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WASHINGTON, DC

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November 30, 2018

BY ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

RE: Notice of Ex Parte Meeting, Consolidated 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 November 28, Debbie Goldman and Hooman Hedayati of the Communications Workers of America (CWA) and CWA outside consultants and counsel, Allen Grunes, Randy Barber, David Rosenblatt, and Dr. Andrew Afflerbach, met with the following FCC staff: Jim Bird, Joel Robinovitz, Bill Dever, Aleks Yankelevich, David Lawrence, Charles Mathias, Kathy Harris, Kirk Arner, Chris Smeenk, Garnet Hanly, Aalok Mehta, Sara Mechanic, Bill Dever, Jonathan Campbell, Weiren Wang, and Saurbh Chhabra to discuss the above-captioned proceeding. (Ms. Goldman and Mr. Hedayati were present for the public portion of the discussion only.)

Mr. Grunes informed the staff that CWA had filed a letter with the Commission that day noting significant deficiencies in T-Mobile's revised privilege log and requesting action by the Commission to require T-Mobile to comply with Instructions 17 and 18 in the "General Information and Document Request for T-Mobile."

The attached power point formed the basis of CWA's presentation. CWA discussed the considerable competitive harms that would result from the proposed merger between T-Mobile and Sprint with few, if any, countervailing, merger-related public interest benefits. The proposed merger would substantially lessen competition both upstream, hurting workers, and downstream, hurting consumers. In addition to fewer jobs and higher prices, the merger would concentrate valuable spectrum in a combined T-Mobile/Sprint in almost two-thirds of the counties in the United States. Moreover, the merger would do little to close the digital divide in rural areas, and

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by the Applicants' own statements, T-Mobile and Sprint do not need to merge for deployment of 5G.

Competitive Impact of the Merger. CWA noted that two relevant markets implicated in this transaction are the market for mobile/telephony broadband services and the narrower market for prepaid wireless retail services. The merger would enhance market power in both markets as calculations of the HHI under any measure far exceed *Merger Guidelines* thresholds.¹ In addition, the "New T-Mobile" would exceed the Commission's spectrum screen in two-thirds of the counties in the United States, where 92 percent of the U.S. population resides.² We pointed out that the unilateral anticompetitive effects of the merger are likely to be significant, as products and services offered by T-Mobile and Sprint are very close substitutes for a large number of customers. Finally, we emphasized that there are glaring inconsistencies between Applicants' economists.

Rural Service Comparable Whether or Not Merger Happens. Dr. Andrew Afflerbach of CTC Technology and Energy explained that his review of the Applicants' Public Interest Statement (PIS) as well as confidential documents makes clear that the proposed merger would have marginal impact in rural areas. T-Mobile already holds low-band spectrum best suited for long distances in rural America, but not at high speeds. Moreover, Sprint contributes very little rural infrastructure, and its mid-band spectrum is poorly suited for rural areas because it has shorter range and is easily obstructed by foliage and terrain. Dr. Afflerbach pointed to the Applicants' PIS which shows that post-merger, the New T-Mobile's mid-band coverage would not reach 84.6 million Americans by 2021 and would leave 45.9 million rural Americans unserved in 2024.³ Dr. Afflerbach further emphasized that the Applicants' post-merger 5G claims are overstated as they have approximately 2 percent of the millimeter-wave spectrum in the market, and that T-Mobile's low-band 5G will only provide marginal improvements to rural areas. Furthermore, the Applicants have not provided corresponding GIS data to support their 2021 projections.

Employment Impact of the Merger. CWA noted that the employment impact of a merger is part of the Commissions' public interest analysis.⁴ In the instant proceeding, CWA conducted a

¹ See Comments of Communications Workers of America, *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, at 16-21 ("CWA Comments").

² See CWA Comments, WT Docket No. 18-197, Aug. 27, 2018, at 21-23.

³ *T-Mobile US, Inc. and Sprint Corporation Seek FCC Consent to the Transfer of Control of Licenses, Authorizations, and Spectrum Leases held by Sprint Corporation and Its Subsidiaries to T-Mobile US, Inc.*, WT Docket No. 18-197, Description of Transaction, Public Interest Statement, and Related Demonstrations, at 46-47, table 9 and figure 10 (filed June 18, 2018).

⁴ See CWA Comments, WT Docket No. 18-197, Aug. 27, 2018, footnotes 11-14 (AT&T/T-Mobile Staff Report: "As part of the public interest analysis, the Commission historically has considered employment related issues such

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comprehensive analysis based on detailed location data for retail locations involved in the proposed transaction. The CWA analysis finds that the proposed merger would result in the loss of 30,000 jobs. Approximately 25,500 jobs would be eliminated as a result of overlapping retail store closures at postpaid and prepaid locations. Another 4,500 jobs would be eliminated due to duplicative functions at corporate headquarters in Overland Park, KS and Bellevue, WA.⁵ In addition, CWA explained that the transaction would increase concentration in the wireless retail labor market which could have a negative impact on industry-wide wages. In addition, CWA noted that both T-Mobile and Sprint offshore many jobs, including call centers and (in the case of Sprint) network management. Finally, CWA detailed T-Mobile and Sprint's long history of violation of workers' rights.⁶

Given the substantial dispute in the record over the impact of the transaction on employment, CWA urged the Commission to issue a comprehensive information request regarding the merger impact on employment.⁷

Sprint is Not a Failing Firm. CWA presented detailed charts showing that Wall Street analysts predict steady growth in Sprint's earnings, and capital expenditures over the next five years as a standalone company.⁸

T-Mobile and Sprint Do Not Have to Merge to Deploy 5G. As reflected in the Applicants' public statements, Sprint and T-Mobile are well positioned to build a standalone nationwide 5G network. As recently as their 3Q18 earnings call, both T-Mobile and Sprint told investors that they plan to deploy 5G as standalone companies.

