

SPRINT Corp  
Form 425  
October 09, 2018

Filed by T-Mobile US, Inc.

pursuant to Rule 425 under the Securities Act of 1933

and deemed filed pursuant to Rule 14a-12

under the Securities Exchange Act of 1934

Subject Company: Sprint Corporation

Commission File No.: 001-04721

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of T-Mobile US, Inc.	)	WT Docket No. 18-197
	)	
and	)	
	)	
Sprint Corporation	)	
	)	
For Consent to Transfer Control of the	)	
Licenses and Authorizations	)	

**JOINT OPPOSITION OF**

**T-MOBILE US, INC. AND SPRINT CORPORATION**

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### EXECUTIVE SUMMARY

In the Public Interest Statement ( PIS ), T-Mobile and Sprint demonstrated that the merger will produce enormous consumer benefits and intensify competition in ways that neither company could do on its own. The merged company ( New T-Mobile ) will be able to leverage a unique combination of complementary spectrum and cell sites to unlock massive synergies. This will allow New T-Mobile to invest nearly \$40 billion to accelerate and deliver a more robust nationwide 5G network and next-generation services that would not be possible for either company on its own. While both T-Mobile and Sprint have standalone plans to deploy 5G networks, the New T-Mobile network will be far superior and will create expanded capacity and lower costs so that American consumers will pay less and get more. The network will produce fiber-like speeds that enable innovative mobile wireless uses; unleash an alternative to in-home, fixed broadband providers; enable disruptive video services; spark more competition for enterprise; bring better service to rural America, including high-speed broadband; create thousands of additional American jobs; and achieve accelerated 5G deployment in the United States. No petitioner seriously challenges that the proposed New T-Mobile network will deliver transformative increases in capacity, speed, and coverage to the public.

*The Merger Benefits Consumers and Intensifies Competition.* The PIS fully documented the pro-consumer and pro-competitive effects of the merger. A small number of petitioners nonetheless claim that the merger will lead to higher prices, lower output, and less competition. In response, the Applicants submit the following:

**Economic Analysis Confirms that Consumers Will Get More Data on Average at Much Lower Prices.**

In his declaration, Dr. David Evans documented how the transaction will result in a dramatic increase in cellular data output and decrease in cellular data prices through dynamic investment competition. These effects are a result of New T-Mobile integrating the networks and spectrum portfolios of T-Mobile and Sprint, and accelerating the deployment of a strong 5G network, which will induce

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AT&T and Verizon to accelerate and intensify their 5G deployments to remain competitive. He showed that consumers would pay roughly 55 percent less per gigabyte ( GB ) of data in 2024 as a result of the transaction. DISH's economist, Dr. David Sappington, argues that Dr. Evans' analysis failed to consider the impact on static price competition and omitted other considerations. In his attached reply declaration, Dr. Evans shows that even if DISH's estimates of Average Revenue Per User ( ARPU ) increases, which are not empirically valid, were accepted, consumers would pay nearly 50 percent less per GB of data as a result of the transaction just slightly less favorable than the outcome predicted in Dr. Evans' original study.

**Merger Simulations Show Prices Will Not Increase and Consumers Will Benefit.** DISH, in opposing the merger, retained Dr. Joseph Harrington and the Brattle Group ( Brattle ) to present merger simulations that purport to show ARPU would likely increase as a result of the transaction. However, their analysis is defective because of its failure to account for *any* efficiencies in the form of lower costs and higher quality, the presence of each of which will benefit consumers through lower quality-adjusted pricing, as well as spur greater competition among wireless carriers. When these gains are properly accounted for, the DISH-sponsored merger simulations confirm that consumers will benefit substantially from the merger. Applicants also submit merger simulations by Compass Lexecon that use data from T-Mobile and Sprint to properly and more comprehensively model salient features of the industry, while applying more conservative assumptions than DISH's economists. The Compass Lexecon merger simulations support the conclusion that the proposed transaction is projected to generate significant marginal cost savings, which will strengthen the combined firm's incentive and ability to compete for users by offering lower quality-adjusted prices. This will also benefit consumers because it will increase competitive pressures on rival service providers. Furthermore, Compass Lexecon demonstrates that the proposed transaction will generate significant quality improvements, which will benefit consumers and increase competitive pressures on rival service providers. Finally, the Compass Lexecon study refutes claims by some opponents that the merger will create incentives to raise wholesale prices to MVNOs.

