still lack mobile LTE broadband at speeds of 10 Mbps/3 Mbps. See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, [2018 Broadband Deployment Report](#), GN Docket No. 17-199, FCC 18-10, at Table 2b (rel. Feb. 2, 2018). In addition, the Government Accountability Office recently found that the FCC’s data overstates broadband access on Tribal

c. RWA members and other rural carriers are rightfully concerned that T-Mobile will take retaliatory measures against them.

RWA's Petition stated that T-Mobile has a history of not allowing its own customers to roam on rural carrier networks where it has a substandard network or no service at all.¹⁵

Applicants did not deny it. Instead, Applicants argue that the Petition's statement is "unsupported by a declaration and therefore must be rejected."¹⁶ The reason why RWA's Petition to Deny did not include one or more declarations supporting this undisputed accusation is simple: rural carriers fear that Sprint and T-Mobile individually, or the new T-Mobile at some point in the future, will take retaliatory action against them.

The lack of a declaration stating that T-Mobile has a history of not allowing its own customers to roam on rural carrier networks where it has a substandard network or no service at all is not an adequate rationale to reject RWA's concern. RWA and others have made no secret that the unwillingness to enter into bilateral roaming agreements is a pressing issue,¹⁷ and an

lands. See Government Accountability Office, [FCC's Data Overstate Access on Tribal Lands](#) (September 2018).

¹⁵ *Petition to Deny* at p. 15.

¹⁶ *Joint Opposition* at p. 101, n.378.

¹⁷ [Ex Parte Letter](#) from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc., Erin Fitzgerald, Regulatory Counsel, Rural Wireless Association, Inc., and Jill Canfield, Vice President, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, GN Docket No. 14-28 (Nov. 2, 2016) (stating “[t]he country’s nationwide carriers are often hesitant to enter into bilateral voice and data roaming agreements at commercially reasonable rates, terms and conditions, or enter into bilateral agreements at all. Furthermore, these same carriers often refrain from offering their own subscribers access to rural roaming coverage on small carrier networks...even when their own coverage is inferior or non-existent. Rural carrier networks, built with the help of universal service funds, should be made available to the American public in areas that are unserved or underserved by nationwide networks”); see also [Ex Parte Letter](#) from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc., Erin Fitzgerald, Regulatory Counsel, Rural Wireless Association, Inc., WT Docket No. 10-208, WC Docket No. 10-90 (Oct. 27, 2016); see also [Comments of the Rural Wireless Association, Inc., Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition](#), WT Docket No. 16-137 (May 31, 2016); [Comments of the Rural Wireless Association, Inc. and](#)

RWA representative has testified before Congress as to its concerns regarding nationwide carriers' reluctance to enter into bilateral roaming agreements.¹⁸ These concerns have gone unanswered by T-Mobile and other nationwide carriers in the past, as they go unanswered by T-Mobile now.

II. T-MOBILE'S RURAL CALL COMPLETION ABUSES ARE INDICATIVE OF BEHAVIOR THAT IS DETRIMENTAL TO RURAL CONSUMERS.

In its *Petition to Deny*, RWA highlighted T-Mobile's use of "false ring tones" to frustrate potentially millions of T-Mobile customers from completing a telephone call to a customer of a rural landline telephone service provider.¹⁹ T-Mobile's illicit activity not only impacted T-Mobile customers, it caused economic harm to an untold number of small and rural telephone companies and likely millions of American wireless and wireline consumers. The Applicants insist that this recent behavior has no bearing whatsoever on how New T-Mobile will treat both its own subscriber base and all Americans (*e.g.*, individuals, families, companies, government entities, Public Safety, First Responders) who might receive a telephone call from a New T-Mobile subscriber.²⁰ However, as discussed below, this behavior is extremely relevant to this proceeding.

a. The Joint Opposition ignores the False Ring Tone Order and Consent Decree.

The Applicants readily acknowledge that when licensees propose a transaction for review, "the Commission must determine whether the proposed transfer of control will serve the

[NTCA – The Rural Broadband Association](#), *Improving Resiliency, Reliability and Continuity of Mobile Wireless Communications Networks*, PS Docket Nos. 13-239 and 11-60 (May 31, 2016).