"T-Mobile is building out 5G in six of the Top 10 markets, including New York and Los Angeles, and hundreds of cities across the U.S. in 2018. The network will be ready for the introduction of the first 5G smartphones in 2019. We plan on the delivery of nationwide 5G network in 2020." – T-Mobile Press Release, October 30, 2018.

"We are also preparing to launch our mobile 5G network in the first half of 2019. Our

as job creation." Puerto Rico/GTE Order: Finding that a no lay-off commitment serves the public interest. AT&T/Bell South Order: Finding that repatriating offshore jobs serves the public interest).

⁵ See CWA Reply Comments, WTB Docket No. 18-197, Oct. 31, 2018, at 2-13.

⁶ CWA Comments, at 54-71.

⁷ There is ample precedent for such a request. See letter from Rick Kaplan to AT&T and Deutsche Telekom, WTB No. 11-65, Oct. 13, 2011 (requesting all analyses, reports, data or other documents in AT&T's possession, custody, or control that analyze the size and location of AT&T's workforce both before and as anticipated after the merger. Letter asks for employment data for the past 5 years and projections for 3 years after the merger, broken down by employment location and type of employee). See also T-Mobile/MetroPCS Information Request, WT No. 11-65, question 33.

⁸ CWA Reply Comments at 32-34; CWA Comments at 44-47.

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Massive MIMO radios are software upgradable to 5G NR ... allowing us to fully utilize our spectrum for both LTE and 5G simultaneously while we enhance capacity even further with 5G and begin to support new 5G use cases.... And we expect to launch [5G] in nine markets next year.” – Sprint Q2 Earnings Call Transcript, October 31, 2018.

Conclusion. The potential harms from the proposed T-Mobile/Sprint merger are substantial and likely and the claimed benefits are speculative and do not counteract the substantial public interest harms. The Commission should reject the transaction absent clear and enforceable commitments to (i) protect all U.S. jobs; (ii) return all overseas call center jobs to the U.S.; (iii) commit to complete neutrality in allowing employees to form a union of their own choosing; and (iv) completion of the CFIUS national security review with verifiable, enforceable commitments to protect national security.

CWA has indicated with the legend “Redacted” where Highly Confidential Information has been redacted. A Highly Confidential version of this filing is being filed with the Commission on this date and will be made available pursuant to the terms of the Protective Order. Please contact me with any questions.



Allen P. Grunes
Counsel to Communications Workers of America

Attachment

CWA Presentation on Proposed Sprint/T-Mobile Merger

Federal Communications Commission
November 28, 2018

Introduction

Introduction

1. Competitive Impacts of Proposed Merger
2. Rural Service Comparable Whether or Not Merger Happens
3. Retail Job Loss Analysis
4. Labor Market Concentration, Workers' Rights Violations
5. Sprint is Not a Failing Firm
6. T-Mobile and Sprint Do Not Need to Merge to Deploy 5G

1. Competitive Impact of Proposed Merger

Merger is Presumptively Anticompetitive

The proposed merger of T-Mobile and Sprint raises substantial public interest harms and provides no countervailing public interest benefits under the FCC standard of review and public interest framework

- Highly concentrated markets with high barriers to entry and expansion
- Merger significantly increases concentration
- Parties do not calculate HHIs, suggesting result is same regardless of how calculations are done
- HHIs are economically valid predictor of post-merger price increases, not just a “screen”

Market Definition

Mobile telephony/broadband services is a relevant market

- This market is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks
- Same product market defined in a series of recent transactions, including T-Mobile/MetroPCS and AT&T/T-Mobile
- Applicants' Joint Opposition contains statements supporting this market definition (e.g., pp.73-74 & n.273, 99 n.373; see also declaration of Glenn Woroch p. 1)

Prepaid Wireless Retail Services is a Relevant Market

- Differentiated products between prepaid and postpaid offerings
- Very high HHIs and potential impact on lower-income and price-sensitive consumers warrant heightened antitrust scrutiny of effects on prepaid market
- Relevant questions include whether prepaid plans are marketed and sold differently from postpaid plans (they are) and whether postpaid plans constrain pricing of prepaid plans (they do not)
- Applicants' economist Glenn Woroch does not do a *Merger Guidelines* analysis and does not address these key questions

Spectrum Concentration

Spectrum is an essential input for wireless carriers

- On a national basis, 92% of the population of the United States – or more than 284 million people – live in counties in which the spectrum screen would be exceeded post-merger
- On state-by-state basis, the percentage of the population living in counties in which the spectrum screen would be exceeded include:
 - California **99.2%**
 - Connecticut **100%**
 - Florida **94.0%**
 - Hawaii **80.0%**
 - Illinois **97.6%**
 - Massachusetts **96.3%**
 - New York **97.5%**
 - Tennessee **81.1%**
 - Virginia **91.7%**
 - Washington **98.6%**
- See CWA Reply Comments Appendix C for additional states

Unilateral Effects

Unilateral anticompetitive effects are likely to be significant because products and services offered by T-Mobile and Sprint are very close substitutes for a large number of customers

- History of fierce head-to-head competition between T-Mobile and Sprint (examples are found in CWA Comments pp. 24-30 and in Free Press Reply)
- Not surprisingly, parties choose to ignore the long history of rivalry between Sprint and T-Mobile
- Applicants' own statements, documents and other data confirm that Sprint and T-Mobile are particularly close competitors
- Repositioning by others is unlikely to counteract unilateral competitive effects

