

May 30, 2019

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: NOTICE OF EX PARTE

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

Dear Ms. Dortch:

On May 20, 2019, T-Mobile US, Inc. (“T-Mobile”) and Sprint Corp. (“Sprint”) (collectively, the “Applicants”) made a number of unsupported, ambiguous, and open-ended “commitments” in an attempt to secure approval of their proposed merger,¹ including commitments to “build a world-leading nationwide 5G network,”² “provide high-speed 5G services for rural America,”³ and subject the newly merged T-Mobile-Sprint (“New T-Mobile”) to a “verification and enforcement regime” that allegedly ensures the carrier upholds these promises.⁴ That same day, three members of the Federal Communications Commission (“FCC” or “Commission”) made public statements supporting the proposed merger,⁵ effectively rubber-stamping its approval without providing the millions of rural Americans and those that travel through rural America, whom the merger will negatively affect, with an opportunity to review or comment on the conditions proposed.

The Rural Wireless Association, Inc. (“RWA”) believes the three FCC Commissioners publicly supporting this deal have been wooed by flashy language that is nothing but smoke and mirrors, and by this *ex parte* filing RWA addresses the numerous problems associated with the Applicants’ “commitments” that relate to service in rural America.

¹ See [Letter from Regina M. Keeney et al. to Marlene Dortch](#), WT Docket No. 18-197 (May 20, 2019) (“May 20 Filing”).

² See *id.* at 2-3 and Attachment 1, Section 1.

³ See *id.* at 3-4 and Attachment 1, Section 2.

⁴ See *id.* at 7-8 and Attachment 1, Sections 4-5.

⁵ See [Chairman Pai Statement on T-Mobile/Sprint Merger](#), Press Release (May 20, 2019); [Carr Announces Support for T-Mobile-Sprint Transaction](#), Press Release (May 20, 2019); Mike O’Rielly (@mikeofcc), [TWITTER](#) (May 20, 2019, 2:16 PM), <https://twitter.com/mikeofcc/status/1130583036595179520>.

Build-Out Commitments

In the Applicants' May 20 Filing, they claim that within three years of the proposed merger's closing, New T-Mobile will "invest nearly \$40 billion" to create a "nationwide 5G network [that] will deliver fiber-like speeds for mobile services [and] bring broadband wireless service to millions of unserved and underserved rural Americans."⁶ What the Applicants fail to explain or address is how, exactly, New T-Mobile plans to lay the thousands of miles of *actual* fiber that it will take to provide the "fiber-like" wireless speeds that the Applicants have committed to, or how the Applicants will pay for and complete such an enormous project, which will require the buildout of more than 200,000 cell sites in only three to six years' time.

Indeed, having the spectrum necessary to provide 5G services and having the infrastructure to ensure those 5G services actually reach consumers are two entirely different things, and while the Applicants individually possess spectrum that could be used to provide 5G coverage, they totally lack the cell sites, fiber, and backhaul services that are necessary to make a 5G network operational in 99 percent of rural America. Accordingly, in order for the Applicants to "build a world-leading 5G network" that will "provide high-speed 5G services to rural America," New T-Mobile will need to *immediately* begin expending considerable time and resources to deploy thousands of miles of fiber and construct hundreds (if not thousands) of new cell sites. RWA estimates that, to meet New T-Mobile's nearly impossible timeline for achieving this goal, New T-Mobile will need to expend *at least \$100 billion*,⁷ significantly more than the \$40 billion investment that the Applicants' May 20 Filing claims New T-Mobile will make in its network.⁸

Moreover, RWA believes that, in order to meet the Applicants' build-out commitments in three to six years' time, New T-Mobile will need to quickly resolve the problems that have already been identified with its roll-out of 5G service, and which have already forced T-Mobile to delay by several months its launch of 5G service in 30 major cities.⁹ Add this to the fact that certain 5G technologies that will make service to rural America possible have yet to be fully developed,¹⁰ and it becomes clear that the Applicants' three- and six-year 5G buildout "commitments" are nothing more than open-ended

⁶ May 20 Filing at 1.

