

United States Senate

WASHINGTON, DC 20510

August 16, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write to request that the Federal Communications Commission (FCC) issue a public notice seeking additional comment on the proposed merger between T-Mobile US, Inc. (T-Mobile) and Sprint Corporation (Sprint) in light of the Proposed Final Judgment and a Stipulation and Order (Consent Decree) filed on July 26, 2019 in the U.S. District Court for the District of Columbia.¹

As we have previously stated, we have major antitrust concerns regarding the impact of the proposed T-Mobile/Sprint merger on consumers, competition, and the public interest. The requirements of the Consent Decree significantly change the nature of the original transaction proposed and raise additional issues that need to be considered. In addition, we have serious concerns that the terms of the settlement may prove insufficient to protect competition, innovation, and the public interest. Accordingly, notice and an opportunity for the public to comment on the Consent Decree is necessary and appropriate.

As originally proposed, the merger between T-Mobile and Sprint would result in the removal of Sprint—one of only four nationwide mobile wireless carriers—from the market. The Department of Justice (Department) concluded that the proposed T-Mobile/Sprint merger would substantially lessen competition and harm consumers and filed a civil antitrust lawsuit challenging the transaction.² At the same time, the Department filed the Consent Decree, settling the lawsuit by agreeing to terms that would require the divestiture of significant business assets to Dish. The settlement attempts to resolve the competitive concerns with the merger by promising U.S. leadership in 5G by replacing Sprint—an established wireless carrier with a history of aggressive pricing—with that of a new carrier created out of Dish, a satellite TV company with no existing mobile network infrastructure, a bundle of spectrum assets, and multi-year service agreements with the merged company.

The terms of the Consent Decree make this transaction fundamentally different than what was originally proposed by the parties and reviewed by the FCC. As part of Dish's efforts to comply with the conditions of the Consent Decree, Dish recently filed a letter seeking an extension of the construction deadline for hundreds of licenses,³ which Dish did not file as part of the originally

¹ Justice Department Settles with T-Mobile and Sprint in Their Proposed Merger by Requiring a Package of Divestitures to Dish, July 26, 2019, available at <https://www.justice.gov/opa/pr/justice-department-settles-t-mobile-and-sprint-their-proposed-merger-requiring-package>.

² Tony Romm, Sprint, T-Mobile Receive Merger Approval From Justice Department, Washington Post, July 26, 2019 (quoting Makan Delrahim, head of DOJ's Antitrust Division).

³ Letter to Donald Stockdale, Chief of the Wireless Telecommunications Bureau, Federal Communications Commission from Jeffrey H. Blum, Senior Vice President of Public Policy and Government Affairs, DISH, July 26, 2019, available at <https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf>.

proposed merger proceeding. Additionally, the Consent Decree relies on an uncertain assumption that the harm to competition resulting from the loss of Sprint from the nationwide mobile wireless marketplace would be offset by Dish's replacement of Sprint as a national competitor. The risk posed to consumers if Dish Network fails to compete effectively or build its new wireless business is substantial. Therefore, the public deserves the opportunity to evaluate and comment on this proposal as part of the FCC review process.

We remain concerned about the lack of transparency in the FCC's merger review process and the lack of certainty regarding whether this merger will protect competition and consumers. You expressed support for the proposed T-Mobile/Sprint merger two months before it was approved by the Department and before you were aware of the terms in the Consent Decree.⁴ Last month, you expressed support for the proposed T-Mobile/Sprint merger in light of the Consent Decree,⁵ which includes terms of the proposed merger that are fundamentally different from what was originally proposed by the applicants, commented on by the public, and reviewed by the FCC. Two days ago, you circulated a draft Order to your colleagues that would approve the proposed T-Mobile/Sprint merger and direct FCC staff to extend the deadlines for Dish's existing build out obligations. In justifying this decision, your statement indicates that the draft Order concludes that Dish's planned 5G deployment, in connection with its acquisition of Boost, would be in the public interest—a significant aspect of the merger that the public has not had the opportunity to address.⁶

For these reasons, we urge the FCC to issue a public notice and seek public comment on the proposed merger as altered by the Consent Decree and the terms set forth in Dish's extension request letter prior to its consideration of the merger to determine if this transaction is in the public interest. The public should be able to trust that the FCC's process is fair, transparent, and based on a thorough examination of all of the relevant evidence.

Thank you for your prompt attention to this request.

Sincerely,



Amy Klobuchar
United States Senator




Edward J. Markey
United States Senator

⁴ Chairman Pai Statement on T-Mobile/Sprint Transaction, May 20, 2019, available at <https://docs.fcc.gov/public/attachments/DOC-357535A1.pdf>.


⁵ Chairman Pai Statement on Justice Department's Proposed Settlement of T-Mobile/Sprint Merger, July 26, 2019, available at <https://docs.fcc.gov/public/attachments/DOC-358721A1.pdf>.

⁶ Chairman Pai Formally Recommends Approval of T-Mobile/Sprint Merger, August 14, 2019, available at <https://docs.fcc.gov/public/attachments/DOC-359080A1.pdf>.


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