Glaring Inconsistencies Between Applicants' Economists

Applicants' economists are inconsistent in ways that matter to the competitive analysis

- Compass Lexecon's merger simulation model makes predictions about industry demand, revenues, non-network costs, network costs, and churn in 2021 and 2024, while Charles River Associates claims that the four national competitors cannot determine their rivals' prices, quality and consumer demand today, much less predict what will happen three to five years from now
- One economist (Woroch) argues that consumers are highly price-sensitive and will quickly switch carriers, while others (Charles River Associates) argue that switching costs are significant
- One economist (Evans) argues that Sprint's poor coverage "limits its attractiveness to subscribers" and it "remains challenged," while other economists (Compass Lexecon), purporting to rely on "ordinary course" documents, project increases in Sprint's market share in "future years in the absence of the merger"

2. Rural Service Comparable Whether or Not Merger Happens

Merger Would Have Marginal Impact in Rural Areas

1. T-Mobile already holds low-band spectrum best suited for long distances in rural America, but not at high speeds
2. Sprint contributes very limited rural infrastructure
3. Sprint's mid-band spectrum, while very useful in urban and suburban areas, has shorter range and is easily obstructed by foliage and terrain

Therefore, for most of rural America, merged T-Mobile/Sprint will be almost the same as T-Mobile

Spectrum 101:

Different Spectrum for Different Uses

Higher frequency (Sprint)

- 2.5 GHz mid-band spectrum
- Signal resembles a light beam
- Wide channels and high speeds— hundreds of Mbps or Gbps
- However, easily blocked by foliage and terrain
- Range a few miles (2.5 GHz mid-band)

Requires many nearby antennas—good urban/suburban solution—but these do not and cannot exist in most rural areas

Spectrum 101:

Different Spectrum for Different Uses

Low frequency (T-Mobile)

- 600 and 700 MHz
- Signal more like a wave
- Can penetrate foliage and terrain
- Narrower channels and lower speeds— tens of Mbps— one tenth to one-hundredth the speed of mid-band
- Range up to 18 miles
- Tradeoff between coverage and speed

Can work with fewer antennas— the rural reality

Post Merger:

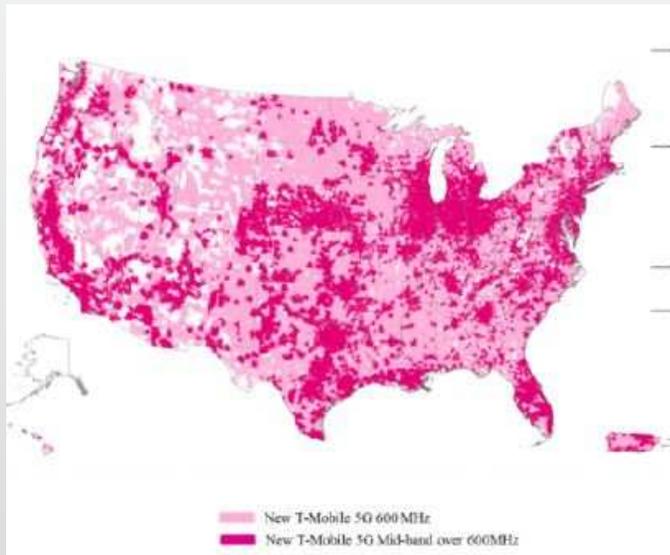
Most Rural Americans Only Have Low Band

		T-Mobile	Sprint	New T-Mobile	Conclusion
	Spectrum	Covered Pop (millions)	Covered Pop (millions)	Covered Pop (millions)	
2021	Mid-band (PCS & 2.5 GHz)	74.6 (77% uncovered)	174.7 (47% uncovered)	240.9 (26% uncovered)	84.6M no high capacity ALMOST ALL RURAL AREAS
	Low-band 600/700 MHz	317.9 (2.9% uncovered)	0	319.6 (2.4% uncovered)	Only 1.7 M additional coverage compared with old T-Mobile
2024	Mid-band (PCS & 2.5 GHz)	173.2 (47.2% uncovered)	194.0 (41% uncovered)	282.2 (14% uncovered)	45.9M no high capacity OVER HALF OF RURAL AREAS
	Low-band 600/700 MHz	323.0 (1.4% uncovered)	0	324.1 (1% uncovered)	Only 1M additional coverage compared with old T-Mobile

Source: T-Mobile/Sprint Public Interest Statement, Table 9, p. 47 (CWA added column labeled “conclusions”).

Post Merger:

Most Rural Americans Only Have Low Band



- New T-Mobile 2024 mid-band service **purple**
- 45.9 million rural Americans unserved by mid-band
 - 13.5 million of these will receive speeds below 10 Mbps, compared to 500 Mbps in metro areas