⁷ Indeed, one analyst estimates that the buildout of 5G services could cost up to \$200 billion *per year*. See Olga Kharif, [Upgrade to 5G Costs \\$200 Billion a Year, May Not be Worth It](#), BLOOMBERG (Dec. 18, 2017). And other analysts have concluded that, to build a fully-functioning 5G network, "network-related capital expenditures would have to increase by 60 percent from 2020 through 2025, roughly doubling total cost of ownership (TCO) during that period." Ferry Grijpink et al., [The Road to 5G: The Inevitable Growth of Infrastructure Cost](#), MCKINSEY & CO. (Feb. 2018).

⁸ See May 20 Filing at 1.

⁹ See Roger Cheng, [T-Mobile Delays Full 600 MHz 5G Launch Until Second Half of 2019](#), CNET (Feb. 25, 2019).

¹⁰ See, e.g., Paul Heltzel, [Real-World 5G Rollout Sees Early Stumbles](#), IT PRO TODAY (Apr. 9, 2019) (citing a March 2019 report from research firm MoffettNathanson finding that there are "a number of problems [with 5G deployment] that are specific to the technology and [that] could point to difficulties that will make a nationwide rollout more difficult than was initially thought")

statement with no concrete plan of action. In sum, this is merely smoke and mirrors and sleight of hand wielded by two of the greatest con artists of all time: T-Mobile and Sprint.

Coverage Commitments

Keeping with past practice, the Applicants also “commit” to “expanding outdoor 5G coverage to 59.4 million rural residents” and to “deploy[ing] a 5G network with low-band coverage of at least 90 percent of the rural population.”¹¹ Like Applicants’ other “commitments,” these statements, and the numbers behind them, do grab attention; however, similar to Applicants’ other unsubstantiated promises, they are devoid of the factual support and buildout specifics that any reasonable merger concession would contain.

While the Applicants claim that they are “expand[ing] and accelerat[ing] their rural deployment plans” by extending mid-band 5G coverage to 6.5 million more rural Americans in the first three years of deployment and an additional 6.1 million rural Americans within six years of deployment,¹² they offer *no explanation* as to how or where this expanded coverage will occur. Indeed, throughout the Applicants’ entire rural buildout “plan,” they do not once explain the process by which New T-Mobile’s deployment of 5G services will be rolled out to reach the numerous rural populations that to date do not even have reliable 4G coverage. Moreover, the Applicants fail to detail who is included in the coverage numbers they repeatedly throw out, choosing to not even provide rough estimations as to what states and/or geographic areas of rural America will see 5G coverage and the anticipated time period at which such coverage will be seen. Rural America is not the wild, wild west and these attempts to sway regulators and public opinion with “5G snake oil” and an alleged money-back guarantee must not be countenanced by our public servants.

And even if the Applicants’ lack of any concrete deployment plan or coverage specifics was itself not enough to raise concerns to the three Commissioners supporting this transaction, its repeated over-estimation of America’s rural population should. As RWA has explained in past filings in this Docket, the Applicants have *never* provided the Commission with a verifiable source to support their claim that there are over 60 million people living in rural America.¹³ According to the U.S. Department of Agriculture, as of November 2018, the United States’ “overall rural population has remained close to 46.1 million since 2013.”¹⁴ Thus, it appears that, in making their rural 5G coverage commitment, the Applicants have severely over-estimated America’s rural population (again) in an effort to pump up their percentages, thereby drastically inflating this number and bringing into their equation millions of urban Americans in hopes of making their ambiguous, unsubstantiated promise of “enhanced coverage” more palatable.

¹¹ May 20 Filing at 3.

¹² *See id.* at 4.

¹³ *See* [Rural Wireless Association Inc.’s Supplemental Comments](#), WT Docket No. 18-197, at 4-5 (Mar. 28, 2019).

¹⁴ *See* [Rural Population Trends](#), USDA (Nov. 2018).

Enforcement Commitments

The Applicants attempt to distract from the numerous ambiguities and misstatements mentioned above by committing New T-Mobile to a “verification and enforcement regime” that will allegedly keep New T-Mobile honest and committed to the open-ended promises the Applicants have made.¹⁵ Ah! The money-back guarantee! But read the fine print, folks. The proposed verification and enforcement regime is itself extremely open-ended and ambiguous, and, in reality, will not provide the millions of Americans who will be harmed by this merger any sort of protection once New T-Mobile fails to uphold its “commitments.”