**The Merger Will Not Increase Risks of Coordination.** In the PIS, Prof. Steven Salop and Dr. Yianis Sarafidis provided an economic analysis of why post-merger coordination among Verizon, AT&T, and New T-Mobile is unlikely. Here, they provide a supplemental declaration that systematically refutes petitioners' attempts to criticize their analysis and confirms their determination that the Commission would lack a credible basis to conclude that the proposed T-Mobile/Sprint merger transaction would increase the risk of successful coordination or encourage attempts to coordinate.

**Sprint as a Standalone Entity Faces Substantial Competitive Challenges.** Several petitioners assert that the apparent improvements in Sprint's business performance somehow demonstrate that Sprint will act as a competitive and pricing constraint on other national carriers absent the merger. As described in Dow Draper's supporting declarations to the PIS and this Joint Opposition, Sprint continues to face significant business challenges that limit its ability now and in the future to act as a competitive constraint on the larger wireless carriers.

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**Spectrum and HHI Screens Are Not Evidence of Local Harms.** Some petitioners argue that the merger results in holdings that exceed the spectrum and HHI screens. These screens, however, are merely tools used to distinguish Cellular Market Areas ( CMAs ) that should be exempt from detailed review rather than undergo closer examination; they are not intended to determine the outcome of a review. And no petitioner has made a credible showing that the transaction causes anticompetitive harm in any local market. Importantly, Verizon and AT&T are in virtually every local CMA and, in most CMAs, there are additional local regional or local competitors. Consequently, the various demands made for spectrum divestitures are not grounded in any legitimate public interest considerations.

***The Merger Benefits All Segments of the Wireless Market for Consumers, the Country, and American Workers.***

Some opponents contend that the consumer benefits described in the PIS are not merger-specific or verifiable. Notably, no petitioner presents credible evidence that the network as planned will not deliver significant speed and capacity gains over the standalone networks. Instead, opponents insist either that the merger is unnecessary to build such a nationwide 5G network or that the standalone companies have alternatives to merging. They further hypothesize that the transaction will result in harmful effects on specific segments of the wireless market, rural areas, and company employment. As explained below, the documented capacity and speed gains are entirely dependent on combining the two companies and they cannot be achieved but for the merger:

**The Merger Enables a Robust Nationwide 5G Network with the Capacity, Speed, and Lower Costs to Deliver Massive Consumer Benefits.** Some merger opponents suggest that T-Mobile and Sprint already have announced 5G plans and can find other spectrum, technology, or commercial arrangements to produce enhanced 5G networks similar to New T-Mobile's in the future. As demonstrated in the PIS and confirmed in declarations filed with this Opposition, the T-Mobile and Sprint standalone plans to deploy 5G are not even close to comparable to what New T-Mobile will deliver. The alternatives suggested by petitioners are unworkable, unavailable, or impossible.

**Ensuring America's Leadership in 5G.** New T-Mobile will build a world-leading 5G network. This, in turn, will stimulate competitive responses from Verizon, AT&T, and others that will help the U.S. win the race to 5G global leadership and secure for our country the benefits of this technological leap forward.

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**Millions of Consumers Will Receive Broadband Alternatives and Save Billions.** The PIS described how New T-Mobile will create competition for in-home broadband, as well as consumer benefits from enabling the substitution of wireless services for wired broadband services. Contrary to the claims of DISH and others, New T-Mobile will have the network and the business incentives to deliver wireless broadband for consumers. Today, millions have no real broadband choice, but with New T-Mobile they will. Dr. Harold Furchtgott-Roth estimates that increased broadband competition enabled by the merger could produce annual consumer savings of as much as \$13.65 billion a year by 2024.