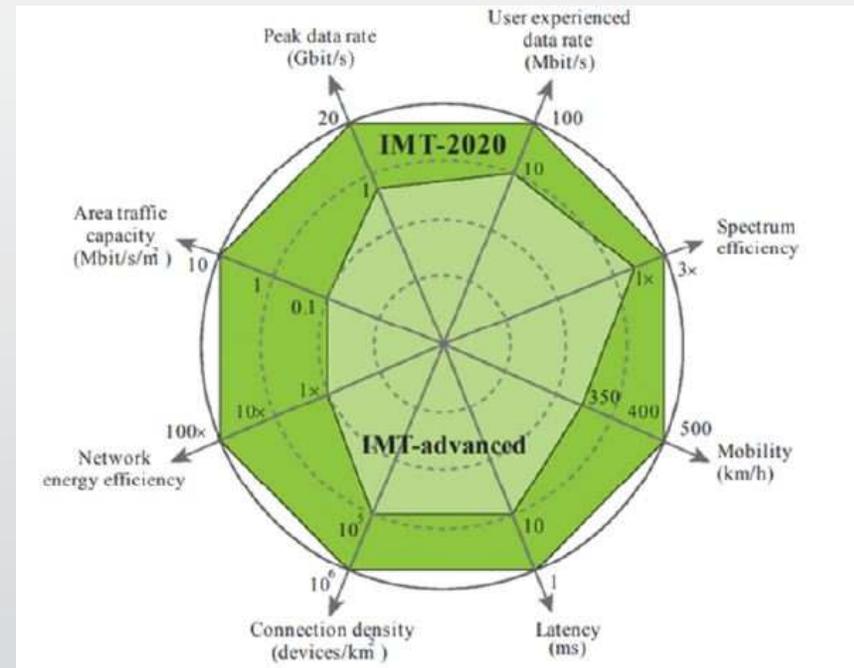
Source: T-Mobile/Sprint Public Interest Statement, Figure 10, p. 46

Performance Decreases Further from Antennas

- Weak signal = slower speeds
- Many rural users further from antennas
- Decreased service level at “cell edge”
- Decreased service indoors

Claims for “5G” Overstated

- Claims for 5G in Statement rely on millimeter-wave spectrum
 - *Sprint and T-Mobile have only 2 percent of this spectrum*
- 5G standard still in development and not yet mass-produced
- Costs and capabilities all estimates
- Performance not yet demonstrated in tests



Source: T-Mobile Declaration, Ray para 12.

5G Especially Overstated in Rural Areas

- In low-band, 5G expected to provide
 - *Only 19 percent increase in efficiency*
 - *Marginal improvements in latency*
- May pose challenge for 4K video, connected vehicles, unlimited data, interactive gaming, machine-to-machine, drone control and monitoring service described in statement

Summary

- **Merged T-Mobile and Sprint creates no sea change for rural America**
- **Service will mostly resemble T-Mobile without merger for most of rural America**
- **Benefits of Sprint's added spectrum mostly limited to built-up areas**

Additional Confidential Material Confirms Analysis

[Redacted]

[Redacted] Very Few Areas Receiving Improved Service with New T-Mobile

[Redacted]

Upgraded [Redacted] Service limited to Metro or Near Metro Areas— [Redacted]

[Redacted]

Upgraded [Redacted] Service limited to Metro or Near Metro Areas– [Redacted]

[Redacted]

3. Retail Job Loss Analysis

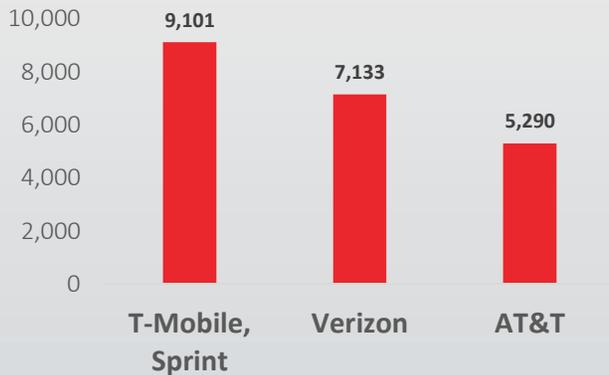
Employment Impact of Merger is Part of Public Interest Analysis

- AT&T/T-Mobile Staff Report
 - “As part of the public interest analysis, the Commission historically has considered employment related issues such as job creation”
- Puerto Rico/GTE Order
 - Finding that a no lay-off commitment serves the public interest
- AT&T/Bell South Order
 - Finding that repatriating offshore jobs serves the public interest

(See CWA Comments in this proceeding, pp. 3-4)

Post-Merger Retail Footprint Far Exceeds Competitors

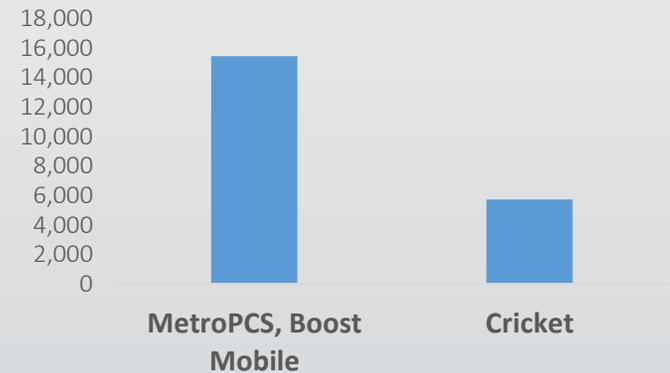
Number of stores,
postpaid brands



“
**There will be a
rationalization
of jobs in the
first year.**
”

