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February 12, 2019

The Honorable Frank Pallone Jr.
Chairman
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
U.S. House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Michael Doyle
Chairman
Subcommittee on Communication and Technology
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Latta
Ranking Member
Subcommittee on Communication and Technology
U.S. House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone Jr., Ranking Member Walden, Subcommittee Chairman Doyle, and Subcommittee Ranking Member Latta:

Consumers' Research appreciates the opportunity to comment for the upcoming hearing, hosted by the House Committee on Energy and Commerce Subcommittee on Communication and Technology, which will discuss the proposed merger between T-Mobile and Sprint ("Protecting Consumers and Competition: An Examination of the T-Mobile and Sprint Merger"). Consumers' Research[1] is a 501(c)(3) organization advocating for the general interests of consumers. Accordingly, this comment does not represent the views of any affected party or special interest group. It is intended to assist the Subcommittee in its effort to examine the consumer benefits of a merger between T-Mobile and Sprint.

It is the view of Consumers' Research that allowing the T-Mobile and Sprint merger would be in the best interest of consumers. Enclosed, Members of the Subcommittee will find two documents produced by Consumers' Research staff arguing in support of the merger.

The first document ("Let 'Em Merge! Why Regulators Should Approve T-Mobile-Sprint Merger") is an op-ed written by Kyle Burgess, Executive Director of Consumers' Research, which was published by Investor's Business Daily on Sept. 28, 2018.

The second document is a comment submitted to the Federal Communications Commission (WT Docket No. 18-197). This comment, sent Sept. 17, 2018, analyzes the merger through the lens of consumer welfare. Ultimately, it weighs the evidence in favor of the merger based in part on the merger's expected accelerating effect on the general roll out of 5G services for consumers.

Consumers' Research hopes these documents will aid the Committee in its consideration of the merger of T-Mobile and Sprint. Again, thank you for allowing Consumers' Research the opportunity to comment.

Sincerely,

Beau Brunson
Senior Policy Advisor

[1] Founded in 1929, Consumers' Research is the nation's oldest consumer affairs organization. Consumers' Research aims to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

Let 'Em Merge! Why Regulators Should Approve T-Mobile-Sprint Merger

IBD

Kyle Burgess / September 28, 2018

Federal regulators approved a merger between AT&T and Time Warner earlier this year, a deal that will benefit the industry and its customers. On deck for major telecommunication mergers are Sprint and T-Mobile, who want to consolidate as "New T-Mobile."

The Federal Communications Commission recently paused the 180-day "shot clock" on its review of the proposed merger so that it can consider new submissions regarding the companies' business, economic, and engineering modeling. If American consumers want higher quality cell service, they should cross their fingers for another federal stamp of approval.

As officials at the FCC and Department of Justice consider this merger, they should keep in mind a few important points.

First, worries about the creation of a so-called "super-company" are misplaced. A superficial look at the U.S. telecommunications market might identify four strong competitors — AT&T, Verizon, T-Mobile and Sprint — surrounded by a host of relatively small providers that rely on the big four for infrastructure. But a closer look at the large providers' market valuations reveals the truth: AT&T ($334 billion) and Verizon ($313 billion) dominate the industry, and third place doesn't even come close to contention. Combined, the value of T-Mobile and Sprint ($146 billion) would not amount to half that of either of the two front-runners.

Subscriber numbers tell a similar story. At the end of last year, Verizon had 150.5 million subscriptions followed by AT&T's 141.6 million. T-Mobile had 72.6 million, and Sprint supported 54 million. If combined, T-Mobile and Sprint still would trail Verizon by 23.9 million subscribers and AT&T by 15 million. There are already two "super-companies" in the telecommunications market: They are Verizon and AT&T.

BIGGER CAN BE BETTER

Another thing officials should remember is that when it comes to the number of players in a market, quantity does not necessarily mean quality. A commonplace assumption is that more competitors in telecommunication would achieve stronger competition, benefiting customers through lower prices and better services.

According to this logic, the creation of New T-Mobile would remove a competitor from the market, weaken competition, and harm consumers. But that argument wrongly assumes that all the telecommunications companies can apply adequate competitive pressure on the industry leaders. Investing in telecommunications infrastructure is expensive. In the race to upgrade their networks, the carriers with less capital will have trouble keeping up.

