

**Statement by
Carri Bennet, General Counsel
Rural Wireless Association, Inc.
Washington, DC**

**Before the United States House of Representatives
Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law**

**The State of Competition in the Wireless Market: Examining the Impact of the Proposed
Merger of T-Mobile and Sprint on Consumers, Workers, and the Internet**

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Introduction and Summary

Chairmen Nadler and Cicilline, Ranking Members Collins and Sensenbrenner, and Members of the Subcommittee, thank you for this opportunity to testify today to discuss the impact that the proposed T-Mobile/Sprint merger will have on rural America. I am here on behalf of the Rural Wireless Association, Inc. (RWA), which represents about 50 rural wireless carriers, each with fewer than 100,000 subscribers and the majority with less than 10,000 subscribers.¹

RWA's members consist of both independent wireless carriers and wireless carriers that are affiliated with rural telephone and broadband companies. RWA members have provided wireless services in their respective rural communities for more than 50 years. Our members live and work in rural America, and they make sure that rural America is not left behind.

Small, rural-based wireless service providers offer low-cost wireless plans to rural Americans and operate networks which promote public safety, encourage innovation and economic development, enable more efficient energy and agriculture production, and support telehealth and distance learning applications.

RWA opposes the proposed merger of T-Mobile and Sprint. If approved, this horizontal merger would eliminate one of only four nationwide competitors, leaving only three nationwide, facilities-based wireless carriers. This consolidation will force rural Americans to pay more money for wireless services. In addition, it will undermine the system of roaming that is a key component of telecommunications and broadband access in rural communities and degrade service quality. In short, this merger will do nothing to help rural Americans or those traveling in rural America, but it will do much to hurt them.

¹ See RURAL WIRELESS ASS'N, <https://ruralwireless.org/>

The Proposed Transaction Will Raise Prices for Rural Americans

The primary question facing the Department of Justice (DOJ) and Federal Communications Commission (FCC or Commission) is whether the elimination of Sprint as an independent, nationwide carrier will hurt competition and lead to increased prices, thereby harming the public interest. The answer is an unqualified yes. Such price increases will be acutely felt by rural consumers and those traveling in rural America. –The elimination of Sprint will not only remove a facilities-based carrier that supports its own well-known Sprint and Boost retail operations, it will *completely* remove a nationwide roaming option for small rural carriers, as well as a wholesale network option for mobile virtual network operators (MVNOs), machine-to-machine (M2M) service providers, and other Internet of Things (IoT) service providers.

Recently, in an attempt to counter evidence showing that this transaction will increase prices for American consumers, T-Mobile CEO John Legere promised that “T-Mobile and Sprint legacy rate plans will continue as New T-Mobile plans for three years after the merger or until better plans that offer a lower price or more data are made available.”² In general, this self-imposed behavioral remedy is cold comfort for millions of Americans because there are countless ways New T-Mobile can raise prices while still complying with this supposed “rate plan” freeze.

Worse still, the commitment does nothing to protect rural Americans who purchase wireless plans from the MVNOs that currently rely on Sprint for wholesale service. Mr. Legere makes no commitment to maintain existing prices paid by MVNOs to Sprint.³ If anything, the promise to freeze rate plans for New T-Mobile customers only increases the combined

² Letter from John Legere, CEO, T-Mobile, to Ajit Pai, Chairman, FCC, WT Docket No. 18-197 (Feb. 4, 2019).

³ *See id.* at 7.

company's incentive to raise prices for New T-Mobile's MVNO wholesale customers. Of course, those increased costs to these MVNOs would have to be passed on to rural Americans. And, as discussed below, T-Mobile has not – and will not – commit to extending Sprint's wholesale roaming agreements with rural carriers, leaving them vulnerable to ever-increasing rate hikes.

The Proposed Transaction Will Harm Rural America by Eliminating A Critical Roaming Partner

The merger will result in particular harm to Americans who travel, work, or reside within rural areas. Sprint has historically worked with rural carriers to ensure rural Americans have access to robust mobile wireless service. Sprint has offered rural carriers, including RWA members, reciprocal, strategic roaming agreements at commercially reasonable rates, providing rural carriers important pro-consumer benefits and significant flexibility. In doing so, Sprint has been an exception; the other nationwide carriers have not demonstrated a willingness to engage in such commercially reasonable arrangements. While carriers cannot publicly disclose agreement specifics, RWA understands from its members that the Sprint agreements do not incentivize Sprint or RWA members to throttle data usage because the agreed-upon roaming rates are commercially reasonable, thereby providing a better experience for their respective customer bases. In fact, according to our members, Sprint's roaming rates are 20 times lower than T-Mobile's.