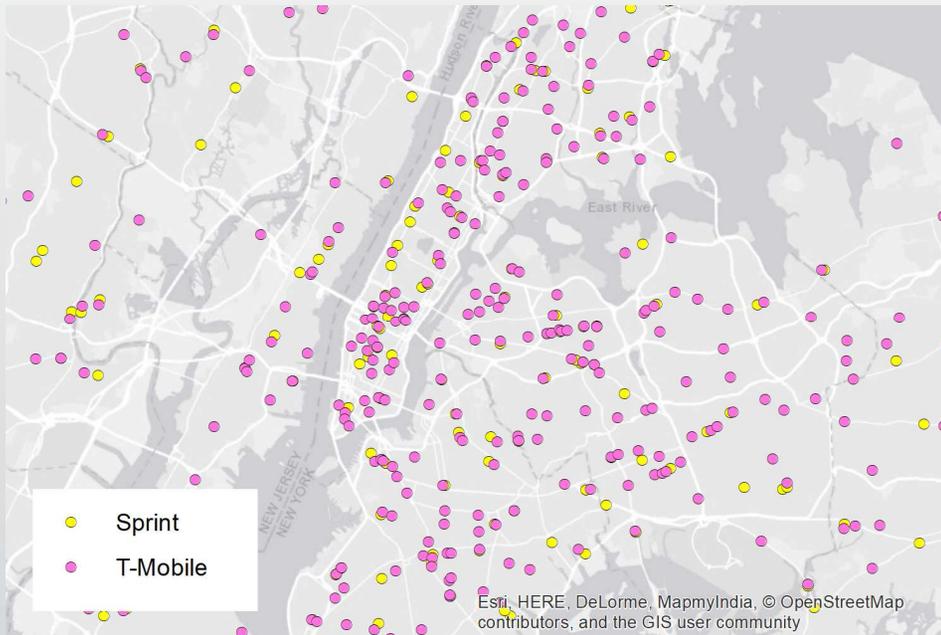
— John Legere
June 2018

Number of stores,
prepaid brands

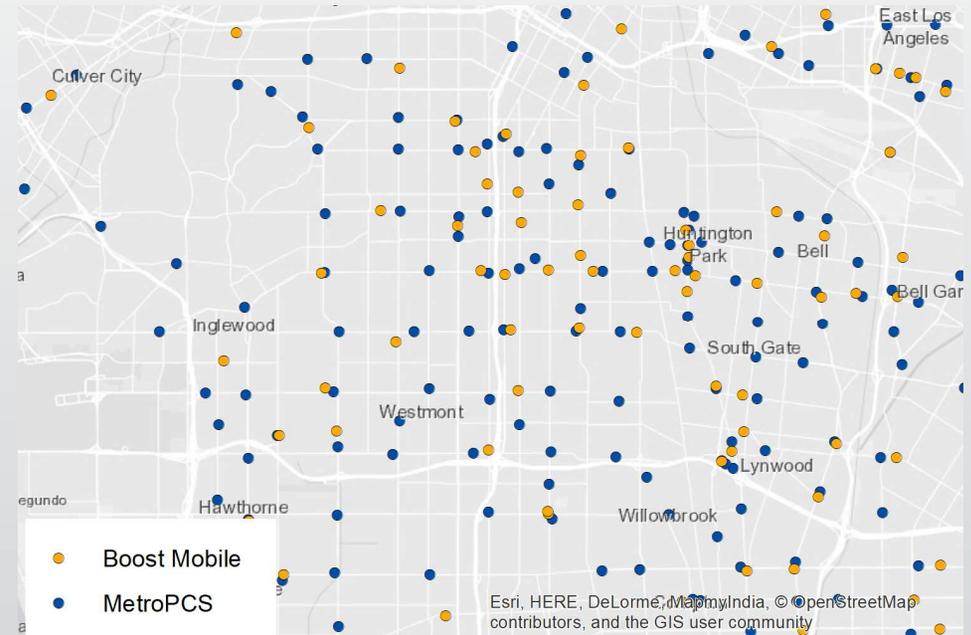


Retail Footprint Has Significant Overlap

New York City

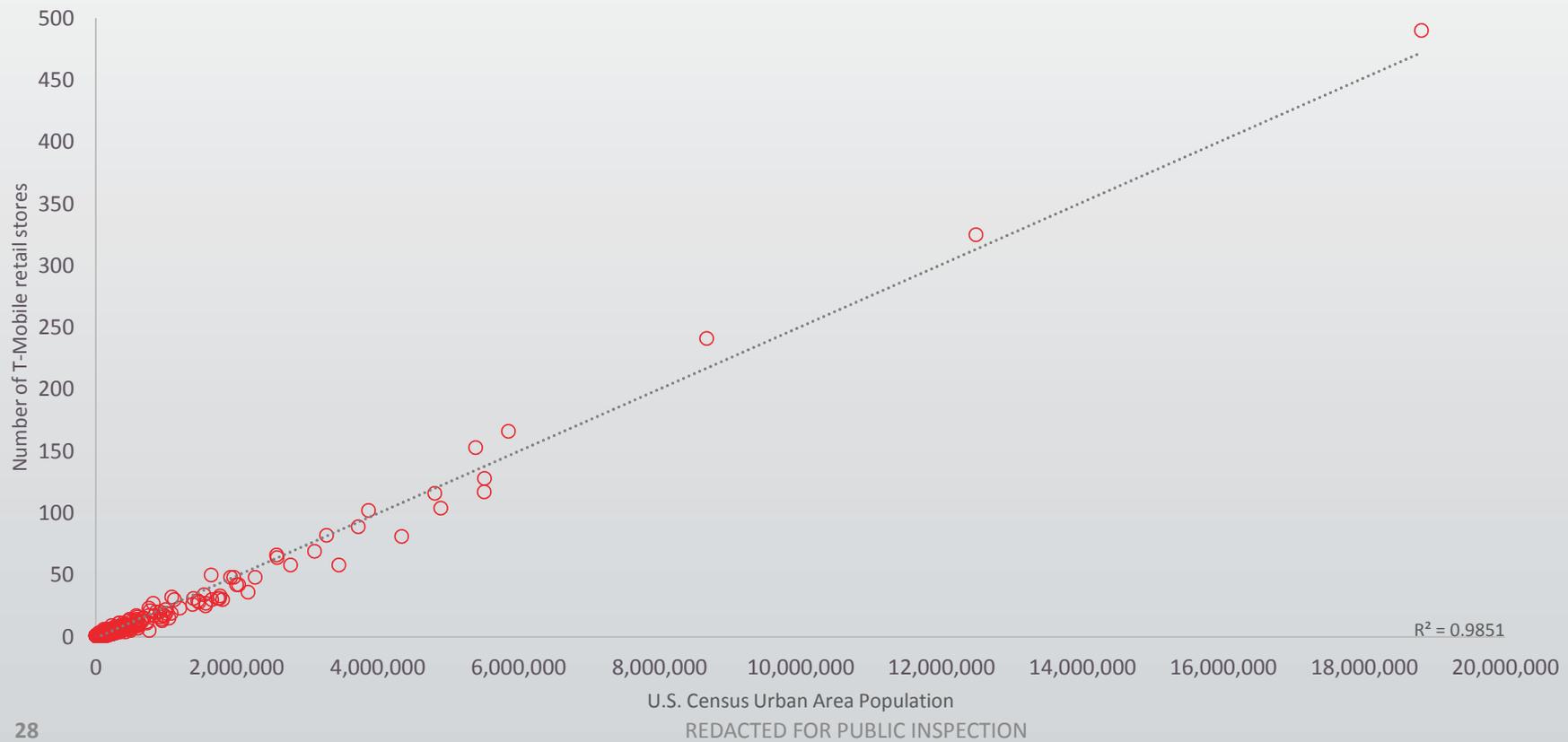


Los Angeles (South)



Predicting Closures Using Population

Number of T-Mobile stores and urban areas population



Increased Market Power In Retail

[Redacted]

4. Labor Market Concentration

Monopsony in Labor Markets



Monopsony: When there's only one employer in town

By Janet Nguyen

October 02, 2018 | 3:50 PM



THE
Nation.

Does Monopoly Power Explain Workers' Stagnant Wages?

As industries get more concentrated, workers have fewer employment options—and less leverage to get a raise.

By Bryce Covert

FEBRUARY 15, 2018

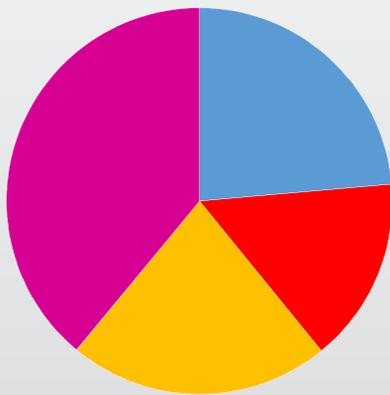
The New York Times

Why Is Pay Lagging? Maybe Too Many Mergers in the Heartland

Consolidation is often seen as a consumer problem. But it may also reduce competition for workers, especially outside big cities, holding down wages.

Memphis, TN Wireless Retail Labor Market

Pre-merger retail employment by carrier
Number of Employees



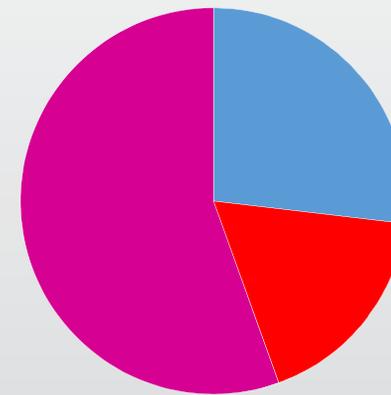
■ AT&T, Cricket ■ Verizon ■ Sprint, Boost-Mobile ■ T-Mobile, MetroPCS

Total employees: **974**

HHI Index: 2798

HHI Category: Highly concentrated

Post-merger retail employment by carrier