¹⁸ U.S. House of Representatives Committee on Small Business, Subcommittees on Health and Technology and Agriculture, Energy, and Trade, *Disconnected: Rural Broadband and the Business Case for Small Carriers*, [Statement by Erin P. Fitzgerald, Regulatory Counsel, Rural Wireless Association, Inc., at pp. 4-6](#) (Mar. 6, 2018) ("*Fitzgerald Testimony*").

¹⁹ *Petition to Deny* at 10.

²⁰ *Joint Opposition* at 121-122.

‘public interest, convenience, and necessity.’”²¹ T-Mobile’s use of false ring tones is abhorrent behavior that is inherently *not* in the public interest. There is no dispute that T-Mobile “admit[ted] that it violated the Commission’s prohibition against the insertion of false ring tones”²² to mask calls not being connected to their destination. This has already been determined by the Commission. Not only did the Commission find that “[r]ural call completion problems have significant and immediate *public interest* ramifications,” but also that “the *public interest* would be served by adopting the *Consent Decree*.”²³ Any Commission review of the Applications must look at the totality of circumstances as to how New T-Mobile will behave in the marketplace, especially with a potential consolidation of spectrum and a corresponding, massive increase in subscriber count. The Applicants (but especially T-Mobile) wish for this issue to disappear, but it is highly relevant to the Commission’s review and cannot be swept under the rug.

b. T-Mobile’s actions have negatively impacted commerce nationwide.

Because T-Mobile entered into a *Consent Decree*, no one quantified the economic loss sustained by individuals and companies due to T-Mobile’s illegal behavior. What is known is that individuals and businesses alike around the country were unwitting victims of duplicitous behavior by T-Mobile when the carrier inserted false ring tones into hundreds of millions of

²¹ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, [Description of Transaction, Public Interest Statement, and Related Demonstrations](#)*, WT Docket No. 18-197, at p. 9 (June 18, 2018) (“*Transaction Description*”). See also 47 U.S.C. § 310(d).

²² *In the Matter of T-Mobile USA, Inc.*, [Order](#), File No.: EB-IHD-16-00023247, Acct. No.: 201832080003, FRN 0004121760, DA 18-373, at p. 1 (released April 16, 2018) (“*T-Mobile Order*”); see also *In the Matter of T-Mobile USA, Inc.*, [Consent Decree](#), File No.: EB-IHD-16-00023247, Acct. No.: 201832080003, FRN 0004121760, DA 18-373 (released April 16, 2018) (“*T-Mobile Consent Decree*”).

²³ *T-Mobile Order* at 1 (emphasis added).

telephone calls annually.²⁴ To the extent the Applicants tout any type of economic benefit resulting from the proposed merger, they fail to consider the economic harm resulting from T-Mobile's recent actions when it comes to false ring tones and failure to complete rural calls. To blindly trust all of the purported economic benefits claimed by the Applicants in their Description of Transaction, Public Interest Statement, and Related Demonstrations (“*Transaction Description*”) and *Joint Opposition* would be a dereliction of duty. The Commission must weigh T-Mobile's past behavior as it considers whether to allow New T-Mobile to take on new Sprint customers and potentially subject more than 50 million new customers to potential callous behavior. This past behavior goes to the heart of the public interest consideration.

III. EXCEEDING THE SPECTRUM SCREEN IN THE VAST MAJORITY OF MARKETS MERITS A COMMISSION REVIEW AT THE NATIONAL LEVEL.

In arguing that exceeding the spectrum is not determinative of whether a proposed merger will harm competition, Applicants ignore the fact that their combined spectrum holdings will exceed the spectrum screen in not just a handful of markets, but in 63% of the nation's counties, including 100% of the Top 130 most populous counties.²⁵ While Applicants are correct that exceeding the spectrum requires only heightened FCC review, the scope of the territory in which Applicants exceed the spectrum screen causes significant competitive problems and, combined with the fact that the country is losing a nationwide carrier, provides support for a finding of competitive harm.

The proposed Sprint/T-Mobile merger would result in excessive concentration of spectrum in the hands of New T-Mobile. Applicants seek to combine their spectrum in CMAs across the country where, post-merger, New T-Mobile will hold more spectrum than either

²⁴ *T-Mobile Consent Decree* at ¶ 11.

²⁵ *RWA Petition to Deny* at p. 17.