The merger of T-Mobile and Sprint would actually make the market more competitive by creating a strong rival to the duumvirate status quo. Separately, the two companies do not seriously threaten Verizon or AT&T and have little hope of doing so without a merger. Sprint, in particular, faces uncertain prospects if regulators obstruct its ability to effectively serve consumers.

ROBUST COMPETITION

Together, however, T-Mobile and Sprint would have the requisite size, money, and spectrum licenses to compete with Verizon and AT&T in pushing forward the industry's technological capabilities. By allowing the two carriers to join forces, the FCC and the DOJ would empower a third, robust competitor to vie with telecommunication's front-runners. In that race, cellular customers win.

"Winning," in this case, means broader access to 5G, or "fifth generation," wireless networks, which leads to the final point that the FCC and DOJ must remember: Stronger competition will be a boon not only to individual customers but also to the country's technological infrastructure. Advances in cellular network technology have made video streaming on laptops and mobile devices available almost anywhere in the country.

As 4K resolution quality becomes standard, however, current infrastructure will struggle to meet consumer demand. In creating their own 5G networks, which they will begin connecting customers to in the next few months, AT&T and Verizon last year invested $22 billion and $17 billion, respectively. New T-Mobile has proposed to invest $40 billion in 5G development over the next three years — an investment that is dependent on the approval of its merger by federal regulators.

The New T-Mobile merger is pro-competition and pro-consumer. If regulators want as many Americans as possible to have expedient access to cutting-edge cellular tech at competitive prices, they should approve the Sprint/T-Mobile merger.

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September 17, 2018

By electronic delivery to:
https://www.fcc.gov

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

Re: Consumers' Research Comment on Federal Communications Commission WT Docket No. 18-197

Dear Secretary Dortch:

Thank you for giving Consumers' Research the opportunity to comment on Federal Communications Commission WT Docket No. 18-197. Consumers' Research[1] is a 501(c)(3) educational non-profit advocating for the general interests of consumers. This comment does not represent the views of any affected party or special interest group and is intended to present a consumer-oriented discussion of issues in the proposed T-Mobile-Sprint merger application.

In practice, a Federal Communications Commission (FCC) review of a merger includes traditional antitrust principles, as well as "the broad aims of the Communications Act," including whether the proposed merger would protect quality for consumers, accelerate deployment of advanced telecommunications services, and ensure diversity of information sources and viewpoints.[2] Under the FCC's longstanding statutory standard of "Public Interest, Convenience and Necessity," all of these considerations weigh in favor of a FCC grant of the proposed merger.[3]

[1] Founded in 1929, Consumers' Research is the nation's oldest consumer affairs organization. Consumers' Research aims to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

[2] The antitrust source, August 2016, Page 3
https://www.americanbar.org/content/dam/aba/publishing/antitrust_source/aug16_maltas_8_5f.authcheckdam.pdf

[3] The diversity considerations are more applicable to issuance of a TV or radio license, as there are no issues as to assuring access to diverse points of view in this merger, since telecommunications companies are common carriers and, unlike radio and TV stations, do not express a particular point of view as a part of their business.

The New T-Mobile merger creates a viable competitor to AT&T and Verizon in provision of 5G service

Fifth Generation Wireless (5G) is the next iteration of wireless technology. 5G is expected to increase both the speed of transmission and the data processing capacity (by volume) many times over current 4G system's capabilities.[4] It is also expected to open the way for major new applications that either do not work on existing infrastructure or place too much strain on current networks. There is general agreement that 5G deployment is a critical next step forward in communications technology, with debate only about whether it is a significant evolution or whether it is truly transformative.[5] There is vigorous competition between countries to be the first to market with 5G and legitimate concern that China may overtake the United States in the race to deploy a 5G network.[6]