Number of Employees



■ AT&T, Cricket ■ Verizon ■ T-Mobile, Sprint, MetroPCS, Boost

Total employees: **856**

HHI Index: 4112 (+1314)

HHI Category: Highly concentrated

T-Mobile and Sprint History of Violating Workers' Rights

- **T-Mobile is One of the Worst Labor Law Violators in the Nation:**
 - Found guilty of violating labor law six times since 2015 and subject to 40 Unfair Labor Practice charges since 2011
- Sprint's current and former employees have sued the company multiple times since 2007 for wage and hour violations affecting thousands of retail and call center workers

The Commission Should Issue a Comprehensive Information Request Regarding Merger Impact on Employment

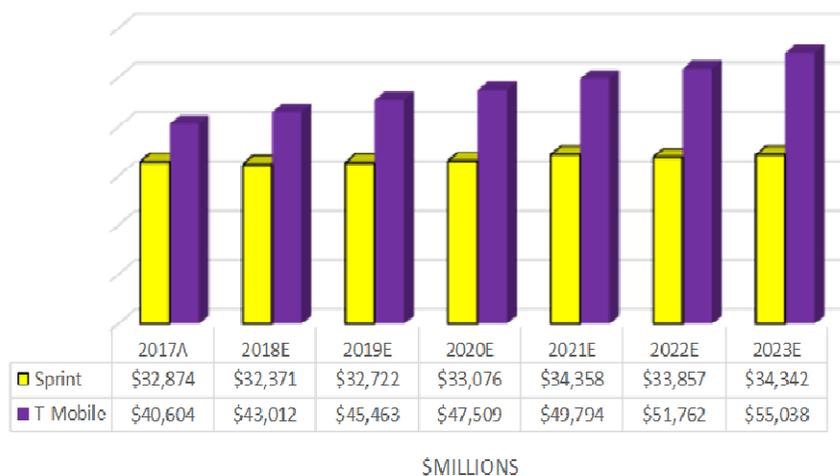
- There is substantial dispute over the impact of the transaction on employment
- There is ample precedent for such a request
 - AT&T/T-Mobile. Letter from Rick Kaplan to AT&T and DT requesting all analyses, reports, data or other documents in AT&T's possession, custody, or control that analyze the size and location of AT&T's workforce both before and as anticipated after the merger. Letter asks for employment data for the past 5 years and projections for 3 years after the merger, broken down by employment location and type of employee (WTB No. 11-65, Oct. 13, 2011)
 - T-Mobile/MetroPCS Information Request (WT No. 11-65, Information Request, question 33)

