**The Free State Foundation**
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October 8, 2019

Scott Scheele
Chief, Telecommunications and Broadband Section
Antitrust Division
Department of Justice
450 Fifth Street NW, Suite 7000
Washington, DC 20530

Re: *United States of America et al. v. Deutsche Telekom AG et al.*, No. 1:19-cv-02232-TJK.

Dear Mr. Scheele,

These comments are filed pursuant to the Antitrust Procedures and Penalties Act (commonly referred to as the Tunney Act) regarding the proposed settlement for the T-Mobile/Sprint merger. They express the views of Randolph May, President of the Free State Foundation, and Seth Cooper, Senior Fellow and Director-Policy Studies.[1] The Free State Foundation is an independent, nonpartisan, non-profit free market-oriented think tank focusing heavily on communications and Internet law and policy. Consistent with the Free State Foundation's practice, these comments do not specifically endorse or oppose the proposed merger or the proposed settlement. Rather they set forth our views concerning the merger's likely public interest benefits and conclude that the proposed merger meets the Tunney Act's public interest standard.

There is strong evidence that the proposed T-Mobile/Sprint merger, if approved pursuant to the proposed settlement, would be in the public interest. A combined "New T-Mobile" would benefit consumers and enterprises by rapidly deploying a 5G mobile wireless

[1] The views expressed do not necessarily represent the views of others associated with the Free State Foundation.

network offering significantly faster speeds, higher data capacity, and reduced per-megabit prices. The New T-Mobile would be in a position to compete more effectively against current wireless market leaders AT&T and Verizon. And pursuant to the proposed settlement's divesture and access provisions, which we do not believe necessarily were required to satisfy the public interest standard, DISH Network, Corp. will be in a position to be a leader in the prepaid market segment and also a prospective nationwide 5G network services provider. Moreover, post-merger consumers will still have choice of competing regional and local wireless providers, as well as recent cable operator wireless entrants.

The New T-Mobile would deploy a nationwide 5G network by combining Sprint's 2.5 GHz spectrum with T-Mobile's nationwide 600 MHz spectrum and other assets. This next-generation network may have up to 30 times more capacity than T-Mobile's existing network. Near-future 5G wireless networks will feature faster speeds, higher capacity, and improved reliability. Indeed, 5G potentially will enable average speeds up to 10 times faster than 4G networks and peak speeds up to 100 times faster.[2] Advanced 5G networks will enable "smart city" capabilities for street lighting and public transportation. Cities are expected to realize millions of dollars in cost savings from such capabilities. Industrial, manufacturing, and other enterprise sectors will benefit from Internet of Things (IoT) devices connected via 5G. Accenture has projected global IoT-related real GDP contributions of $10.6 trillion dollars by 2030.[3] Indeed, 5G's capacity will be essential to supply forecasted increases in demand. And increased data traffic supply will surely put continued downward pressure on per-megabit prices for retail consumers and businesses.

T-Mobile and Sprint significantly trail the two largest nationwide providers in subscribers. At the end of 2017, their market shares of subscribers were 17% and 12.8% compared to Verizon's 35.5% and AT&T's 32.4%.[4] The New T-Mobile would be a stronger match for the market leaders in today's robustly competitive mobile wireless services market. Also, the proposed settlement's required divestures of Sprint's prepaid brands plus spectrum assets as well as required cell site and retail outlet access provisions will establish DISH Network as a prospective nationwide 5G network provider. Post-merger, consumers would still have a choice from rural and regional providers. Multi-regional service providers U.S. Cellular and C Spire, as well as dozens of other facilities-based providers in rural areas, combined serve several million consumers. Moreover, relevant to the public interest determination, T-Mobile has made specific commitments to expand coverage substantially to heretofore unserved rural markets.

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[2] *See* Thomas K. Sawanobori & Paul V. Anuszkiewicz, "High Band Spectrum: The Key to Unlocking the Next Generation of Wireless," CTIA, at 5 (June 13, 2016), at http://www.ctia.org/docs/default-source/default- document-library/5g-high-band-white-paper.pdf.

