

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

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

**SUPPLEMENT TO PETITION TO DENY OF
RURAL WIRELESS ASSOCIATION, INC.**

**JOINED BY
COMMUNICATIONS WORKERS OF AMERICA, CONSUMER REPORTS, NEW
AMERICA'S OPEN TECHNOLOGY INSTITUTE, NTCA - THE RURAL BROADBAND
ASSOCIATION, INSTITUTE FOR LOCAL SELF-RELIANCE, THE GREENLINING
INSTITUTE, OPEN MARKETS INSTITUTE, PUBLIC KNOWLEDGE**

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October 03, 2019

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**SUPPLEMENT TO PETITION TO DENY OF
RURAL WIRELESS ASSOCIATION, INC.**

Pursuant to Section D of the Telecommunications Act of 1996 and Section 1.939 of the Federal Communications Commission’s (“Commission”) rules,¹ and the Public Notice released on July 18, 2018,² the Rural Wireless Association, Inc. (“RWA”), Communications Workers of America, Consumer Reports, New America's Open Technology Institute, NTCA - The Rural Broadband Association, Institute for Local Self-Reliance, the Greenlining Institute, Open Markets Institute and Public Knowledge (collectively “public interest, rural wireless, and labor organizations”) file this Supplement to RWA’s Petition to Deny the Consolidated Application of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint”) (collectively, “Applicants”) for consent to transfer control of certain licenses, authorizations, and spectrum leases.

¹ 47 U.S.C.A. § 309; 47 C.F.R. § 1.939

² Public Notice, *T-Mobile US, Inc., and Sprint Corporation Seek FCC Consent to the Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held by Sprint Corporation and its Subsidiaries to T-Mobile US, Inc., and the Pro Forma Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held by T-Mobile US, Inc., and its Subsidiaries*, WT Docket No. 18-197, DA 18-740 (July 18, 2018).

Specifically, the public interest, rural wireless, and labor organizations ask the Commission to pause its review of the merger while important issues related to Sprint's apparent Lifeline fraud are more fully investigated by the Commission, and also urge the Commission to seek public comment on the DISH waiver requests, the July 26 Dish commitments to the Commission, and related developments, including the DOJ Consent Decree.³

I. BACKGROUND

On September 24, 2019, the Commission announced that Sprint was alleged to have fraudulently received tens of millions of dollars in federal subsidies by falsely claiming it provided Lifeline service to 885,000 inactive subscribers.⁴ Under the Commission's rules, providers of Lifeline service are required to de-enroll subscribers who have not used their phones at least once within the past 30 days.⁵ This represents nearly one-third of Sprint's Lifeline subscriber base and nearly 10 percent of the entire Lifeline program's subscriber base.⁶ Lifeline is a beneficial federal program that provides low-income Americans access to subsidized phone and broadband services. We raise these concerns as strong advocates of the Lifeline program and the overall universal service program in general which also provides support to schools and

³See Letter from Debbie Goldman, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 26, 2019); *See also* Letter from Debbie Goldman to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug 13, 2019); Letter from Louis Peraertz, WISPA, to Ms. Marlene H. Dortch, Secretary, Applications of T-Mobile US, Inc. and Sprint Corporation, Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-19 (filed Aug 8, 2019). Letter from Michael R. Romano and Jill Canfield, NTCA, and Caressa D. Bennet, Daryl Zakov, and Michael R. Bennet, Rural Wireless Association, 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, DBSD Corporation, AWS-4, Lead Call Sign T070272001; Gamma Acquisition L.L.C., AWS-4, Lead Call Sign T060430001; Manifest Wireless L.L.C., Lower 700 MHz E Block, Lead Call Sign WQJY944; American H Block Wireless L.L.C., H Block, Lead Call Sign WQTX200; ParkerB.com Wireless L.L.C., 600 MHz, Lead Call Sign WQZM232 (filed Aug. 5, 2019).

⁴ FCC Press Release, *FCC Learns That Sprint Received Tens Of Millions In Lifeline Subsidies—But Provided No Service* (September 24, 2019).

