

United States Senate

WASHINGTON, DC 20510

October 6, 2017

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

Makan Delrahim
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Chairman Pai and Assistant Attorney General Delrahim:

We write to ask you to begin investigating the impact of a merger between T-Mobile International and Sprint Corporation. According to Pew Research, over three-quarters of Americans now own smartphones, driven by a 12 percent increase in smartphone ownership among adults over age 65 and a 12 percent increase in smartphone ownership in households earning less than \$30,000 a year since 2015.¹ Today, smartphones are not really just phones at all. For many, they are the primary connection to the internet. An anticompetitive acquisition would increase prices, burdening American consumers, many of whom are struggling to make ends meet, or forcing them to forego their internet connection altogether. Neither outcome is acceptable.

We believe that an investigation is appropriate for three reasons. First, aggressive antitrust enforcement benefits consumers and competition in the wireless market. Second, a combination of T-Mobile and Sprint would raise significant antitrust issues and could dramatically harm consumers. Third, although a deal has not been announced, the two parties have made repeated attempts to merge, and current reports suggest they are close to an agreement. Your agencies should be in a position to fully – but expeditiously – investigate and analyze this deal should it occur.

Competition among wireless carriers has lowered prices, increased quality, and driven innovation

Consumers have benefited from competition among the four national carriers, and we have effective antitrust enforcement to thank for that competition. In the summer of 2011, the Department of Justice's (DOJ) Antitrust Division filed suit to block AT&T's proposed acquisition of T-Mobile despite claims that T-Mobile was a weak competitor and, without the deal, remaining options "won't be pretty."² The FCC likewise outlined its opposition to the deal that fall. The deal collapsed, but T-Mobile did not. It competed. It spent billions improving its network, and it offered better terms; for example, it eliminated two-year contracts and data overages. It enticed customers to switch providers by paying their termination fees. And, its

¹ Aaron Smith, "Record Shares of Americans Now Own Smartphones, have Home Broad Band," <http://www.pewresearch.org/fact-tank/2017/01/12/evolution-of-technology/> (January 12, 2017).

² David Goldman, "Without AT&T, T-Mobile is a Wireless White Elephant," CNNMoney (September 7, 2011), http://money.cnn.com/2011/09/06/technology/tmobile_options/index.htm.

competitors had to respond in kind. As William Baer, former head of DOJ's Antitrust Division, has explained, consumers have enjoyed "much more favorable competitive conditions" since that transaction was blocked.³ In May 2017, the *Wall Street Journal* reported that cellphone plan prices were down 12.9 percent since April 2016, the largest decline in 16 years, and attributed the drop to "intense competition" among the top cell service providers: Verizon, Sprint, T-Mobile, and AT&T.⁴ Paul Ashworth, chief U.S. economist at Capital Economics, specifically suggested that it was caused by the "price war that has broken out among cell-phone service providers, with all the big providers now offering unlimited data plans at cheaper rates."⁵

Further, the fact that T-Mobile and Sprint appear to be each other's primary competitor raises additional concerns about this potential horizontal merger. That direct competition has particularly benefited lower-income families and communities of color, many of whom rely on mobile broadband as their primary or only internet connection.⁶ Sprint and T-Mobile have offered products and service options that are more appealing to lower-income consumers. For example, T-Mobile was the first major carrier to offer a no contract plan,⁷ and both Sprint and T-Mobile have been leaders in offering prepaid and no credit check plans, which allow people who may have poor credit to obtain a cell plan and ultimately access the internet.⁸

A combination of T-Mobile and Sprint would raise significant antitrust concerns

Not surprisingly, when T-Mobile and Sprint first discussed a merger in 2014, both of your predecessors expressed skepticism. William Baer stated that "[I]t's going to be hard for someone to make a persuasive case that reducing four firms to three is actually going to improve competition for the benefit of American consumers."⁹ Similarly, former FCC Chairman Tom Wheeler simply explained, "[f]our national wireless providers are good for American consumers."¹⁰

³ Edward Wyatt, "Wireless Mergers Will Draw Scrutiny, Antitrust Chief Says," THE NEW YORK TIMES (January 30, 2014), <https://dealbook.nytimes.com/2014/01/30/wireless-mergers-will-draw-scrutiny-antitrust-chief-says/?mcubz=1>.

⁴ Ben Leubsdorf, "How Cell Phone Plans with Unlimited Data Limited Inflation," WALL STREET JOURNAL (May 19, 2017), <https://blogs.wsj.com/economics/2017/05/19/how-cell-phone-plans-with-unlimited-data-limited-inflation/>.