**Prepaid Customers, Just Like All Other New T-Mobile Customers, Will Benefit from Lower Costs, More Capacity, Higher Quality, and Increased Competition.** Some petitioners speculate that New T-Mobile will reduce service and/or raise prices for prepaid plans attractive to cost-conscious and low-income customers. These concerns, like those raised when T-Mobile acquired MetroPCS, are unfounded. Following this merger, all MetroPCS, Boost Mobile, and Virgin Mobile USA customers with compatible handsets will benefit from the increased capacity and improved service quality that the New T-Mobile nationwide network will provide. Prepaid plan customers with compatible handsets will enjoy the same improved network as postpaid plan customers, and perhaps more so, since many prepaid plan customers use more data than those on postpaid plans. This improved service will not come with higher prices. New T-Mobile will be incentivized to deliver more for the same or less due to having substantially more capacity and lower costs. New T-Mobile also will face continued and likely intensified competition from Verizon, AT&T and others. The Compass Lexecon merger simulations take into account the claimed reduction in the number of prepaid competitors and demonstrate that the merger nonetheless will benefit all consumers whether they are on prepaid or postpaid plans.

**The Expanded Coverage, Increased Capacity, and Higher Quality 5G Nationwide Network Resulting from the Merger Will Benefit MVNOs and Their Subscribers.** Combining T-Mobile and Sprint's spectrum and site assets will lower costs and increase competition for wholesale services. The massive capacity gains and lower operational costs resulting from the merger will allow New T-Mobile to reduce its wholesale prices. Moreover, the superior New T-Mobile 5G network will allow the combined entity to apply significant competitive pressure to Verizon and AT&T, spurring the two incumbents to increase investment in their networks, expand network capacity, and provide more favorable terms to MVNOs. MVNO subscribers will benefit from increased, improved, and lower cost network options. These benefits are confirmed by MVNOs such as TracFone filing in support of the merger.

**Rural Americans Will Benefit from Improved Broadband Service While Rural Carriers Will Receive Continued Roaming and Technical Assistance.** The merger provides the scale, capacity and incentives to deliver enormous benefits to rural Americans in terms of coverage and quality of service, an in-home broadband alternative, 600 or more new retail stores and up to five new Customer Excellence Centers located to serve small towns and rural communities. New T-Mobile also will continue the efforts of T-Mobile and Sprint by becoming the preferred roaming partner to smaller rural carriers.

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**The Merger Increases Jobs from Day One and Thereafter.** The proposed merger will grow U.S. jobs from day one and for the foreseeable future. New T-Mobile will need more employees than the standalone companies to integrate and upgrade network infrastructure, expand the combined company's retail footprint, extend the T-Mobile Team of Experts model of customer care to millions of Sprint subscribers, and perform other critical functions. In an unsubstantiated, but convenient, reversal of claims it made about job gains in the proposed AT&T/T-Mobile merger, the Communications Workers of America ( CWA ) distorts facts and assumptions to claim the present transaction will result in job losses. As reflected in the PIS and confirmed herein, the merger will increase jobs and CWA's statements are baseless.

**National Security Interests Are Fully Addressed.** CWA and the Rural Wireless Association assert that the Commission needs to examine national security issues because of New T-Mobile's foreign ownership. But the merger does not introduce any new foreign ownership and T-Mobile and Sprint are trusted operators with long histories of working well with the U.S. government. Furthermore, consistent with past transactions involving foreign ownership, the Applicants are undergoing Team Telecom and CFIUS review.

**Requests That Are Unrelated to the Merger Should Be Rejected.** Finally, some parties inappropriately attempt to use the merger review to extract business concessions or conditions that are unrelated to the merger. The Commission has a longstanding policy of not considering private disputes or issues of general industry applicability in the context of merger proceedings. Consistent with that well-founded precedent, the petitions filed by Atif Khan, Stanley D. Besecker, CarrierX, Voqal and Aureon should be summarily dismissed or denied.

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

In the Matter of )  
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Applications of T-Mobile US, Inc. ) WT Docket No. 18-197  
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and )  
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Sprint Corporation )  
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For Consent to Transfer Control of the Licenses )  
and Authorizations )

**JOINT OPPOSITION OF**

**T-MOBILE US, INC. AND SPRINT CORPORATION**

T-Mobile US, Inc. ( T-Mobile ) and Sprint Corporation ( Sprint ) hereby submit their Joint Opposition to petitions to deny and comments in the above-captioned proceeding. On August 27, 2018, the Commission received petitions and comments concerning the transaction and its effects on consumers and competition.<sup>1</sup> As detailed below, the concerns expressed about the merger are ill-founded and without credible bases, while the benefits from its approval are supported by detailed engineering, business, and economic evidence. In this Joint Opposition, T-Mobile and Sprint ( Applicants ) address and answer all of the material questions raised by petitioners and commenters. In so doing, the Applicants provide the Commission with further merger-specific and verifiable bases for rapid approval of the transfer applications to effectuate the merger.