The Applicants assert that their commitments “will set a new standard for regulatory transparency” by requiring the New T-Mobile to provide “regular and robust information in annual reports regarding its progress” and two “comprehensive coverage reports” that include data from drive tests, which collectively will be used to hold the New T-Mobile to its 5G buildout and coverage promises.¹⁶ As RWA has previously explained, however, T-Mobile is not the most “transparent” company. For example, RWA,¹⁷ state public service agencies,¹⁸ and members of Congress¹⁹ have all raised concerns regarding T-Mobile’s 4G LTE coverage misstatements in the Commission’s Mobility Fund Phase II proceeding and/or in the coverage maps it displays on its website. Moreover, the Commission itself has penalized T-Mobile for inserting false ring tones into hundreds of millions of calls destined for rural America and for misleading the agency as to the carrier’s years’ long engagement in this unlawful practice.²⁰ Consequently, the Commission should look at the Applicants’ present verification regime and its promise of “transparency” with extreme skepticism.

The Commission should take a closer look at who, in fact, the enforcement regime will advantage as well, as it is readily apparent to RWA that New T-Mobile – *not* the public – will be the primary (and likely *sole*) beneficiary of this scheme. For example, while traditionally the FCC would have the authority to financially penalize an entity for violating an agreement between the entity and the agency,²¹ the conditions proposed by the Applicants explicitly remove this tool from the agency’s enforcement arsenal, requiring New T-Mobile to instead pay a *tax-deductible* “voluntary contribution” to the U.S. Treasury in the event it breaches the Applicants’ commitments. And even once T-Mobile

¹⁵ See May 20 Filing at 7-8 and Attachment 1, Sections 4-5.

¹⁶ *Id.* at 7.

¹⁷ See [Informal Request of the Rural Wireless Association, Inc. for Commission Action](#), WC Docket No. 10-90 & WT Docket No. 10-208 (Dec. 26, 2018).

¹⁸ See [Mobile Wireless in Vermont](#), VERMONT DEPT. PUB. SERV. (rel. Jan. 14, 2019).

¹⁹ See Marguerite Reardon, [Lawmakers Question T-Mobile’s Commitment to Rural 5G](#), CNET (Feb. 13, 2019) (“Rep. Peter Welch, a Democrat from Vermont, criticized T-Mobile and Sprint for not actually delivering the 3G and 4G service in Vermont that the companies [sic] own coverage maps say they offer. And he said he was doubtful the New T-Mobile would actually deliver on its promise to bring 5G to his neck of the woods.”).

²⁰ See *In re T-Mobile USA, Inc.*, [Order](#), File No. EB-IHD-16-00023247, Acct. No. 201832080003, FRN 0004121760, DA 18-373 (rel. Apr. 16, 2018); see also *In re T-Mobile USA, Inc.*, [Consent Decree](#), File No. EB-IHD-16-00023247, Acct. No. 201832080003, FRN 0004121760, DA 18-373, ¶¶ 6-8, 10-12 (rel. Apr. 16, 2018).

²¹ See 47 U.S.C. §§ 501-503.

breaches its commitments and is required to pay such a “voluntary contribution,” the carrier will *at most* be required to pay \$2.4 billion,²² which pales in comparison to the \$26.5 billion-dollar cost of the merger, the billions in revenue New T-Mobile will receive as a result of the transaction, *and* the \$100 billion-plus it will take for New T-Mobile to actually meet its commitments.

RWA equates the Applicants’ proposal to nothing more than the 5G version of the Emperor’s new clothes and respectfully requests that the Commission find that the vague, unsubstantiated conditions proposed by the Applicants, without further investigation and public comment, are drastically insufficient to protect rural consumers against the clear harms this market-consolidating merger would bring. Moreover, the proposed “penalties” for failing to comply with the conditions offered are illusory and will not force T-Mobile to keep its promises. Consequently, and for the reasons set forth more fully in RWA’s other submissions in this Docket, to benefit rural America and the public interest in general, the proposed transaction should be denied.

Respectfully submitted,

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²² See May 20 Filing Attachment 1, Section 5(B). Indeed, this is assuming New T-Mobile is at some point actually required to *pay* the “voluntary contribution,” which is no guarantee given the Commission may be unwilling to enforce the Applicants’ commitments or that New T-Mobile will likely litigate the breached commitment and its required payment for years.