AT&T or Verizon, yet T-Mobile has consistently failed to provide adequate coverage on its own when it already holds considerable Low Band and Mid Band coverage. Applicants will exceed the spectrum screen in 2,061 of the 3,230 counties (or county equivalents) across the country.²⁶ In their *Joint Opposition*, Applicants ignored this fact and tried to argue that New T-Mobile's market share would be significantly less than what RWA demonstrates.²⁷ This excessive concentration of spectrum, which when combined with T-Mobile's failure to deploy native coverage, as evidenced by its own publicly-available coverage map, would result in harm to rural consumers. In addition to the harms to consumers resulting from the failure of Sprint and T-Mobile to deploy coverage, the likely public interest harms stemming from this proposed merger also include precluding Sprint and potentially multiple other new and existing carriers from using these licenses to provide next-generation services in direct competition to only three remaining nationwide carriers.

Applicants contend that the Commission should apply its "routine competitive review" to this transaction, whereby the Commission analyzes its "post-screen competitive analysis on a local-market-by-local-market basis, considering a variety of competitive factors in

²⁶ *RWA Petition to Deny* at p. 17.

²⁷ *Joint Opposition* at p. 28. After RWA raised in its *Petition to Deny* the specter of New T-Mobile holding, post-merger, excessive spectrum in Alpine County, CA, and Benton County, MS (two counties where today neither Sprint nor T-Mobile have appreciable coverage), the Applicants responded that "[i]t is not credible to suggest that the merger would enhance the potential for competitive harm in a local market when the post-merger entity would have only *single digit* market share in that CMA" (emphasis added). Ignoring millimeter wave spectrum and only considering Low Band and Mid Band spectrum, the percentage "market share" of New T-Mobile would be anything but "single digit." For example, in Alpine County, CA, Sprint's (27.3 megahertz Low Band, 216 megahertz Mid Band) and T-Mobile's (52 megahertz Low Band, 60 megahertz Mid Band) post-merger spectrum holdings would dwarf those of both AT&T (55 megahertz Low Band, 110 megahertz Mid Band) and Verizon (47 megahertz Low Band, 70 megahertz Mid Band). The analysis for Benton County, MS and numerous other counties around the country would yield similar results.

those triggered markets.”²⁸ However, in the present case, where this spectrum screen is triggered in the vast majority of markets across the country, the sheer volume of impacted markets negates the Applicants’ presumption that only a perfunctory review is required. Indeed, just the opposite is required. The Applicants are not seeking Commission approval to acquire fallow spectrum or buy-out a small local or even regional operator. Rather, the Applicants wish to eliminate one of the four nationwide facilities-based nationwide LTE carriers. Such a proposition was anathema to healthy competition in 2011 when AT&T and T-Mobile sought Commission approval to merge, and for the same reasons would harm competition today as well.

Going from four to three nationwide, facilities-based wireless carriers is a 25% reduction in the number of competitors at the national level. The simple fact that one of the four nationwide carriers will disappear from most major urban and suburban markets around the country will severely limit consumer choice. Concentrating spectrum into the new “Big Three” nationwide wireless carriers is anticompetitive. The Applicants argue that the proposed merger is *not* anticompetitive because “[f]rom an economic perspective, a merger is only anticompetitive when it leads to artificial reductions in supply, increases in prices²⁹, or lower quality, thereby reducing consumer welfare.”³⁰ Applicants appear to argue that the proposed merger would not lead to an artificial reduction in supply, and that therefore the proposed merger is not anticompetitive. However, Applicants mischaracterize the definition of an anticompetitive merger. Mergers can be anticompetitive whether the resulting decrease in supply is “artificial” or “organic.” Any proposed merger between AT&T and Verizon before the Commission would be

²⁸ *Joint Opposition* at p. 25.

²⁹ With respect to future lower prices, any assurances made by the Applicants in the *Transaction Description*, the various Declarations, or any subsequent filings in the docket are purely speculative in nature and are not dispositive.