<sup>1</sup> Each of Free Conferencing’s, Aureon’s, Atif Khan’s, and Stanley Besecker’s petitions are flawed on procedural grounds and should be dismissed for failure to show standing. Unlike rulemaking proceedings, in which any interested party may provide its views to the Commission, the rules governing license transfer proceedings require parties filing petitions to deny to establish standing (47 U.S.C. § 309(d)(1); 47 C.F.R. §§ 1.45, 1.939). To establish standing as a party in interest, a petitioner must (1) allege facts sufficient to demonstrate that grant of the application would cause it direct injury; (2) demonstrate a causal link between claimed injury and the challenged action; and (3) demonstrate it is likely that the injury would be prevented or redressed by the relief requested. None of the above cited petitions can meet this standard. Mr. Besecker does not even allege an injury resulting from the merger. Free Conferencing, Mr. Khan, and Aueron’s petitions all center on allegations that predate the merger, and therefore cannot demonstrate a causal link between their alleged injuries and the Transaction. Moreover, these petitioners all fail to even assert standing. They therefore fail to satisfy the standing requirement, and their petitions should be dismissed on procedural grounds accordingly.

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**I. THE PROPOSED MERGER WILL LOWER PRICES AND INCREASE COMPETITION**

The Applicants' Public Interest Statement ( PIS ) provided detailed network engineering, business plan, and economic information to document the merger benefits for consumers and competition.<sup>2</sup> The network engineering information established the dramatic increases in capacity, speed, and coverage that would result from the planned 5G network.<sup>3</sup> Mike Sievert, President and Chief Operating Officer of T-Mobile, explained that New T-Mobile will have every incentive to grow its customer base and increasing prices post-merger would be economically irrational and contrary to shareholder interests.<sup>4</sup> The economic analyses concluded that building the nationwide 5G network will provoke competitive responses from Verizon and AT&T that result in as much as a 55 percent decrease in price per GB and a 120 percent increase in cellular data supply for all wireless customers<sup>5</sup> and that there is no credible basis to conclude that the merger on balance would enhance the vulnerability of the market to successful coordination.<sup>6</sup>

<sup>2</sup> *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197, Description of Transaction, Public Interest Statement, and Related Demonstrations (filed June 18, 2018) ( Public Interest Statement or PIS ).

<sup>3</sup> *See generally* PIS, Appx. B, Declaration of Neville R. Ray, Executive Vice President and Chief Technology Officer, T-Mobile, US, Inc. ( Ray Decl. ).

<sup>4</sup> *See* PIS, Appx. C, Declaration of G. Michael ( Mike ) Sievert, President and Chief Operating Officer, T-Mobile, US, Inc., at ¶26 ( Sievert Decl. ).

<sup>5</sup> *See* PIS, Appx. G, Declaration of Dr. David Evans, at Section V.C ( Evans Decl. ).

<sup>6</sup> *See* PIS, Appx. H, Joint Declaration of Prof. Steven C. Salop and Dr. Yianis Sarafidis, at ¶12 ( Salop/Sarafidis Decl. ).

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As documented in the PIS, the combined network will more than *double* 5G monthly capacity by 2021 and nearly *triple* 5G monthly capacity by 2024 when compared to the combined 5G capacities of the standalone networks.<sup>7</sup> Further, T-Mobile Executive Vice President and Chief Technology Officer Neville Ray explained in his declaration that, by 2024, the total capacity of the new network inclusive of LTE will be approximately twice the combined capacity of the standalone firms.<sup>8</sup> By 2024, New T-Mobile's 5G network will deliver average data rates above 100 Mbps to 292.3 million covered POPs, average data rates above 150 Mbps to 278.1 million covered POPs, average data rates above 300 Mbps to 252.4 million covered POPs, and average data rates above 500 Mbps to 208.7 million covered POPs.<sup>9</sup>