⁵ *Id.*

⁶ *Id.* The previous largest Commission investigation of a Lifeline provider involved only 40,000 inactive subscribers of American Broadband and Telecommunications Co, in which the Commission proposed a \$63 million fine. *See* Law360, *FCC Floats \$63M Fine Over Alleged Lifeline Bilking* (Sep. 26, 2019), available at <https://www.law360.com/competition/articles/1203350/fcc-dems-say-sprint-lifeline-probe-justifies-fresh-input?>

libraries through the E-rate program, support for telemedicine, and support for high cost rural areas.⁷

II. PETITION

The allegations against Sprint warrant investigation and delay of any Commission action on the T-Mobile/Sprint Application until such investigation is resolved. The Commission's long-standing precedent under *Jefferson Radio Co. v. FCC* is clear that a company cannot sell or transfer a license when the company's fitness to hold a license is at issue.⁸ If these allegations are accurate, Sprint's Lifeline fraud, which impacts subscribers comprising about 10 percent of the whole program, is serious enough to support action by the Commission to pause its consideration of the Applicants' proposed merger while it investigates substantial and material issues of fact presented by Sprint's alleged abuse and fraud related to the Lifeline rules.

III. REQUEST FOR PUBLIC COMMENT

The Commission's T-Mobile/Sprint merger review process has been highly unusual. For example, Chairman Pai and two other Commissioners announced their support for the merger before the completion of the legal, engineering, and economic analysis by the Commission Staff, and before the completion of the Department of Justice's ("DOJ") antitrust review.⁹

Since the announcement of the draft *T-Mobile/Sprint Merger Order* on August 14, 2019, T-Mobile has held, according to public records, 15 meetings with FCC Commissioners and staff. These include meetings between T-Mobile CEO, John J. Legere, or T-Mobile President and

⁷ Given that the FCC is currently considering a cap on the overall universal service fund of which Lifeline is a portion, the fraudulent taking of Lifeline funds potentially impacts other universal service programs. See Universal Service Contribution Methodology, WC Docket No. 06-122.

⁸ See *Jefferson Radio Co. v. F.C.C.*, 340 F.2d 781 (D.C. Cir. 1964); see also 47 U.S.C. §308(b) (requiring applicants to have the requisite character qualifications to hold an FCC license).

⁹ See Monica Allevan, "Rosenworcel calls T-Mobile/Sprint merger review process 'bonkers'," *FierceWireless* (Sept. 26, 2019).

COO, G. Michael Sievert, and the Commissioners,¹⁰ two meetings with Chairman Pai’s Chief of Staff Mathew Berry,¹¹ and eight meetings with the office of Commissioner Carr.¹²

T-Mobile’s ex parte filings on these meetings did not comply with the FCC’s ex parte rules.¹³ They are very brief cursory notices that do not provide sufficient detail under the ex parte rules to allow the public to understand exactly what T-Mobile communicated in these meetings. The FCC should require T-Mobile to supplement its ex parte filings with additional information sufficient to bring it into compliance with the ex parte rules.

In addition to directing T-Mobile to file more substantive ex parte disclosures of those meetings, the FCC, as requested by RWA,¹⁴ should open a public comment period to allow all parties – the Applicants as well as the public – to file substantive, public comments on major

¹⁰ Letter from Nancy Victory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 19, 2019).

¹¹ Letter from Samuel L. Feder to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 5, 2019); Letter from Samuel L. Feder to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 9, 2019).

¹² Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 19, 2019); Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 23, 2019); Letter from Edward “Smitty” Smith to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 27, 2019); Letter from Edward “Smitty” Smith to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 29, 2019); Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 6, 2019); Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 11, 2019); Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 13, 2019); Letter from Nancy Victory to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Sept. 18, 2019); See also Blair Lewin, *TMUS/S and the Sounds of Silence: C-Band and the Hum of Congress*, New Street Research (Sept. 22, 2019).

¹³ 47 C. F. R. §§ 1.1200 – 1.1216

¹⁴ Letter from Michael R. Romano and Jill Canfield, NTCA, and Caressa D. Bennet, Daryl Zakov, and Michael R. Bennet, Rural Wireless Association, 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, DBSD Corporation, AWS-4, Lead Call Sign T070272001; Gamma Acquisition L.L.C., AWS-4, Lead Call Sign T060430001; Manifest Wireless L.L.C., Lower 700 MHz E Block, Lead Call Sign WQJY944; American H Block Wireless L.L.C., H Block, Lead Call Sign WQTX200; ParkerB.com Wireless L.L.C., 600 MHz, Lead Call Sign WQZM232 (filed Aug. 5, 2019).

developments that took place after the conclusion of the formal comment period. This level of transparency is what Chairman Pai has called for, and is what is called for today.¹⁵