The German company Deutsche Telekom, which controls T-Mobile, will have a 42 percent interest in New T-Mobile, and the Japanese company Softbank, which controls Sprint, will have a 27 percent interest in New T-Mobile.[7] Together, these two companies will own a controlling majority interest in the merged company.[8] By agreement, Deutsche Telekom will have de facto control of New T-Mobile, as Softbank has entered into a proxy agreement that allows Deutsche Telekom to vote its shares for this purpose.[9] New T-Mobile will have its two headquarters in the United States, and its development and deployment of 5G will be in the United States. As both T-Mobile and Sprint are already majority-controlled by Deutsche Telekom and Softbank, respectively, there is no substantive increase in foreign control of U.S. telecommunications companies.[10] Accordingly, the FCC should extend waivers of the 25 percent limit on foreign control of telecommunications companies for Sprint and T-Mobile and approve majority foreign ownership of New T-Mobile. Since the primary challenge to the U.S. position in the 5G race comes from China, concern about New T-Mobile's German ownership is

[4] https://www.pcmag.com/article/345387/what-is-5g
[5] Institute of Electrical and Electronics Engineers (IEEE) 5G: The Future of Communications Networks, March 1, 2017 by Kathy Peretz http://theinstitute.ieee.org/technology-topics/communications/5g-the-future-of-communications-networks
[6] Stratfor, April 3, 2018, The U.S., China and others race to develop 5g mobile networks https://worldview.stratfor.com/article/us-china-and-others-race-develop-5g-mobile-networks
[7] T-Mobile agrees to acquire Sprint, Reuters, April 29, 2018 https://www.reuters.com/article/sprint-corp-ma-t-mobile-us/t-mobile-agrees-to-acquire-sprint-idUSL1N1S607W
[8] Sprint Description of Transaction, Public Interest Statement and related Demonstrations Exec. Summary, Page 6 http://d18rn0p25nwr6d.cloudfront.net/CIK-0000101830/2b9a1a2b-6310-415a-bb08-f455fc418d17.pdf
[9] Id. Page 8.
[10] Id. Pages 8-9.

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misplaced. Because New T-Mobile's deployment of 5G will benefit American consumers, Deutsche Telekom's control of New T-Mobile does not affect the value of the New T-Mobile merger in strengthening the U.S. position in the 5G race.

In their submission to the FCC, Sprint and T-Mobile argue that New T-Mobile will have the resources to build a highly competitive nationwide 5G network that neither Sprint nor T-Mobile would have as separate entities. Sprint states that the two companies will achieve $43.6 billion in net present value savings through 2024 through synergies between the Sprint and T-Mobile networks.[11] With these savings, New T-Mobile will commit $40 billion to the development of its 5G network, estimated to be three times the amount T-Mobile would have committed on its own.[12]

Furthermore, the merger makes available to New T-Mobile a very extensive and complementary combination of existing spectrum, sites, and equipment currently divided between Sprint and T-Mobile. These combined resources will be much more effective in delivering a broad range of consumer services via 5G than either company would be able to deliver separately, even if they had the resources to begin such an initiative on their own.[13]

Based on these facts, Sprint and T-Mobile make a sound case that the merger would not merely be additive, but also creative, in enabling the deployment of new 5G services for consumers. Irrespective of the accuracy or relevance of claims that New T-Mobile would "leapfrog" AT&T and Verizon, this merger would enable New T-Mobile to compete effectively in 5G with AT&T and Verizon, potentially allowing the combined entity to be the first to introduce new 5G services in at least some parts of the United States.

A May 2018 New York Times article on this merger provides independent support for the argument that neither Sprint nor T-Mobile has the resources to compete independently with AT&T and Verizon in a national 5G initiative. The article notes that in 2017, the combined network investments Sprint and T-Mobile made came to only $6 billion, while AT&T invested $22 billion and Verizon $17 billion. Estimates indicate that 5G deployment will be extremely costly. Verizon is expected to spend about $35 billion over the next five years to reach 20 percent of

[11] Id. pages 15
[12] Id. pages 15-16
[13] Id. page 16

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the U.S., highlighting the relevance of New T-Mobile's commitment to a $40 billion 5G investment.[14]

This merger advances the adoption of 5G technology in the U.S., generally accepted as the next significant step in technological advancement in telecommunications. Neither T-Mobile nor Sprint would have the resources to provide a nationwide 5G network effectively as a solo outfit, but a merged New T-Mobile would have both the resources and the complementary spectrum to proceed rapidly and effectively in deploying 5G.