New T-Mobile's network, business and capital plans work in concert and are all predicated upon T-Mobile and Sprint creating a single combined network. Indeed, as discussed in Section II below, the two networks will be integrated as soon as possible, because (1) running two parallel networks makes no engineering or economic sense; (2) a combined network is needed to deliver the capacity, speed, and coverage benefits to the two companies' customers; and (3) network efficiencies from integration account for 60 percent of the transaction's total synergies. Integrating the networks requires the deployment of new equipment, which given the current state of technology at the time of deployment, will be 5G-capable. As such, the rapid integration of the two networks to meet business plan goals will drive accelerated 5G roll-out at low incremental cost.

<sup>7</sup> PIS at 42-43.

<sup>8</sup> Ray Decl. at Fig. 5.

<sup>9</sup> *Id.* at ¶20. These figures have shifted very slightly from those in the PIS as a result of additional modeling that determined that more spectrum could be refarmed to 5G services more quickly than originally planned.

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**A. The New T-Mobile Network's Massive Increase in Capacity Drives Lower Costs and Competition**

As a matter of fundamental economics, significantly increasing the supply of available capacity puts substantial downward pressure on the per unit price of capacity. New T-Mobile's business plan tracks this fundamental economic tenet by recognizing that the optimal strategy to monetize the combined network's additional capacity is to reduce prices. As Mike Sievert put it: "[w]e will compete aggressively with lower prices to take market share from Verizon and AT&T, allowing more customers to enjoy the benefits of our increased capacity."<sup>10</sup> Consistent with these economic incentives, the [New T-Mobile] financial model projects passing scale benefits on to customers in the form of an over 6 percent reduction in average revenue per user ( ARPU ), going from to by 2024. This contrasts with T-Mobile's standalone plan, which projects over time<sup>11</sup> The fundamentals of the proposed transaction and its massive increase in wireless capacity and output will benefit competition and consumers across all segments of the wireless market, including retail services provided on prepaid and postpaid plans as well as services sold at wholesale to MVNOs and other hybrid participants in the wireless ecosystem.<sup>12</sup>

<sup>10</sup> Sievert Decl. at ¶21.

<sup>11</sup> See PIS, Appx. D, Declaration of Peter Ewens, Executive Vice President, Corporate Strategy, T-Mobile US, Inc., at ¶8 ( Ewens Decl. ).

<sup>12</sup> See *infra* Sections II. C and II.D.

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In the PIS, leading economists supported the merger's benefits of increased output and lower costs. Dr. David Evans economic analysis concluded that, by 2024, by building the nationwide 5G network and provoking competitive responses from Verizon and AT&T that the transaction will result in as much as a 55 percent decrease in price per GB and a 120 percent increase in cellular data supply for all wireless customers.<sup>13</sup> In addition, Prof. Steven Salop and Dr. Yianis Sarafidis found that there is no credible basis to conclude that the merger on balance would enhance the vulnerability of the market to successful coordination.<sup>14</sup>

Without challenging the New T-Mobile network's ability to produce massively increased capacity, speed, and coverage, some opponents simply resort to claiming that the combination of T-Mobile and Sprint is a four-to-three merger and relying on the untenable thesis that such combinations *per se* harm consumers and competition. However, modern competition analysis should not be reduced to a simple shorthand exercise in unsubstantiated generalities. From an economic perspective, a merger is only anticompetitive when it leads to artificial reductions in supply, increases in price, or lower quality, thereby reducing consumer welfare. While it is true that some four-to-three mergers may result in reduced supply, increased price, or lower quality the opponents have not seriously contested Applicants' well-supported and empirical demonstration that the combination of T-Mobile and Sprint will do just the opposite; it will result in a massive increase in the capacity of the combined network, lower prices, and higher quality service. They also have not challenged that these benefits will trigger a competitive response from Verizon and AT&T to similarly expand capacity, lower prices, and increase quality in an attempt to match the performance of New T-Mobile's network. As discussed below, transactions and conditions in the past, in other businesses and other countries that involve different facts, circumstances and markets, are not relevant here, given the demonstrated market and consumer benefits from the transaction.