RWA members are concerned that the terms in their roaming agreements with Sprint will not be included in any roaming agreements with New T-Mobile, and that New T-Mobile has no plans to allow its customers to roam on rural carrier networks – even in areas where its own network is substandard or nonexistent.

Absent a guarantee that favorable Sprint roaming terms will continue, RWA members will be forced to accept T-Mobile's existing one-sided roaming agreements. While T-Mobile is required by the Commission's rules to allow the customers of other carriers to roam on its network, T-Mobile is *not* required to allow its customers to roam on other carriers' networks, even where its own network is substandard or non-existent. T-Mobile will frequently enter into unilateral roaming agreements under which the rural carrier's subscribers can roam on T-Mobile's network, but with no possibility of T-Mobile's subscribers roaming on the rural carrier's network. In such cases, T-Mobile has simply determined that it is better for its business for its customers to do without any coverage in rural areas, rather than pay the rural carrier for network access. As discussed below, the cost of accessing the rural carrier's network is determined by T-Mobile, so T-Mobile's argument that the cost to use a rural carrier's network is too expensive is baseless and self-serving. This means T-Mobile's customers cannot access wireless services when traveling in rural areas. The result? They cannot be reached and are basically off the grid, all because T-Mobile chooses to restrict access to the rural carriers' networks.

Roaming arrangements are particularly important to rural Americans who depend upon reliable access to advanced mobile services in order to communicate with others. This need to access 4G (and soon 5G) services does not end when a rural consumer leaves her home or job in rural America. Rural consumers still need the capability to access mobile wireless services in non-rural U.S. markets where their local hometown carrier does not provide service. Likewise, wireless customers in urban and suburban U.S. markets should have access to the critical coverage provided by RWA member carriers, who in many cases operate the only network in a rural area. This mutual dependency makes bilateral, inter-carrier voice and data roaming critical from both a commercial and public safety perspective. Reciprocal roaming keeps urban,

suburban, and rural America connected. Sprint has been a valuable partner in this system, while T-Mobile has consistently refused to enter into reciprocal roaming agreements with RWA members.

What does this mean? If this merger is approved, rural consumers and consumers traveling through rural America will pay higher rates due to the increased roaming rates set by New T-Mobile. Of the four nationwide carriers, Sprint is the only one that offers anything approximating commercially reasonable roaming rates, terms, and conditions to rural carriers. T-Mobile has not shown that it wants rural carriers to have affordable access to its nationwide network. If a rural carrier had such access, the rural carrier could offer its rural customers not only robust rural coverage on its network, but also affordable coverage when the rural customer chooses to travel outside the rural carrier network (*i.e.*, affordable nationwide service). When a rural carrier's customer regularly travels outside a rural area, the cost to support that customer accessing T-Mobile's network through a roaming agreement can be astronomical. Similarly, if a rural customer purchases a T-Mobile handset and plan, T-Mobile denies access to the rural carrier's network so that the device does not work when the T-Mobile customer is in the rural carrier's service area. Do we really want to force rural Americans to buy two plans – one from a rural carrier and one from New T-Mobile – just to get consistent coverage? That would *double* the monthly price a consumer would pay for service.

Sprint, on the other hand, has not blocked access, throttled data usage, or established unreasonable commercial roaming rates. In fact, RWA members have reported that the voice and data roaming rates they currently pay to Sprint are one-twentieth (1/20th) of what they pay T-Mobile for comparable coverage and service. If Sprint disappears and T-Mobile's rates are adopted, roaming costs could go up by *1,900 percent*, jeopardizing the ability of rural carriers to offer outbound roaming to their consumers. Without outbound roaming, rural carriers cannot

offer a compelling retail product to rural consumers. Absent that capability, they will be forced to exit the business, leaving an untold number of Americans without *any* access to mobile wireless communications in rural America. Obviously, loss of coverage in rural America is not in the public interest and is one of the many harmful anticompetitive effects of this proposed merger.

New T-Mobile will have zero incentive to provide commercially reasonable roaming rates, terms, and conditions to RWA members. Without access to nationwide roaming (at per-megabyte or per-minute bilateral rates that are lower than each carrier's existing retail rates, or even each carrier's wholesale/MVNO rates), rural carriers cannot offer nationwide rate plans at levels that are competitive with the nationwide carriers. This puts rural carriers at a competitive disadvantage. Specifically, because the flow of roaming traffic is one-way (*i.e.*, only rural to T-Mobile), the wholesale roaming rates paid by rural carriers are often inflated. This is because T-Mobile entered into negotiations knowing that it would never allow outbound (*i.e.*, T-Mobile to rural) roaming. Higher roaming rates mean that rural carriers are either forced to raise their own retail rates or absorb the roaming charges, which comes out of the rural carrier's profits. When rural carriers pay higher roaming rates, they are forced to reduce the extent of network buildout and reduce the funds available for other operating expenses, resulting in denigrated service in rural areas. In these instances, rural consumers and rural carriers lose.