³⁰ *Joint Opposition* at p. 5.

no more or no less “artificial” than the proposed merger between Sprint and T-Mobile. RWA is not disputing the fact that a merger between Sprint and T-Mobile would result in increased assets available to New T-Mobile (including an increase in spectrum holdings). What RWA and other petitioners have demonstrated³¹ is that the proposed merger is anticompetitive and will not lead to “lower prices, and higher quality service.”³²

IV. THE PROPOSED MERGER WOULD ENABLE NEW T-MOBILE TO ALLOW ADDITIONAL SPECTRUM TO LIE FALLOW.

In its *Petition to Deny*, RWA expressed concern that current Sprint spectrum leases would not be renewed after the merger. Given the difficulty that rural wireless carriers often have in accessing spectrum, these lease agreements are critical. The *Joint Opposition* confirms that this concern was warranted. The *Joint Opposition* states that Sprint’s spectrum leases will only be renewed “where economically justified.”³³

T-Mobile’s promise to “continue spectrum sales and leases where economically justified” offers no assurances to RWA members that T-Mobile will enter into such sale or lease arrangements. As RWA and others have explained – the secondary market for fallow spectrum in rural areas is broken.³⁴ While entities are able to partition and disaggregate spectrum to parse out smaller geographic areas, the transactional costs for the largest carriers – including the prospective New T-Mobile – to do so often outpace spectrum value. Spectrum leasing and management have also been options for utilizing fallow spectrum in rural areas, but these

³¹ *Petition to Deny* at pp. i-ii.

³² *Joint Opposition* at p. 5.

³³ *Id.* at p. 101, n.379.

³⁴ *Fitzgerald Testimony* at pp. 3-4; *see also Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Reply Comments of the Rural Wireless Association, Inc.*, WT Docket No. 10-112, at pp. 4-5 (Oct. 31, 2017) (“*RWA Licensing Reply Comments*”).

arrangements place rural wireless carriers at the mercy of a spectrum licensee that usually has no incentive to deal, especially when the licensee has been able to meet build out requirements by serving only major population centers and transportation corridors.³⁵ T-Mobile has neglected in any meaningful way to sell, lease, or enter into joint-venture build-outs with rural carriers to make use of its valuable 600 MHz, 700 MHz, PCS, and AWS spectrum. As RWA noted in its *Petition to Deny*, T-Mobile’s argument that, with the 600 MHz spectrum it recently acquired during the FCC’s incentive auction, it now finally aspires to become a rural-focused carrier and deliver 5G services to forgotten corners of the United States is not persuasive. T-Mobile may claim that it intends to change its stripes, but the last twenty years provide ample evidence of a T-Mobile buildout strategy that neglects rural markets.

V. APPLICANTS’ RURAL BUILDOUT CLAIMS ARE UNSUPPORTED IN THE RECORD.

Applicants’ *Transaction Description* states that the “New T-Mobile will bring increased broadband coverage to rural Americans, along with improved signal quality and increased network capacity that will enable data-intensive applications and superior rural consumer experiences.”³⁶ T-Mobile cites its 600 MHz buildout as a demonstration of its “commitment to rural America,”³⁷ and the *Joint Opposition* explains that “New T-Mobile will expand outdoor coverage to 59.4 million rural residents, and indoor coverage to 31 million rural

³⁵ See generally *RWA Licensing Reply Comments*; see also *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, [Comments of NTCA – The Rural Broadband Association](#), WT Docket No. 10-112, at p. 2 (Oct. 2, 2017) (explaining why spectrum in rural areas often lies fallow and how the issue could be remedied).

³⁶ *Transaction Description* at pp. ii-iii.

³⁷ *Id.* at p. 63.

residents.”³⁸ But the reality is that Applicants’ rural buildout claims are not supported in the record.

As highlighted by the Communications Workers of America³⁹ and Dr. Andrew Afflerbach, the record shows that the New T-Mobile would “only provide at most marginally better broadband options than standalone T-Mobile in much of rural America.”⁴⁰ In fact, Dr. Afflerbach concluded that “for the great majority of rural Americans, the level of coverage and capacity would be similar for the merged New T-Mobile network as it would be for the standalone T-Mobile network.”⁴¹ Further, as discussed below, the data in the Applicants’ *Transaction Description* demonstrates that even six years after a T-Mobile/Sprint merger, “most of New T-Mobile’s rural customers would be forced to settle for a service that has significantly lower performance than the urban and suburban parts of the network.”⁴² As such, the digital divide is “likely to worsen, not improve, post-merger.”⁴³

The *Transaction Description* itself shows that much of rural America would be left without mid-band coverage even after the proposed merger. In a best case scenario, the Applicants project that if the merger were approved, 84.6 million Americans (26 percent of the population) would still lack New T-Mobile mid-band coverage in 2021, and by 2024, 45.9 million Americans (14 percent of the total population) would continue to lack mid-band access. Dr. Afflerbach’s findings show that, given these figures and the technical limitations of the spectrum, the vast majority of this uncovered population would be among the 62 million

³⁸ *Joint Opposition* at p. 94.

