

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of T-Mobile and UScellular)	GN Docket No. 24-286
)	
For Consent to Transfer of Control and)	
Assignment of Certain Spectrum Licenses,)	
Authorizations, and Spectrum Leases Held by)	
UScellular to T-Mobile)	

**OPPOSITION TO PETITIONS TO DENY OF
THE FREE STATE FOUNDATION¹**

I. Introduction and Summary

This Opposition to Petitions to Deny is filed in the Commission’s review of the transfer control of spectrum licenses pursuant to the proposed acquisition of UScellular operations and assets by T-Mobile US, Inc. Consistent with its past practice, the Free State Foundation does not specifically endorse or oppose the proposed T-Mobile/UScellular merger but examines it in light of basic merger review and competition principles. This Opposition to Petitions to Deny also responds to arguments contained in petitions to deny that are unsupported by evidence or not transaction-specific.

The weight of evidence indicates that the proposed T-Mobile/UScellular merger, if approved, would produce pro-competitive benefits. The merger would benefit UScellular subscribers by giving them access to 5G services with faster speeds and higher data capacity. It also would expand fixed wireless access (FWA) services in UScellular's service regions, especially in rural areas. Moreover, given the existing competition in the traditional wireless

¹ This Opposition to Petitions to Deny expresses the views of Randolph May, President of the Free State Foundation, and Seth Cooper, Senior Fellow and Director of Policy Studies. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

marketplace, as well as in the broader broadband marketplace in which T-Mobile and UScellular participate, the transaction does not appear to pose any significant harm to competition or consumers that would outweigh the likely positive benefits.

II. The Market’s Competitiveness Should Dictate the Commission’s Analysis

The proposed transaction should be analyzed in light of the competitive conditions of the wireless marketplace. Today’s “mobile telephony/broadband services” product market is characterized by strong competition among three nationwide mobile wireless providers – T-Mobile, AT&T, and Verizon, an emergent fourth nationwide provider in EchoStar, local wireless providers, and regional hybrid cellular-cable mobile virtual network operators (MVNOs) Xfinity Mobile and Spectrum Mobile. Wireless providers are rapidly expanding 5G networks and upgrading their bandwidth capacity and speeds to supply increasing consumer demands. Indeed, the “mobile telephony/broadband services” product market exists within a broader broadband marketplace that is characterized by convergence and cross-platform competition between traditional mobile wireless services and substitutable or potentially substitutable fixed wireless (FWA), cable, fiber, and satellite services.

Ongoing service capability improvements and competition are backed by strong annual private market investment of \$30 billion in 2023 and a total of \$190 billion since 2018.² Given the pro-competitive conditions for wireless services, the Commission’s merger review should incorporate a forward-looking analysis. Static market indicators fail to capture the critical role of future investment and innovation in driving competition and benefitting consumers.

² CTIA, “2024 Annual Survey Highlights” (September 10, 2024), at 5, at: <https://api.ctia.org/wp-content/uploads/2024/09/2024-Annual-Survey.pdf>.

III. The Proposed Merger Presents Likely 5G-Related Public Benefits

The proposed transaction would result in T-Mobile acquiring UScellular's wireless operations, subscribers, and about 30% of its spectrum licenses for \$4.4 billion.³ If approved, the proposed T-Mobile/UScellular merger would benefit UScellular subscribers by providing access to T-Mobile's faster and more capacious 5G mobile wireless network. T-Mobile's spectrum holdings reportedly are lower, on average, in UScellular's geographic territory than in other areas, and the merger would enable T-Mobile to access and almost immediately put into use new spectrum resources that are complementary to T-Mobile's current spectrum holdings.⁴ The parties expect that the combination of network infrastructure and spectrum would significantly increase capacity in rural areas above what either provider offers as standalone networks and that percentages of rural population with access to download speeds of 50 Mbps or more and to 500 Mbps or more would increase.⁵ Indeed, about 40% of UScellular's footprint is in rural America.