In addition, T-Mobile's preclusion of its own customers from accessing rural carriers' networks – either by blocking by location area codes (LAC) or denying the exchange of reciprocal roaming traffic – makes rural carriers more reliant on Universal Service Fund (USF) subsidies. RWA emphasizes that many of these LAC restrictions and roaming denials are not in markets where T-Mobile has its own network – they are in markets where T-Mobile has no reliable coverage of its own. If T-Mobile allowed its customers to access those networks and

paid rural carriers for use of their networks, the rural carriers would have revenue to support their networks, reducing reliance on USF funding. RWA notes that T-Mobile collects a universal service fee from its own customers to support these high cost networks and then turns around and *denies* its customers access to those very same networks T-Mobile's customers subsidize.

Sprint, on the other hand, has been willing to allow its customers to roam off-network. Accordingly, if T-Mobile is allowed to merge with Sprint and continues to block access to rural carriers' networks, then tens of millions of existing Sprint customers will experience a reduction in roaming coverage availability, another major public interest harm.

Furthermore, Sprint has leased its spectrum to rural carriers in rural areas to enable them to build out networks that serve both rural Americans and those traveling in rural America. Given the difficulty that rural carriers often have in accessing spectrum, these lease agreements are critical. But, there is no reason to believe they will continue if the proposed merger is consummated. Specifically, RWA members are concerned that their spectrum leases with Sprint will not be renewed by New T-Mobile, which would cause rural carriers to lose coverage and force even more consumers to go without service.

And, despite T-Mobile's claims that it will expand service to underserved communities post-merger, the reality is clear: T-Mobile has neglected rural America for over 20 years. T-Mobile has focused most of its energy on urban areas. Indeed, T-Mobile's retail presence in rural America is virtually non-existent, presumably because it has little or no coverage in rural America. After all, there is no point in having a rural retail store if there is no coverage in the area.

The lack of retail stores came to light during the FCC's Mobility Fund Phase II challenge process when rural carriers sought to obtain T-Mobile devices to challenge alleged 4G LTE coverage in rural areas. To participate in the challenge process, RWA members often had to

drive two or more hours each way (over 250 miles round trip) to purchase T-Mobile devices at the closest T-Mobile retail store. The experience of RWA members is that when T-Mobile does extend service to a “rural county,” it typically builds a cell in the county seat, covers major state and federal roadways, and ignores the rest of the county. In short, T-Mobile is not focused on rural Americans, and there is no reason to believe that will change if this merger is approved.

5G Needs Fiber -- an Input Both T-Mobile and Sprint Lack in Rural America

The repeated claims about the extent of New T-Mobile’s future 5G rural buildout are unfounded. Rural areas are difficult to serve, and the proposed transaction does nothing to improve the challenging economics of undertaking a 5G greenfield build in rural areas. While Sprint and T-Mobile each have ample spectrum today to initiate facilities-based service in rural markets, both have elected to focus their attention on urban and suburban portions of the country. The proposed merger will not change their major market focus. Moreover, both companies lack fiber deployment in rural areas, a critical input for 5G services.

When it comes to 5G networks and some of their potential applications - autonomous vehicles, precision technology and remote health care – lowering latency is a must. The backhaul facilities needed for 5G technology cannot rely on satellite and microwave backhaul technology due to their high latency. 5G wireless cells must be placed in close proximity (300 to 500 feet) to consumers⁴, and fiber optic backhaul must be present nearby each of those cell sites. Deploying fiber takes time and money. Google, one of the best financed companies in the United States, exited the fiber business after realizing that building fiber networks is not for the faint of heart. Building fiber networks that support both wireless and wireline networks is a capital intensive and costly undertaking – one that rural telephone companies have assumed

⁴ Vantage Point, *White Paper: Evaluating 5G Technology*, (rel. July 10, 2017).

across the United States by banding together in statewide consortia to connect rural areas of their individual states. Because neither T-Mobile nor Sprint have expended resources to build out fiber networks in rural America, T-Mobile's claims of building out future 5G wireless broadband networks in rural America is without foundation absent a commitment to lay fiber in these greenfield areas.

In short, T-Mobile's acquisition of Sprint is not going to change the fact that both companies lack the fiber buildout they need to serve rural America with 5G. By keeping both T-Mobile and Sprint separate and competing, hundreds of rural broadband providers across rural America will be able to work with both to more quickly build out LTE and 5G by leveraging and expanding the rural fiber networks.