³⁹ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorization*, [Comments of Communications Workers of America](#), WT Docket No. 18-197 (Aug. 27, 2018) (“*CWA Comments*”).

⁴⁰ *Id.* at p. 47.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Americans living in the less dense, rural areas, and not the urban or suburban areas. “Assuming that the country’s rural population is the least served, and using the numbers above, New T-Mobile will likely provide mid-band coverage to few (if any) rural Americans by 2021, and (under best case projections) only 26 percent of rural Americans by 2024.”⁴⁴

New rural low-band coverage would be similarly unimpressive. According to the *Transaction Description*, low-band coverage (reflecting the total urban, suburban, and rural coverage) will be relatively constant regardless of whether the merger happens.⁴⁵ Without the merger, T-Mobile’s low-band network will cover 317.9 million users by 2021 and 323 million by 2024, compared with New T-Mobile’s 319.6 million users covered by 2021 and 324.1 million by 2024. Thus, the New T-Mobile’s low-band network would only serve an additional 1.7 million users by 2021 and an additional 1.1 million users by 2024 compared to a T-Mobile that does not merge with Sprint. As noted by CWA, the merger “does not by itself provide a meaningful solution to the lack of adequate broadband options in most parts of the country.”⁴⁶ The digital divide would continue to grow, and the merged firm’s rural offerings would still fall dramatically short of those in urban and suburban markets and would not be dramatically improved relative to standalone T-Mobile and Sprint.⁴⁷

VI. THE PROPOSED MERGER WILL HARM THE ABILITY OF THE UNITED STATES TO CONTINUE ITS 5G LEADERSHIP AND WILL PUT THE U.S. BEHIND CHINA IN THE RACE TO 5G.

The White House recently held its first ever 5G Summit. At this September 28, 2018 event, David J. Redl, the National Telecommunications and Information Administration’s (NTIA) Assistant Secretary for Communications and Information, remarked that “[t]he Trump

⁴⁴ *CWA Comments* at p. 48.

⁴⁵ Table 9, *Transaction Description*.

⁴⁶ *CWA Comments* at p. 52; Afflerbach at ¶ 16.

⁴⁷ *CWA Comments* at p. 52;

Administration is dedicated to ensuring America’s continued *leadership* in wireless technology, and the rollout of secure, ubiquitous 5G has been a priority for our nation.”⁴⁸ FCC Chairman Ajit Pai reiterated this sentiment when he stated that “U.S. *leadership* in 5G technology is a national imperative for economic growth and competitiveness.”⁴⁹ Chairman Pai even acknowledged that “[t]ime is of the essence” and that “China, South Korea, and many other countries are eager to claim this mantle.”⁵⁰ However, in order for the United States to remain the undisputed global leader in 5G technology and deployments, the U.S. government cannot simultaneously aid other countries in their race to global leadership, especially China. Yet, that is precisely what will happen if the proposed merger is allowed to proceed.

Softbank and Deutsche Telekom, the respective parent companies of Sprint and T-Mobile, are not just openly partnering with China-based companies to bring 5G to Japan and Germany, the companies are actively involved in bringing artificial intelligence and other next-generation technologies directly to China to help them reach 5G first. It is no secret that both Deutsche Telekom⁵¹ and Softbank⁵², dating back as early as 2015, are partnering with Chinese-

⁴⁸ Remarks by David J. Redl, Assistant Secretary for Communications and Information, White House 5G Summit, Washington, DC, September 28, 2018; *see* <https://www.ntia.doc.gov/spechtestimony/2018/remarks-assistant-secretary-redl-white-house-5g-summit> (emphasis added).

⁴⁹ Remarks by Ajit Pai, Chairman, Federal Communications Commission, White House 5G Summit, Washington, DC, September 28, 2018; *see* <https://docs.fcc.gov/public/attachments/DOC-354323A1.pdf> (emphasis added).

⁵⁰ *Id.*

⁵¹ “Deutsche Telekom, Intel and Huawei Achieve World’s First 5G NR Interoperability in Operator Environment,” Deutsche Telekom Press Release (February 20, 2018); *see* <https://www.telekom.com/en/media/media-information/archive/dt-and-partners-achieve-5g-nr-interoperability-515364>, (“The test is based on Huawei’s 5G commercial base station...and [i]t is a critical step towards the early development of full commercial 5G equipment in 2019, accelerating the 5G ecosystem.”).