Moreover, the parties expect that the combination of network infrastructure and spectrum will enable offerings of residential or fixed wireless access (FWA) beyond what either provider offers as a standalone service and that the combination would enable higher percentages of UScellular's approximately 134,000 FWA subscribers receive speeds that meet or exceed the Commission's 100 Mbps/20 Mbps definitional benchmark for broadband services.⁶

³ See Todd Haselton and Sean Conlon, "T-Mobile to acquire most of U.S. Cellular in \$4.4 billion deal; U.S. Cellular shares surge," *CNBC* (May 28, 2024), at <https://www.cnbc.com/2024/05/28/t-mobile-to-acquire-most-of-us-cellular-in-4point4-billion-deal.html>; T-Mobile and UScellular, "Description of Transaction, Public Interest Statement, and Related Demonstrations" ("Public Interest Statement"), Applications of T-Mobile US, Inc. and United States Cellular Corp. for Consent to Transfer Control of Licenses and Authorizations, GN Docket No. 24-286 (September 13, 2024), at 4, at: https://www.fcc.gov/ecfs/document/109132166915081/10?utm_source=substack&utm_medium=email.

⁴ See Public Interest Statement, at 17-18.

⁵ See Public Interest Statement, at 26-27.

⁶ See Public Interest Statement, at 27-28.

Commission precedents such as the *T-Mobile/Sprint Order* (2019) recognize that the combination of two providers' network infrastructure and spectrum to expand access to next-generation services such as 5G and to expand rural 5G coverage constitutes public interest benefits.⁷ The merger-enabled benefits of upgrading older-generation wireless networks to 5G networks that can meet or exceed the Commission's broadband speed benchmarks, thereby expanding broadband access, are benefits that would flow through to consumers.⁸

IV. The Proposed Merger Is Unlikely to Cause Public Harms

Importantly, consumers are unlikely to face substantial anticompetitive harm from the proposed transaction because T-Mobile faces little challenge from UScellular due to the latter's small market share. UScellular's geographic footprint spans only about 10% of the nation's territory.⁹ T-Mobile is the second-largest wireless provider, with 127.5 million total subscriptions compared to UScellular's 4 million.¹⁰ T-Mobile sets price and service terms on a nationwide basis, without any likely impact from UScellular's presence in a given area.

Moreover, UScellular is not a market leader or disruptor. UScellular faces competitive disadvantages compared to its rivals because of its limited amount of licensed spectrum, lack of geographic scale, and lower potential subscriber density of its network territory. As a result, UScellular faces higher fixed costs on a per-subscriber basis compared to its rivals.¹¹ And within its geographic footprint, UScellular reportedly ranks fourth in retail handset connections.¹²

⁷ See Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification ("*T-Mobile/Sprint Order*") (released Nov. 5, 2019), at ¶ 236, ¶ 257.

⁸ See *T-Mobile/Sprint Order*, at ¶ 305.

⁹ See Public Interest Statement, at 35.

¹⁰ T-Mobile, Earnings Release: "T-Mobile Delivers Industry-Leading Growth in Customers, Service Revenues, Profitability and Cash Flows in Q3, Raises 2024 Guidance Across the Board" (September 30, 2024), at 2, at: https://s29.q4cdn.com/310188824/files/doc_financials/2024/q3/TMUS-Q3-2024-Earnings-Release.pdf; UScellular, Press Release: "UScellular reports third quarter 2024 results" (November 1, 2024), at: <https://investors.uscellular.com/news/news-details/2024/UScellular-reports-third-quarter-2024-results/default.aspx>.

¹¹ See Public Interest Statement, at 10-11.

¹² See Public Interest Statement, at 10-11.

Furthermore, revenue reductions resulting from subscriber losses and \$2.9 billion in debts limit UScellular's resources for future network investment. UScellular's debt apparently doubled between December 2019 and December 2023.¹³ If UScellular were to continue operating as a standalone mobile provider, its competitiveness probably would diminish further.

Additionally, UScellular subscribers likely would benefit or be unharmed in pricing as a result of the merger. UScellular subscribers would have the option of keeping existing plans.¹⁴ The parties reasonably estimate some UScellular subscribers would save by changing to comparable T-Mobile plans.¹⁵

Although the Petition to Deny of Public Knowledge, et al. claims that the parties have not demonstrated that UScellular would fail without the merger,¹⁶ such a finding is not necessary to credit the public benefits of the proposed merger. A merger that enables expanded and improved wireless network capacity and speed for mobile wireless services and residential broadband, particularly in underserved rural areas, benefits the public even if one merging party's failure is not imminent.

T-Mobile and UScellular apparently do not have an overlapping competitive presence in about 37% of the Cellular Marketing Areas (CMAs) that are implicated by the proposed merger.¹⁷ If the transaction is approved, most consumers would continue to have choices among nationwide providers T-Mobile, Verizon, and AT&T. Many consumers also would have choices among DISH Wireless and a cable wireless MVNO, and some would have a choice of a local wireless service provider. Indeed, the parties to the proposed merger acknowledge that between

¹³ See Public Interest Statement, at 17.