T-Mobile Has a Poor Track Record of Rural Call Completion

The harm T-Mobile has inflicted on its own customers is not restricted to denying them access to rural wireless networks – it extends to denying those same customers access to rural landline telephone networks as well. Less than a year ago – on April 16, 2018 – the FCC announced that it had “reached a settlement concluding its investigation into whether T-Mobile USA, Inc. violated the Communications Act when it failed to correct ongoing problems with delivery of calls to rural consumers and whether it violated the FCC rule that prohibits providers from inserting false ringtones with respect to hundreds of millions of calls.”⁵ That same day, the FCC released a *Settlement Order*,⁶ which adopted a *Consent Decree*⁷ entered into between the FCC and T-Mobile. In the *Consent Decree*, the FCC determined that T-Mobile inserted false

⁵ Press Release, *FCC Reaches \$40 Million Settlement with T-Mobile for Rural Call Completion Violations* (rel. Apr. 16, 2018).

⁶ T-Mobile USA, Inc., File No.: EB-IHD-16-00023247, *Order*, DA 18-373 (rel. April 16, 2018).

⁷ T-Mobile USA, Inc., File No.: EB-IHD-16-00023247, *Consent Decree*, DA 18-373 (released April 16, 2018).

ringtones into hundreds of millions of telephone calls placed by T-Mobile customers each year. The FCC's investigation revealed a pattern of this illegal practice impacting customers of rural local exchange carriers (LECs). Instead of terminating these calls, T-Mobile injected false ringtones, leading the T-Mobile customer to think that the rural LEC customers were not picking up their landline telephones. In reality, the call was passed to an intermediate provider, where it was then either placed in a never-ending loop or transferred to one or more additional intermediate providers. Eventually, the calls either dropped or the T-Mobile customers hung up. T-Mobile admitted in the *Consent Decree* that it violated the FCC's 2014 prohibition against the insertion of false ringtones and failed to correct problems with its intermediate providers' completion of calls to customers of rural LECs. T-Mobile's actions were extremely harmful to both its own wireless customers and landline customers served by rural LECs across the country. And, despite the FCC informing T-Mobile of numerous customer complaints and expressly prohibiting the practice, T-Mobile engaged in the illegal practice of inserting false ringtones into calls destined for rural consumers for four years.

Aside from blatantly breaking the law, T-Mobile severely hindered rural consumers seeking to run their businesses; communicate important and critical information to family and friends; and reach emergency service personnel, medical professionals, and law enforcement in affected rural areas. The callous behavior T-Mobile engaged in to save money on terminating rural calls underscores the fact that T-Mobile's attitude toward rural consumers is egregiously anticompetitive. T-Mobile's actions with respect to rural call completion, combined with its behavior in the context of roaming and spectrum management, demonstrate that T-Mobile has a general disregard for rural consumers and rural carriers. RWA believes that T-Mobile's anti-rural consumer behavior will continue, perhaps even more aggressively, once its rival Sprint is eliminated.

The FCC Should Investigate T-Mobile's 4G LTE Coverage Claims Before It Approves the Merger

The FCC's Mobility Fund was created to provide \$4.5 billion to mobile carriers over the next 10 years to help connect rural Americans who lack quality wireless service. To make sure it knows where the money is most needed, the FCC has asked wireless carriers to submit maps indicating where each carrier offers 4G LTE coverage with speeds of 5 megabits per second download or faster. According to a study done by RWA, when T-Mobile submitted its data, the company vastly overstated its rural coverage to make its reach seem bigger than it is. When rural carriers went to test T-Mobile's claims, **95.8 percent** of their tests showed speeds **below** the threshold demanded by the FCC – or **no** 4G LTE service at all. In many of the places where T-Mobile certified it had coverage, cell sites had not even been put into operation. FCC acceptance of the faulty T-Mobile coverage data would mean that rural carriers who serve rural consumers would be denied funds, even though no alternative sources of service exist, causing a loss of service to customers of rural carriers who rely on this funding.

The FCC is currently investigating this issue. But, before the FCC can make a public interest determination regarding this proposed merger, it must first know that T-Mobile has been honest in its dealings with the Commission. Our members' drive tests strongly suggest that it has not. The Commission cannot approve a merger when there is an unresolved enforcement proceeding pending against the merging parties.

Conclusion

This merger is bad for competition. It is bad for consumers, especially in rural areas, who will experience higher rates and lower quality service. It will degrade the quality of telephone service in rural areas. It should not be denied.