⁵² “SoftBank and Huawei’s Wireless X Labs Sign Connected Robot MoU to Explore New Cloud Robotics,” Huawei Press Release (November 24, 2017); *see* <https://www.huawei.com/en/press-events/news/2017/11/Huawei-Wireless-XLabs-SoftBank-MOU> (“SoftBank and Huawei’s

based equipment manufacturers in order to help Japan and Germany leapfrog into commercial 5G before the United States.⁵³ Perhaps even more troubling, Softbank is using its \$100 billion “Vision Fund” to provide financial support to multiple Chinese companies, most of which have some type of critical infrastructure or Internet presence, and at least one of which is developing Artificial Intelligence (facial recognition) technology that will be highly dependent upon 5G networks.⁵⁴

By allowing the proposed merger between Sprint and T-Mobile to proceed, and in the process allow the parent companies Softbank and Deutsche Telekom to realize billions of dollars in cost savings, the U.S. government would tacitly allow the parent companies of the two U.S. carriers to re-allocate capital and operational savings and funnel it directly into the purchase of 5G equipment developed by Chinese-based equipment companies in Asia and Europe, and furthermore, aid 5G and Artificial Intelligence technological developments in China. To the extent the U.S. government wants America to be the leader in 5G, it cannot simultaneously provide a government-approved conduit by which revenue earned off the backs of American consumers is then re-appropriated to help bolster the 5G prospects of numerous other countries, including China.

Wireless X Labs recently signed a memorandum of understanding (MoU) regarding connected robots. SoftBank plans to offer Cube and Kibako (automated cube robots), while Huawei provides 5G wireless networks. Joint efforts will be conducted to implement 5G-based smart service robots by 2018.”)

⁵³ “Huawei to Launch 5G Network Equipment in 2018,” Huawei Press Release (December 3, 2017); see <https://huawei.eu/media-centre/press-releases/huawei-launch-5g-network-equipment-2018> and <https://huawei.eu/media-centre/media/huawei-antennas-go-berlin>.

⁵⁴ “SoftBank’s Vision Fund to Invest \$1 Billion in China AI Startup: Bloomberg,” Reuters (July 19, 2018), see <https://www.reuters.com/article/us-softbank-group-china-funding/softbanks-vision-fund-to-invest-1-billion-in-china-ai-startup-bloomberg-idUSKBN1KA0HU>.

VII. CONCLUSION.

For all of the reasons set forth above, the proposed transaction is contrary to the public interest and should be denied.

Respectfully submitted,

RURAL WIRELESS ASSOCIATION, INC.

By: /s/ Caressa D. Bennet
Caressa D. Bennet, General Counsel
Daryl A. Zakov, Assistant General Counsel
Erin P. Fitzgerald, Regulatory Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 857-4519
legal@ruralwireless.org

October 31, 2018

CERTIFICATE OF SERVICE

I, Erin Fitzgerald, do hereby certify that on this 31st day of October, 2018, I caused a copy of the foregoing Reply to be served upon the following individuals by United States Postal Service and/or electronic mail.