As articulated in the August 26, 2019 ex parte filing of the public interest, rural wireless, and labor representatives,¹⁶ the DOJ Consent Decree, the July 26 DISH commitments to the FCC, and the DISH waiver and extension requests represent significant changes to the original transaction and raise new and important public interest and competition issues related to execution risk; to operational, technical, managerial, and financial capability of the party to whom the assets will be divested; to enforcement provisions; to economic incentives; and to jobs. The MVNO and related commercial agreements between DISH and T-Mobile are central to the analysis of the purported public interest benefits of the transaction, yet these commercial agreements have not been submitted into the record and have not been subject to public comment.¹⁷ In two prior instances in this docket, the Commission ensured compliance with the Administrative Procedure Act (APA) by seeking public comment when new developments and evidence were introduced into the record.¹⁸

Given the extraordinary nature of these interrelated developments, failure to seek public comment on their impact on the transaction would be a violation of the APA. Decisions of

¹⁵ See for example, FCC Press Release “FCC Chairman Pai Takes First Step to Increase Transparency of Rulemakings” (Feb. 2, 2017) (quoting Chairman Pai: “We believe releasing these documents – rather than keeping them behind closed doors until after the vote – will increase the public’s understanding of our decision-making process and result in final rules that better serve the public interest.”).

¹⁶ Letter of Public Interest and Labor Representatives to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Aug. 26, 2019).

¹⁷ DISH has acknowledged that the economic studies that it submitted into the record in this proceeding have changed as a result of the DOJ Consent Decree. See Letter from Jeffrey H. Blum, DISH Senior Vice-President to Marlene H. Dortch, Secretary, WT Docket No. 18-197, Aug. 1, 2019 (noting that “these studies do not apply to the recently entered into set or arrangements...”).

¹⁸ Public Notice, *Commission Announces Receipt of Supplemental Analysis from T-Mobile; Establishes Comment Deadline*, DA 18-1155, WT Docket No. 18-197 (Nov. 13, 2018) (seeking public comment on the Applicants’ Cornerstone economic study); Public Notice, *Commission Announces Receipt of Additional Analysis and Information from T-Mobile and Sprint; Establishes Comment Deadline*, DA 19-161, WT Docket No. 18-197 (Mar. 7, 2019) (seeking comment on new economic simulations, engineering, and home broadband commitments).

federal agencies, including the FCC, are governed by the APA, which establishes the scope of review and directs courts to set aside decisions which are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁹ This is fully applicable to adjudications, including license application proceedings, as well as rulemakings.²⁰ To ignore the fundamental changes to this proceeding that have resulted from the consent decree and DISH’s requests to the Commission would be the epitome of arbitrary and capricious decision making. To ensure a full record with adequate opportunity to comment on fundamental changes in this transaction, the Commission should seek public comment on the DISH waiver request and related developments.

IV. Conclusion

Pursuant to the Commission’s *Jefferson Radio* principle, Sprint’s potential Lifeline fraud requires the Commission to pause the review of the T-Mobile-Sprint merger pending the outcome of the Commission investigation, including a determination of the appropriate penalty against Sprint. Additionally, to ensure a full record with adequate opportunity to comment on fundamental changes in this transaction, the Commission should seek public comment on the DISH waiver requests, the July 26 Dish commitments to the Commission, and related developments, including the DOJ Consent Decree.

Respectfully submitted,

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Rural Wireless Association, Inc.

/s/Debbie Goldman
Debbie Goldman
Communications Workers of
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¹⁹ 5 U.S.C. § 706(2)(A).

²⁰ See, e.g., *Press Communications v. FCC*, 875 F.3d 1117, 1121 (D.C. Cir. 2017) (quoting Section 706(2)(A)).

/s/George Slover

George Slover
Consumer Reports

/s/Paul Goodman

Paul Goodman
The Greenlining Institute

/s/Christopher Mitchell

Christopher Mitchell
Institute for Local Self-Reliance

/s/Amir Nasr

Amir Nasr
Becky Chao
Joshua Stager
New America's Open Technology
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/s/Jill Canfield

Jill Canfield
NTCA - The Rural Broadband
Association

/s/Barry Lynn

Barry Lynn
Open Markets Institute

/s/Phillip Berenbroick

Phillip Berenbroick
Public Knowledge

DECLARATION OF CARESSA D. BENNET

I, Caressa D. Bennet, do hereby declare under penalty of perjury the following:

1. I am the General Counsel of the Rural Wireless Association, Inc.
2. I have personal knowledge of the facts set forth in the foregoing Supplement to Petition to Deny and believe them to be true and correct.



Caressa D. Bennet

October 3, 2019

Date