5. Sprint is Not a Failing Firm

Wall Street Analysts Project Sprint Revenues to be Steady Through 2023

CHART 1

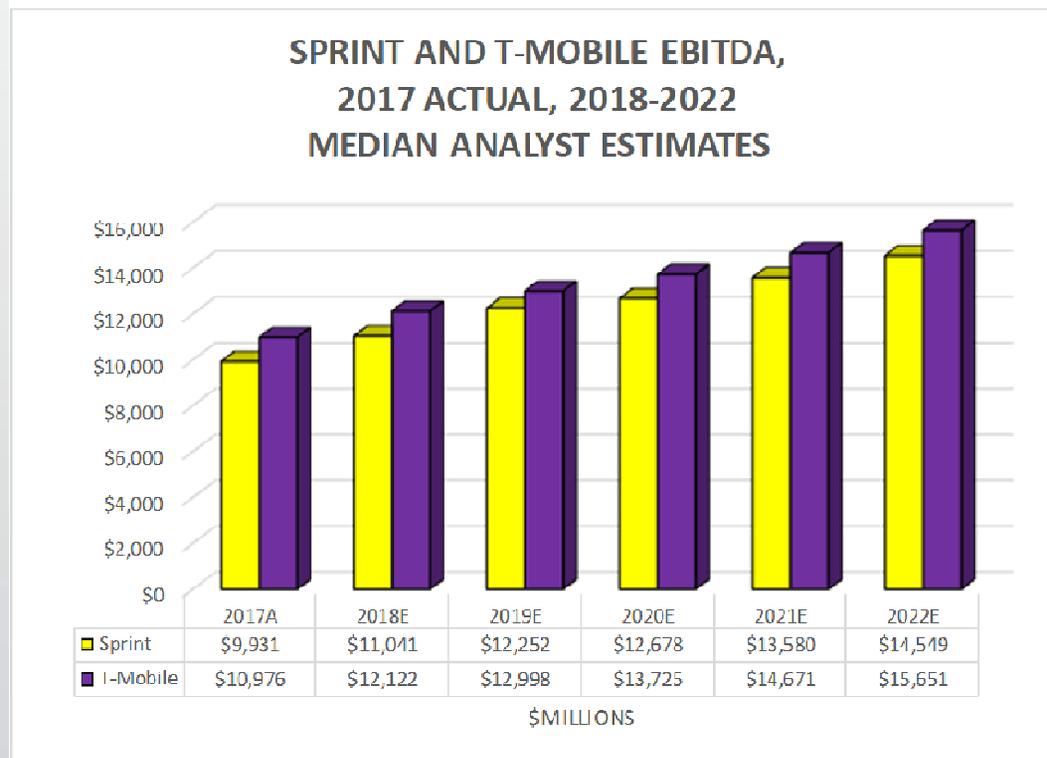
SPRINT AND T-MOBILE TOTAL REVENUES, 2017 ACTUAL, 2018-2023 MEDIAN ANALYST ESTIMATES



Source: S&P Capital IQ, Actuals and Analyst Estimates. Accessed August 14, 2018. Note that Sprint projections include small amounts associated with its Wireline operations

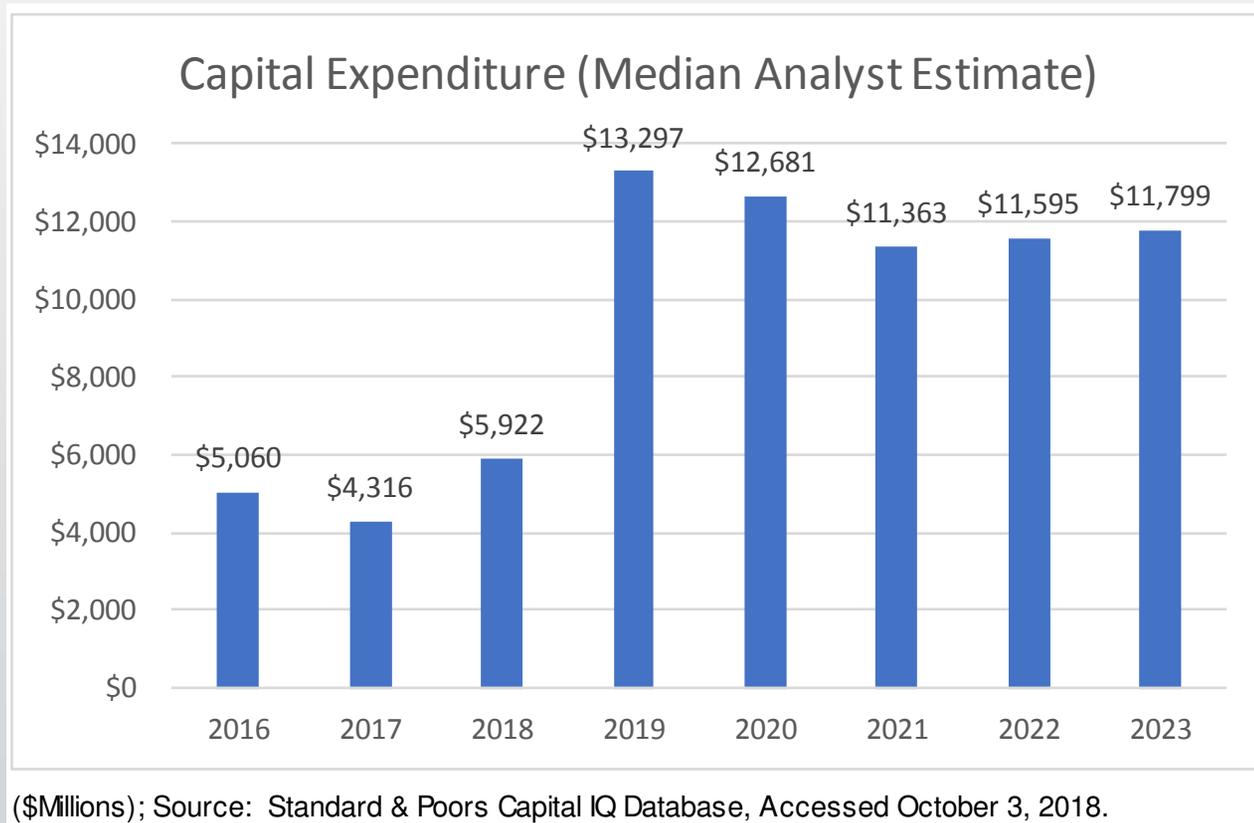
. . . But They Project Sprint's EBITDA to Rise in Step with T-Mobile's