¹⁴ See Public Interest Statement, at 25, 33.

¹⁵ See Public Interest Statement, at 25.

¹⁶ See Petition to Deny of Public Knowledge, Open Technology Institute at New America, Benton Institute for Broadband & Society, Access Humboldt, and Institute for Self-Reliance, GN Docket No. 24-286 (December 9, 2024), at 10-13.

¹⁷ See Public Interest Statement, at iv.

2020 and 2024, cable wireless MVNOs increased their market share within UScellular's geographic territory and that those trends are continuing.¹⁸

Given the demonstrable competitive choices available to consumers as well as UScellular's small footprint, Petitions to Deny filed by CCIA, EchoStar, and Public Knowledge, et al. suggesting that the transaction will eliminate a competitor likely overstate the potential for harm.¹⁹ Similarly, the claim made in the Petition to Deny of CWA that the proposed merger would cause undue market concentration lacks specificity for finding a likely public harm, and it fails to take account of the competitive and innovative conditions in the marketplace.²⁰

Agency precedents demonstrate that the public benefits of mergers can outweigh potential harms even when the resulting combination has reduced the number of competitors in geographic markets.²¹ In geographic markets that are characterized by effective competition and innovation backed by strong private investment – such as the wireless market – three competitors likely can provide choice and check the conduct of their rivals to the benefit of consumers. But in many CMAs implicated by this transaction, consumers have access to more than three traditional wireless competitors. And, of course, they have access as well to substitutable broadband services offered by various facilities-based broadband market participants over other technological platforms such as satellite, cable, and fiber.

¹⁸ See Public Interest Statement, at 14-15.

¹⁹ See Petition to Deny of Computer & Communications Industry Association (CCIA), GN Docket No. 24-286 (December 9, 2024), at 1-2; Petition to Deny of EchoStar Corporation, GN Docket No. 24-286 (December 9, 2024), at 5-6; Petition to Deny of Public Knowledge, et al., at 6-8.

²⁰ See Petition to Deny of Communications Workers of America (CWA), GN Docket No. 24-286 (December 9, 2024), at 25-28.

²¹ See, e.g., Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order (“*AT&T/DIRECTV Order*”), MB Docket 14-90 (released July 28, 2015), at ¶ 146.

Although Petitions to Deny filed by CCIA, EchoStar, and RWA express concern about spectrum concentration,²² it is unlikely that the combination of spectrum resources that would be enabled by the merger would be harmful to competition or consumers. The combination of spectrum enables the likely public benefit of more capacious and faster networks. Furthermore, the parties' analysis indicates that T-Mobile's acquisition of 30% of UScellular's spectrum would not trigger the FCC's spectrum screen analytical trigger in any CMA.²³

Petitions to Deny filed by CWA and RWA express concerns about merger effects on roaming agreements.²⁴ Neither Petitioner offers enough specific evidence to substantiate such harms or adverse impact on consumer welfare. However, to the extent that roaming concerns are valid, the Commission has existing rules that address roaming practices and disputes.²⁵

Also, the Petition to Deny filed by CWA make employment-related claims regarding retail store jobs, workforce bargaining power, and collective bargaining agreements.²⁶ Those claims do not appear to be tied to potential output reduction, and they also appear to be largely or entirely non-specific to the proposed merger.²⁷ To the extent such claims have validity, they are more fitting for review by agencies such as the National Labor Relations Board.²⁸ They are not germane to review of this proposed transaction.

²² See Petition to Deny of CCIA, at 4-5; Petition to Deny of EchoStar, at 6-11; Petition to Deny of Rural Wireless Association, Inc. (RWA), GN Docket No. 24-286 (December 9, 2024), at 11.

²³ See Public Interest Statement, at i-ii, 37.

²⁴ See Petition to Deny of CWA, at 31; Petition to Deny of RWA, at 11-13, 18-19.

²⁵ See *T-Mobile/Sprint Order*, at ¶ 297.

²⁶ See Petition to Deny of CWA, at 5-22.

²⁷ See *T-Mobile/Sprint Order*, at ¶ 330.

²⁸ See *T-Mobile/Sprint Order*, at ¶ 321.

V. Conclusion

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

Randolph J. May
President

Seth L. Cooper
Director of Policy Studies & Senior Fellow

Free State Foundation
P.O. Box 60680
Potomac, MD 20854

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