[3] Accenture Strategy, "Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities" (January 2017), at 1, at: https://newsroom.accenture.com/content/1101/files/Accenture_5G-Municipalities-Become-Smart-Cities.pdf.

[4] FCC, Communications Marketplace Report, GN Docket No. 18-231 (released Dec. 26, 2018), at ¶ 9.

Wireless market entry by Comcast and Charter Communications using hybrid Wi-Fi/cellular mobile wireless networks further diminish the likelihood of significant price increases or other anti-competitive conduct post-merger. Traditional cable operators are established providers of bundled voice, video, and data services. They are well suited to provide competitive mobile wireless services by leveraging their existing broadband network capacity and nationwide deployment of Wi-Fi hotspots and leasing network capacity for out-of-area voice and data transmission. As of the second quarter of 2019, Xfinity Mobile reportedly served 1.6 million subscribers and Spectrum Mobile reportedly served 518,000 subscribers.[5] Those subscriber numbers are widely expected to increase.

Importantly, many consumers routinely switch providers – a further indication of vigorous competition that will continue post-merger. According to industry data cited in the FCC's *Communications Marketplace Report* (2018), the amount of "churn," or percentage of subscriber connections that have cancelled mobile wireless service, was 15.9% in 2017, with a monthly churn rate of 1.3%.[6]

Given the competitive conditions of the wireless market, it is quite unlikely that the T-Mobile/Sprint merger would result in increases in wholesale prices for wireless resellers or for price increases in the pre-paid market segment. However, any such concern is further alleviated by divestures of prepaid brands Boost Mobile, Sprint Mobile, and Virgin Mobile to DISH Network, Corp., as set forth in the proposed settlement.

Significantly, T-Mobile and Sprint likely separately would not have the capital resources to deploy 5G networks that could compete timely and effectively against AT&T and Verizon. T-Mobile lacks mid-band spectrum while Sprint lacks low-band spectrum. Separately, the two providers would require longer periods to transition spectrum from older-generation networks to 5G. Also, Sprint's recent financial history and analysts' projections indicate a standalone Sprint likely would be less competitive and perhaps not even viable in the 5G era. Sprint reportedly has substantial debt relative to its capitalization, assets, and cash flow. Furthermore, Sprint's supposed role as a market disruptor may have been overstated, as it has suffered declines in subscriber market share since late 2006. And Sprint's market share of service revenues also has declined.

We have addressed these matters in much more detail in comments and reply comments filed on the record in the FCC's T-Mobile/Sprint merger review proceeding.[7] In both sets of comments, we concluded that, as originally proposed, the merger likely would be in the public interest. While we do not believe the divestitures demanded by the Department

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[5] Comcast Corp., Press Release: "Comcast Reports 2nd Quarter 2019 Results" (July 25, 2019), at: https://www.cmcsa.com/news-releases/news-release-details/comcast-reports-2nd-quarter-2019-results; Charter Communications, Inc., Press Release: "Charter Announces Second Quarter 2019 Results" (July 26, 2019), at: https://newsroom.charter.com/press-releases/charter-announces-second-quarter-2019-results/.

[6] FCC, Communications Marketplace Report, at ¶ 11.

[7] Comments of the Free State Foundation, Applications of T-Mobile US, Inc. and Sprint Corp., WT Docket No. 18-977 (August 2019, at http://fsfwebsite.wpengine.com/wp-content/uploads/2019/08/FSF-Comments-T-Mobile-Sprint-Merger-082718.pdf; Reply Comments of the Free State Foundation (September 17, 2018), at http://fsfwebsite.wpengine.com/wp-content/uploads/2019/08/FSF-Reply-Comments-T-Mobile-Sprint-091718.pdf.

of Justice necessarily were required from a competition standpoint, in any event, given the potential benefits of 5G deployment enabled by the proposed T-Mobile/Sprint merger and the competitive conditions in the market, the merger meets the Tunney Act's public interest requirement.

Sincerely,



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