⁵ *Id.*

⁶ 2015 Census data indicated that 20% of U.S. Households that use the internet at home relied exclusively on mobile connections to do so at that time. That figure jumped to 24% for households with incomes between \$25,000 and \$50,000, and a full 29% for online households with incomes below \$25,000. See Giulia McHenry, "Evolving Technologies Change the Nature of Internet Use," NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION (Apr. 19, 2016), <https://www.ntia.doc.gov/blog/2016/evolving-technologies-change-nature-internet-use>.

⁷ Jacob Kastrenakes, "Two-year phone contracts are now dead at all major US carriers," THE VERGE (Jan. 11, 2016), <https://www.theverge.com/2016/1/11/10749160/sprint-kills-two-year-phone-contracts>.

⁸ Fiona Agomuoh, "'Bad Credit' Phone Plans: Verizon and ATT&T May Follow T-Mobile, Sprint as Carriers See Gold In Subprime Households," INTERNATIONAL BUSINESS TIMES (January 27, 2015), <http://www.ibtimes.com/bad-credit-phone-plans-verizon-att-may-follow-t-mobile-sprint-carriers-see-gold-1793440>.

⁹ Edward Wyatt, "Wireless Mergers Will Draw Scrutiny, Antitrust Chief Says," THE NEW YORK TIMES (January 30, 2014) <https://dealbook.nytimes.com/2014/01/30/wireless-mergers-will-draw-scrutiny-antitrust-chief-says/?mcubz=1>.

¹⁰ "Statement From FCC Chairman Tom Wheeler On Competition In the Mobile Marketplace," FEDERAL COMMUNICATIONS COMMISSION (August 6, 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-328687A1.pdf.

What is surprising, however, is that a few years later the two companies have revived their merger talks. Whether one looks at cellphone competition as a national market or as numerous local markets, T-Mobile's acquisition of Sprint would very likely be presumptively anticompetitive. We are concerned that this consolidation would increase prices, reduce incentives to offer new plans, and allow the remaining carriers to curtail their investment in their networks. Further, given both companies' focus on competing for lower-income customers, the combination of Sprint and T-Mobile could disproportionately harm those consumers. In addition to potentially raising retail prices, the remaining carriers are also likely to increase prices to companies like Straight Talk, which buys bulk access to one or more of the four national carriers and advertises almost exclusively to lower-income communities.

T-Mobile and Sprint will no doubt claim that the merger will leave sufficient competition, increase cost savings, and spur investment. The agencies will need to examine these issues in depth and make the ultimate determination as to whether the effect of such a deal would be to undermine or promote competition. The very complexity of the issues only further justifies the need for the agencies to begin examining the markets and investigating the competitive dynamics sooner rather than later.

Initiating an investigation is appropriate

Although the antitrust agencies often wait for an official filing before opening an investigation, nothing requires this delay. For example, in May, the Antitrust Division announced an investigation of the possible acquisition of the *Chicago Sun-Times* by the owner of the *Chicago Tribune*.¹¹ The two companies in question here have had a longstanding interest in combining, and, according to reports, an agreement between Sprint and T-Mobile may be weeks away.¹²

Beginning an investigation into a merger of T-Mobile and Sprint now will allow your agencies to quickly, but fully, review the agreement if it is announced. Indeed, multiple news sources are reporting that the two parties are close to a deal in principle. The likelihood of the transaction occurring combined with the serious issues that it raises provide compelling reason for DOJ and the Federal Communication Commission to begin investigating the potential transaction.

For the reasons stated above, we urge you to begin to examine this potential transaction now. Competition among four major cell phone carriers has benefited consumers with lower prices, better service, and more innovation. We are concerned that consolidation will thwart those goals. Thank you for your prompt attention to this matter.

Sincerely,

¹¹ "Justice Department Announces Investigation of Possible Acquisition of Chicago Sun-Times by Owner of Chicago Tribune," DEPARTMENT OF JUSTICE (May 15, 2017), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-possible-acquisition-chicago-sun-times-owner>.

¹² Greg Roumeliotis and Arno Schuetze, "Exclusive: T-Mobile, Sprint close to agreeing on deal terms," REUTERS (September 22, 2017), <https://www.reuters.com/article/us-sprint-m-a-tmobile-exclusive/exclusive-t-mobile-sprint-close-to-agreeing-on-deal-terms-sources-idUSKCN1BX1EK>.



Amy Klobuchar
United States Senator



Al Franken
United States Senator



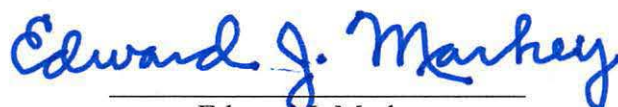
Patrick Leahy
United States Senator



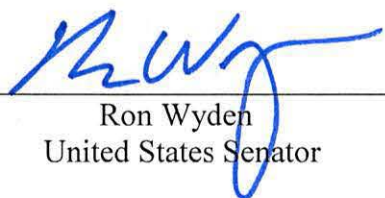
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