CHART 2



Source: S&P Capital IQ, Actuals and Analyst Estimates. Accessed August 14, 2018. Note that Sprint projections include small amounts associated with its Wireline operations

Analysts Project Rising Sprint Capex Over the Next Few Years



Applicants' Financial Model Confirms that Sprint is Not a Failing Firm (1/3)

[Redacted]

Applicants' Financial Model Confirms that Sprint is Not a Failing Firm (2/3)

[Redacted]

Applicants' Financial Model Confirms that Sprint is Not a Failing Firm (3/3)

[Redacted]

6. Merger Not Necessary to Deploy 5G

T-Mobile and Sprint Do Not Have to Merge to Deploy 5G

“T-Mobile is building out 5G in six of the Top 10 markets, including New York and Los Angeles, and hundreds of cities across the U.S. in 2018. The network will be ready for the introduction of the first 5G smartphones in 2019. We plan on the delivery of nationwide 5G network in 2020.” – T-Mobile Press Release, October 30, 2018.

“We are also preparing to launch our mobile 5G network in the first half of 2019. Our Massive MIMO radios are software upgradable to 5G NR ... allowing us to fully utilize our spectrum for both LTE and 5G simultaneously while we enhance capacity even further with 5G and begin to support new 5G use cases.... And we expect to launch [5G] in nine markets next year.”

– Sprint Q2 Earnings Call Transcript, October 31, 2018.

The Commission should reject the transaction as currently structured

- The potential harms are substantial and likely and the claimed benefits are not merger-related, verifiable, and do not counteract the substantial public interest harms
- The Commission should reject the transaction absent
 - Clear and enforceable commitments to project all U.S. jobs, return all overseas call center jobs to the U.S., and commit to complete neutrality in allowing employees to form a union of their own choosing
 - Completion of CFIUS national security review with verifiable commitments to meet all conditions

Addendum 1: Unilateral Effects

Unilateral Effects: Applicants' Internal Communications Confirm that they are Particularly Close Competitors

[Redacted]

Addendum 2: Estimated Retail Job Losses by State

Estimated Store Closures and Retail Job Losses by State (1/2)

State	Stores	Est Store Closures	Est Jobs Lost
Alabama	267	65	-230
Arizona	571	185	-716
Arkansas	105	22	-91
California	3,241	902	-3,342
Colorado	394	112	-531
Connecticut	230	44	-183
Delaware	67	14	-53
DC	60	9	-36
Florida	2,386	807	-3,157
Georgia	834	248	-1,027
Hawaii	43	7	-19
Idaho	105	31	-168
Illinois	1,194	465	-1,822

State	Stores	Est Store Closures	Est Jobs Lost
Indiana	408	117	-422
Iowa	56	7	-32
Kansas	165	54	-251
Kentucky	220	61	-213
Louisiana	365	130	-451
Maine	14	2	-10
Maryland	482	169	-520
Massachusetts	464	73	-266
Michigan	973	327	-1,372
Minnesota	275	51	-272
Mississippi	108	30	-96
Missouri	369	119	-474
Nebraska	73	11	-27

Estimated Store Closures and Retail Job Losses by State (2/2)

State	Stores	Est Store Closures	Est Jobs Lost
Nevada	219	57	-231
New Hampshire	48	9	-44
New Jersey	704	201	-769
New Mexico	137	32	-112
New York	1,642	443	-1,705
North Carolina	645	221	-773
Ohio	889	299	-1,078
Oklahoma	214	65	-268
Oregon	245	57	-303
Pennsylvania	771	168	-635
Rhode Island	102	26	-111
South Carolina	317	104	-410

State	Stores	Est Store Closures	Est Jobs Lost
Tennessee	418	126	-419
Texas	3,048	966	-3,665
Utah	222	58	-286
Virginia	594	195	-876
Washington	447	99	-497
West Virginia	81	6	-29
Wisconsin	306	108	-394
Total	24,546	7,266	-28,391