<sup>13</sup> See Evans Decl. at Section V.C., ¶¶220-44.

<sup>14</sup> See Salop/Sarafidis Decl. at ¶12.



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DISH is the only opponent that has even attempted to make an economic showing addressing the T-Mobile/Sprint merger. Its petition includes merger simulations and declarations purportedly indicating risks of post-merger price increases and coordination. These submissions, however, confirm rather than refute the merger's pro-competitive and pro-consumer effects. As detailed below, by altogether ignoring the merger's efficiencies, including its impact on reductions of marginal costs of increasing capacity, DISH's economists manage to predict increases in ARPUs. But once the simulation is corrected to include merger efficiencies (as required under the long-accepted standards for merger simulations) that reflect the merger's competitive effects, the DISH-sponsored merger simulations confirm that the merger promotes consumer welfare even without accounting for considerable improvements in quality resulting from faster speeds, lower latency, and improved coverage.

To further corroborate the merger's pro-consumer and pro-competition effects, T-Mobile and Sprint submit herewith: (1) a reply declaration from Dr. Evans responding to petitions to deny and confirming the dramatic reductions in the price/GB attributable to the merger and the likely output-enhancing competitive responses by Verizon and AT&T; (2) even more conservative merger simulations than those put forward by DISH prepared by Mark Israel, Michael Katz, and Bryan Keating of Compass Lexecon (Compass Lexecon) confirming that the merger promotes consumer welfare; (3) the response of Prof. Salop and Dr. Sarafidis to DISH's criticisms of their conclusion that the merger will not result in increased risks of harmful coordination; and (4) a reply declaration of Brandon Dow Draper, Sprint's Chief Commercial Officer, reiterating that Sprint in the standalone world faces challenges that refute opponents' assumptions about Sprint's competitive abilities.

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**B. The Competitive Effects of the Transaction Are Dynamic, and Dr. Evans Shows That the Transaction Will Be Profoundly Pro-Competitive**

In his PIS declaration, Dr. David Evans demonstrated that the transaction would produce a dramatic increase in cellular data output and decrease in cellular data prices as a result of New T-Mobile's integration of T-Mobile's and Sprint's networks and spectrum portfolios. The accelerated deployment of a robust 5G network will also create strong incentives for AT&T and Verizon to accelerate and intensify their own 5G deployments to remain competitive. Dr. Evans' declaration presented a detailed, fact-based analysis of dynamic investment competition among cellular carriers, grounded in the longstanding business realities of the industry and the implications of the transaction for the prices, output, and quality for cellular data in light of these business realities. Given the merger-specific efficiencies estimated by T-Mobile's engineering model and a projection that ARPU remains flat, which is generally consistent with T-Mobile's contemporaneous business planning documents, Dr. Evans found that the transaction would increase GB/subscriber by 120 percent and reduce price/GB by 55 percent by 2024.

On behalf of DISH, Prof. David Sappington challenges Dr. Evans' findings, based on alleged flaws in his study.<sup>5</sup> In response, Dr. Evans in his reply declaration attached hereto provides a point-by-point refutation demonstrating why Prof. Sappington's criticisms are unfounded:

<sup>15</sup> Petition to Deny of DISH Network Corporation, WT Docket No. 18-197, at 35-38 (filed Aug. 27, 2018) ( *DISH Petition* ).

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Prof. Sappington claims that the study is incomplete because Dr. Evans did not conduct an analysis of static price competition.<sup>16</sup> As explained in the PIS, and not contested by DISH, dynamic investment competition in wireless networks has been the main determinant of increases in cellular data output and cellular data price reductions. Dr. Evans shows that the dynamic merger-specific decline in price/GB in 2024 would be 49.9 percent even if he assumed that ARPUs would increase by the upper bound of 10.4 percent claimed by the DISH economists.<sup>17</sup> The bottom line is that the dynamic, efficiency-driven price declines exceed the DISH economists' estimates of static price increases.

