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Media Advisory

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FSF Comments Detail Why the Proposed T-Mobile/Sprint Merger Likely Will Benefit Consumers and Spur 5G

Free State Foundation President Randolph May and Senior Fellow Seth Cooper submitted [comments](#) today in connection with the Federal Communications Commission's review of the proposed T-Mobile/Sprint merger. The comments explain, in detail, why the public benefits of the proposed merger appear to outweigh any potential harm. And they detail why the proposed merger is likely to lead to a more rapidly deployed 5G network that will significantly benefit consumers, enterprises, and the nation's economy.

Below is the **Introduction and Summary** of the Free State Foundation's comments submitted today.

A PDF of the full FSF comments, with footnotes, is [here](#).

Introduction and Summary

These comments are filed in response to the Commission's request for comments concerning the agency's review of the transfer of control of licenses in connection with the proposed acquisition of Sprint Corporation by T-Mobile US, Inc. Consistent with the Free State Foundation's past practice, these comments do not specifically endorse or oppose the proposed merger. Rather, they set out basic merger review principles and examine the proposed merger in the context of those principles.

In this instance, there is strong evidence that the proposed T-Mobile/Sprint merger, if approved, would greatly benefit consumers and enterprises by enabling faster mobile broadband speeds, higher data capacity, and reduced per-megabit prices. A combined "New T-Mobile" would have the resources to rapidly deploy a nationwide 5G network and to compete more effectively against AT&T and Verizon, presently the two largest wireless carriers. On its face, the proposed merger appears to satisfy the public interest standard.

The New T-Mobile would combine Sprint's 2.5 GHz spectrum with T-Mobile's nationwide 600 MHz spectrum and other assets into a nationwide 5G network to be deployed over three years. Its next-generation network may have 30 times more capacity than T-Mobile's existing network, with peak speeds up to 100 times faster.

The data traffic capacity of 5G will be essential to supply skyrocketing future wireless

demand. The *Ericsson Mobility Report* forecasts global mobile data traffic to rise at a compound annual growth rate of 43%, climbing to 107 exabytes per month by 2023. T-Mobile and Sprint project their 5G network's monthly capacity would reach 6.8 exabytes in 2021 and 20.3 exabytes by 2024. Advanced 5G networks will enable "smart city" capabilities for street lighting and public transportation. Industrial, manufacturing, and other enterprise sectors will benefit from Internet-of-Things (IoT) devices connected via 5G. And increased data traffic supply will likely put downward pressure on per-megabit prices for retail consumers and businesses.

The Commission's merger precedents already recognize the public interest benefits of accelerated 5G deployment. For example, *Verizon/XO Order* (2016) characterized "the rollout of 5G technology" as an "important Commission policy priority for the general benefit of all consumers." Further, it appears unlikely that the potential benefits of accelerating 5G network deployment would be outweighed by any potential harms. T-Mobile and Sprint significantly trail the two largest nationwide providers in terms of the number of subscribers. At the end of 2016, their market shares of revenues were 15.4% and 13.4% compared to Verizon's 36.8% and AT&T's 32.8%. Post-merger, the New T-Mobile would be a stronger match. Indeed, as a result of the merger, a combined T-Mobile/Sprint might mean more robust competition in the wireless market as the new company's resources are marshalled to compete with the market leaders.

Wireless market entry by Comcast and Charter Communications using hybrid Wi-Fi/cellular mobile wireless networks as well as DISH Network's planned launches of IoT and 5G networks diminish the likelihood of significant price increases, post-merger. Commission precedents like the *CenturyLink/Level 3 Order* (2017) factor such entry into the review analysis.