This merger promotes competition because it consolidates two smaller competitors into a viable competitor to AT&T and Verizon

Verizon and AT&T are much larger than either T-Mobile or Sprint, both in the number of subscribers and in the value of the competing companies. AT&T and Verizon have nearly the same amount of customers with about 150 and 142 million subscribers, respectively. While T-Mobile and Sprint are far behind separately, New T-Mobile's 127-million-person subscriber base would be closer to, though still lagging behind, its two rivals if the merger were approved.[15] Financially, AT&T is valued at about $334 billion and Verizon at $313 billion. The two leading telecommunication companies would still be far ahead of New T-Mobile's value of about $146 billion, but the difference would be far less than the gap that currently exists between the leaders and the two smaller companies.[16] Concerning pricing, the default, but potentially misguided assumption, is that four competitors are likely to keep prices lower than three. However, New T-Mobile may put more competitive pressure on AT&T and Verizon to hold or even reduce their service prices. The real question is whether three strong competitors are more or less competitive than two strong competitors and two weaker ones.

Without this merger, consumers may suffer from a less competitive market, particularly regarding access to nationwide 5G

Sprint is $32 billion in debt, exceeding the company's total value of $26 billion.[17] It has had a long history of losses, though it did achieve some improvement, posting a small profit in the first three months of 2018 and gaining 39,000

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[14] T-Mobile's 5G Argument to Regulators Is Compelling – Jennifer Saba, New York Times, May 3, 2018 https://www.nytimes.com/2018/05/03/business/dealbook/t-mobile-5g-regulators.html
[15] https://www.recode.net/2018/4/30/17300652/tmobile-sprint-att-verizon-merger-wireless-subscriber-chart
[16] http://fortune.com/2018/04/29/t-mobile-sprint-merger-deal/
[17] Op. Cit Reuters, T-Mobile agrees to acquire Sprint, Paragraph 9.

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subscribers, somewhat mitigating a loss of 118,000 subscribers in 2017.[18] Despite this recent improvement in profitability, Sprint's total operating revenue is marginally down in the last quarter, and its stock price is down nearly 10 percent for the year. Overall, its prospects remain uncertain if this merger is not approved.[19] Should Sprint's position in the market weaken further, the company may not be able to raise the capital required to continue significant 5G investment, leaving the race for standalone nationwide 5G to three competitors, one of which may have insufficient spectrum to effectively compete without this merger. If the overall competitiveness of this market diminishes, consumers may suffer in terms of choice and prices.

Qualitative competition from a strong third competitor will benefit consumers

Consumer benefits should not be measured exclusively in terms of price competition. Consumers also benefit from qualitative competition to provide access to a greater variety of new, advanced services. In this area, Sprint and T-Mobile make a strong argument for the merger. First, with the combined resources of Sprint and T-Mobile, New T-Mobile will be able to compete with AT&T and Verizon nationwide on reasonably even terms for the introduction of nationwide 5G services. Secondly, T-Mobile and Sprint may be ahead of AT&T and Verizon in some aspects of the race to develop and deploy 5G networks because of combined spectrum. New T-Mobile will be able to offer 5G services to substantially more consumers than T-Mobile and Sprint could separately.

Conclusion

Based on the statutory goals of the Communications Act, the FCC should approve this merger. Blocking this merger in order to conform to an arbitrary maximum foreign ownership standard or to preserve the number of competitors in the marketplace prioritizes immaterial factors over the strength of competition in the marketplace will only hurt the American consumers whom the FCC is charged to protect in this matter. New T-Mobile will have the capacity and funding to be a third viable competitor to AT&T and Verizon in the development of nationwide 5G. The additional competitive pressure New T-Mobile brings to the marketplace will benefit consumers with competitive, high quality services.

Sincerely,

[18] https://www.reuters.com/article/us-sprint-corp-results/sprint-reports-quarterly-profit-vs-year-ago-loss-idUSKBN1I32TW
[19] https://www.cnbc.com/2018/08/01/reuters-america-update-3-sprint-beats-profit-estimates-says-higher-prices-could-affect-growth.html

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