Prof. Sappington claims that, as a result of assuming that in the absence of the transaction AT&T and Verizon would match T-Mobile and not Sprint, Dr. Evans' analysis is subject to prediction bias.<sup>17</sup> Prof. Sappington ignores, and does not contest, the evidence presented in Dr. Evans' declaration that Sprint's network has substantially lower coverage which limits its attractiveness to subscribers and makes it a weaker competitor, and that AT&T and Verizon have historically responded to T-Mobile. Prof. Sappington also questions whether AT&T and Verizon would respond to a combination of the Sprint and T-Mobile networks that simply combined their capacities but did not increase capacity. But Prof. Sappington ignores the fact that this hypothetical network would be stronger, since it would provide more coverage to previous Sprint customers and more capacity to previous T-Mobile customers, thereby necessitating a competitive investment response by AT&T and Verizon.<sup>18</sup>

Prof. Sappington claims that the assumptions used in Dr. Evans' analysis are not fully supported.<sup>18</sup> However, Prof. Sappington's analysis ignores, misstates, or downplays the extensive empirical evidence on investment competition among cellular carriers set forth in the PIS declaration. That evidence showed that, regardless of the intensity of spectrum use or other factors, cellular carriers are forced to make investments to compete on network performance and do not willingly choose to leave capacity unutilized; the fact that carriers choose to use spectrum differently does not alter this conclusion. Prof. Sappington's assertion that the estimates of practical capacity are not precisely estimated for 2024 because many factors could affect capacity is not a substantive economic critique. He does not show that any of his criticisms of the Applicants' capacity forecasts would result in material changes to Dr. Evans' conclusions that the transaction will lead to substantial reductions in price/GB that far exceed the Brattle economists' estimated static price increase.

Finally, Prof. Sappington claims that merger gains may only be incremental *i.e.*, that the merger merely brings forward in time gains that would materialize eventually anyway apparently suggesting that Dr. Evans' analysis overlooked this possibility and exaggerated the gains from the merger as a result.<sup>19</sup> Dr. Evans shows that Prof. Sappington's claim is wrong because the transaction will enable New T-Mobile to deploy a stronger 5G network faster than the standalone companies could. The increased efficiency due to combining the two networks is a permanent gain.

<sup>16</sup> *Id.* at Exhibit A, Declaration of David E. M. Sappington, at 2 ( Sappington Decl. ).

<sup>17</sup> Reply Declaration of Dr. David Evans, Appx. G, at ¶¶12-15 ( Evans Reply Decl. ).

<sup>18</sup> Sappington Decl. at 9.

<sup>19</sup> Sappington Decl. at 14.



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Dr. Evans also shows that the transaction would generate incremental gains by bringing benefits forward in time as a result of accelerating the deployment of 5G technology by Verizon and AT&T. The fact that the considerable gains from accelerating 5G are smaller than the even larger total value of 5G is irrelevant.

Dr. Evans thus confirms the dramatic reductions in the price/GB attributable to the merger and the likely output-enhancing competitive responses by Verizon and AT&T.

**C. Merger Simulations Confirm that the Merger Will Enhance Consumer Welfare from a Static Unilateral Effects Perspective**

In addition to criticizing Dr. Evans' model in its petition to deny, DISH presents the results of static merger simulations prepared by Prof. Joseph Harrington and the Brattle Group that purport to demonstrate that the transaction would result in price increases to retail customers.<sup>20</sup> The Brattle declaration also purports to show an incentive for New T-Mobile to increase wholesale prices, although it does not attempt to quantify those price increases.<sup>21</sup>

Mark Israel, Michael Katz and Bryan Keating from Compass Lexecon reviewed the Brattle declaration and identified several serious shortcomings.<sup>22</sup> They concluded that, [i]ncorporating the merger-specific efficiencies projected by the Parties' network plans and their Network Build Model into the [Brattle model] leads to the conclusion that the merger will strengthen competition and raise consumer welfare, exceeding the level of efficiencies needed to show a pro-competitive results.<sup>23</sup> Compass Lexecon notes that, by excluding consideration of efficiencies, the Brattle model would necessarily find that *any* merger of firms competing for the same customers harms competition and consumers and, thus the Brattle model cannot

<sup>20</sup> See *DISH Petition* at 77-78.

<sup>21</sup> *Id.* at Exhibit B, Declaration of Joseph Harrington, Coleman Bazelon, Jeremy Verlinda, and William Zarakas at 76, Table 25 (Harrington/Brattle Decl. ).