Of course, reciting the market shares above might be read to suggest that mobile broadband is a properly defined market for purposes of competition analysis, but this likely is no longer the case. It is more likely that wireless and wireline broadband services properly are part of an overall broadband communications market – a broader broadband market, if you will – as these two market segments become increasingly substitutable. Traditional market definitions, such as a "mobile broadband" market, are now likely to be overly narrow, just as "cable" is certainly outdated and overly narrow as a meaningful product market definition. As Commissioner Michael O'Rielly recently said, echoing our own frequently expressed view:

"From the viewpoint of many, both the FCC and Department of Justice have been stuck in administrative molasses, seeking to apply sectoral market analysis, preserve questionable bright line tests, and continue the imposition of rigid restrictions as part of transactional reviews the same way now as in 2008, 1988, or 1958. I would posit that the entire foundation of how the government currently views the "communications" market – be it voice, video, or data – is outdated and misguided. . ."

The *AT&T/DIRECTV Order* (2015) recognized that benefits of new technologies and services enabled by mergers can outweigh the loss of a competitor. Here, the potential benefits of 5G enabled by T-Mobile/Sprint would likely outweigh any potential concerns that might arise from the loss of one national wireless service provider. Data traffic capacity and speed characteristics of 5G are likely to put downward pressure on per-megabit prices and offset price increases, if any, that might be triggered by loss of the number four provider.

Importantly, it is not certain that T-Mobile and Sprint separately would have the capital resources necessary to deploy 5G networks in a timely fashion that could compete 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 existing spectrum resources from older-generation networks to 5G.

Given the competitive conditions of the wireless market, it is quite unlikely that the merger would result in increases in the wholesale prices for wireless market resellers or for price increases in the pre-paid market segment. Also, Commission precedents properly reject narrow reseller or prepaid market definitions. There is no justification for the Commission to consider requiring divestiture of any part of T-Mobile/Sprint's pre-paid business because, whatever the differences between the pre-paid and post-paid

products in the past, these two products obviously now compete with one another as many of the features of their service plans have converged and become more similar. The reality is that the pre-paid and post-paid products compete for many of the same customers and this competition extends across multiple demographics. The Commission ought to focus on innovative and competitive market forces that produce service, product, and pricing choices rather than prescribing how and by whom certain choices ought to be made available to consumers.

In sum, the proposed T-Mobile/Sprint merger's enablement of a rapidly deployed nationwide 5G network would significantly benefit consumers and enterprises. Such benefits appear to outweigh any potential harm in the competitive wireless marketplace.

A PDF of the full FSF comments, with footnotes, is [here](#).

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Randolph J. May, President of the Free State Foundation, is a former FCC Associate General Counsel and a former Chairman of the American Bar Association's Section of Administrative Law and Regulatory Practice. Mr. May is a past Public Member and a current Senior Fellow of the Administrative Conference of the United States, and a Fellow at the National Academy of Public Administration.

Mr. May is a nationally recognized expert in communications law, Internet law and policy, and administrative law and regulatory practice. He is the author of more than 250 scholarly articles and essays on communications law and policy, administrative law, and constitutional law. Most recently, Mr. May is the co-author, with FSF Senior Fellow Seth Cooper, of the recently released [A Reader on Net Neutrality and Restoring Internet Freedom](#), and [#CommActUpdate - A Communications Law Fit for the Digital Age](#) as well as [The Constitutional Foundations of Intellectual Property](#), and is the editor of the book [Communications Law and Policy in the Digital Age: The Next Five Years](#). He is the author of *A Call for a Radical New Communications Policy: Proposals for Free Market Reform*. And he is the editor of the book, *New Directions in Communications Policy* and co-editor of other two books on communications law and policy: *Net Neutrality or Net Neutering: Should Broadband Internet Services Be Regulated* and *Communications Deregulation and FCC Reform*.

Seth L. Cooper is a Senior Fellow at the Free State Foundation. He previously served as the Telecommunications and Information Technology Task Force Director at the American Legislative Exchange Council (ALEC), as a Washington State Supreme Court judicial clerk and as a state senate caucus staff counsel. He is an attorney, and he graduated from Seattle University School of Law with honors. Mr. Cooper's work has appeared in such publications as *CommLaw Spectus*, the *Gonzaga Law Review*, the *San Jose Mercury News*, *Forbes.com*, the *Des Moines Register*, the *Baltimore Sun*, the *Washington Examiner*, the *Washington Times*, and *The Hill*.

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