<p>Regina M. Keeney A. Richard Metzger, Jr. Emily J.H. Daniels Lawler, Metzger, Keeney & Logan, LLC 1717 K Street, N.W., Suite 1075 Washington, DC 20006 (202) 777-7700 <i>Counsel to Sprint Corporation</i></p>	<p>R. Michael Senkowski* Nancy J. Victory Edward “Smitty” Smith DLA Piper LLP (US) 500 8th Street, N.W. Washington, DC 20004 (202) 799-4000 nancy.victory@dlapiper.com Peter.Shroyer@dlapiper.com <i>Counsel to T-Mobile US, Inc.</i></p>
<p>Paul Goodman* The Greenlining Institute 360 14th Street Oakland, CA 94612 paulg@greenlining.org</p>	<p>David A. LaFuria Robert S. Koppel Lukas, LaFuria, Gutierrez & Sachs, LLP 8300 Greensboro Drive Suite 1200 Tysons, VA 22102 dlafuria@fcclaw.com <i>Counsel to Broadcast Data Corp. and Union Telephone et al.</i></p>
<p>Donald L. Herman* Clare Liedquist Molly O’Connor Herman & Whiteaker, LLC 6720B Rockledge Drive, Suite 150 Bethesda, MD 20817 dee@hermanwhiteaker.com <i>Counsel to Rural South Carolina Operators</i></p>	<p>Allen P. Grunes Maurice E. Stucke THE KONKURRENZ GROUP 5335 Wisconsin Avenue, Suite 440 Washington, D.C. 20015 allengrunes@konkurrenzgroup.com <i>Counsel to Communications Workers of America</i></p>
<p>Jill Canfield* NTCA – The Rural Broadband Association 4121 Wilson Boulevard, Suite 1000 Arlington, VA 22203 jcanfield@ntca.org</p>	<p>Lauren J. Coppola Robins Kaplan LLP 800 Boylston Street Suite 2500 Boston, MA 02199 lcoppola@robinskaplan.com <i>Counsel to CarrierX d/b/a Free Conferencing</i></p>
<p>Yosef Getachew Common Cause 805 15th Street NW, Suite 800 Washington, D.C. 20005 ygetachew@commoncause.org</p>	<p>Elliot Noss Tucows Inc. 96 Mowat Avenue Toronto, Ontario, Canada M6K 3M1</p>

<p>Pantelis Michalopoulos* Christopher Bjornson Andrew M. Golodny Steptoe & Johnson LLP 1330 Connecticut Ave NW Washington, D.C. 20036 agolodny@steptoe.com <i>Counsel to DISH Network Corporation</i></p>	<p>Catherine Wang Morgan, Lewis & Bockius LLP 1111 Pennsylvania Avenue NW Washington, D.C. 20004 Catherine.wang@morganlewis.com <i>Counsel to Charter Communications, Inc.</i></p>
<p>Jennifer L. Richter* Shea Boyd Akin Gump Strauss Hauer & Feld LLP 1333 New Hampshire Avenue NW Washington, D.C. 20036 Shea.boyd@akingump.com <i>Counsel to Altice</i></p>	<p>Diana Moss American Antitrust Institute 1025 Connecticut Avenue NW, Suite 1000 Washington, D.C. 20036 dmoos@antitrustinstitute.org</p>
<p>Debra Berlyn Consumer Policy Solutions 7207 Summit Avenue Chevy Chase, MD 20815</p>	<p>AJ Burton Frontier Communications Corporation 1800 M Street, NW Suite 850S Washington, D.C. 20036 Aj.burton@ftr.com</p>
<p>Maureen R. Jeffreys* Scott Feira Arnold & Porter 601 Massachusetts Avenue NW Washington, D.C. 20001 Maureen.jeffreys@apks.com Stefanie.Alfonso-Frank@arnoldporter.com <i>Counsel to AT&T</i></p>	<p>Enrique Gallardo* California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102 Enrique.gallardo@cpuc.ca.gov</p>
<p>Carl W. Northrop* E. Ashton Johnston Carolyn Mahoney Telecommunications Law Professionals PLLC 1025 Connecticut Avenue NW, Suite 1011 Washington, D.C. 20036 cmahoney@telecomlawpros.com <i>Counsel to Cellular South d/b/a C Spire</i></p>	<p>John Schwartz Voqal P.O. Box 6060 Boulder, CO 80306</p>
<p>Dennis L. Puckett* Amanda A. James Sullivan and Ward, P.C. 6601 Westown Parkway, Suite 200 Des Moines, IA 50266 dpuckett@sullivan-ward.com <i>Counsel to Aureon</i></p>	<p>O'Neil Pryce* Matthew Wood Free Press 1025 Connecticut Avenue NW Suite 1110 Washington, D.C. 20036 mwood@freepress.net</p>

Atif Khan Unlimited Arena 17411 Mountainview Circle Sugarland, TX 77479	Christopher Price Console Enterprises 564 Rio Lindo Avenue, Suite 203 Chico, CA 95926
Kim Keenan P.O. Box 3911 Washington, D.C. 20027	Thomas Whitehead Windstream Services, LLC 1101 17th Street NW, Suite 802 Washington, D.C. 20036
John Conrad Rodriguez Alexandra Verdiales Costa Liberty Cablevision of Puerto Rico LLC 279 Ponce de Leon Avenue San Juan, PR 00918	

/s/ Erin P. Fitzgerald
Erin P. Fitzgerald

*Denotes service via electronic mail