

United States Senate

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JUDICIARY

ENERGY AND
NATURAL RESOURCES

COMMERCE, SCIENCE,
AND TRANSPORTATION

JOINT ECONOMIC
COMMITTEE

August 6, 2018

618

The Honorable Jeff Sessions
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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

Dear Attorney General Sessions and Chairman Pai:

I write with regard to the proposed merger of T-Mobile US and Sprint, which is currently under review by the Department of Justice's Antitrust Division and the Federal Communications Commission. On June 27, 2018, the Senate Judiciary Committee's Subcommittee on Antitrust, Competition Policy, and Consumer Rights held a hearing to review relevant antitrust issues relating to the proposed transaction.¹ I wish to draw your attention to certain testimony provided to the Subcommittee during this hearing.

On its face, a merger of T-Mobile and Sprint would significantly increase concentration in an already-concentrated market. Likewise, such a combination would reduce the number of the nation's national wireless carriers from four to three. While this evidence alone is not determinative of the likely effects of the merger, it does suggest that the merger could potentially lead to a lessening of competition. Indeed, two witnesses who appeared before the Subcommittee highlighted the close competition between the parties, particularly in pre-paid wireless plans, that is likely to be lost by this merger.

And yet this transaction may offer the potential to build a stronger competitor rather than simply eliminate one.² As you are aware, while highly concentrated markets are typically less competitive than those with a greater number of firms, oligopolistic markets may still exhibit intense rivalry. Testimony presented at our June 27 hearing suggests that the combination of T-Mobile and Sprint may create a more competitive wireless carrier that would be better positioned than either firm standing alone to take-on Verizon and AT&T in the future, particularly as these carriers seek to roll out nationwide 5G networks.

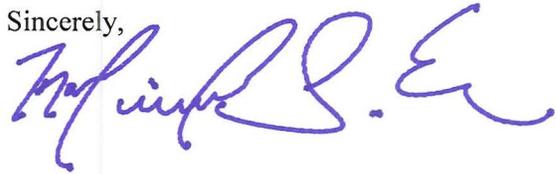
¹ "Game of Phones: Examining the Competitive Impact of the Proposed T-Mobile – Sprint Transaction," Subcommittee on Antitrust, Competition and Consumer Rights, U.S. Senate Judiciary Committee (June 27, 2018), https://www.judiciary.senate.gov/meetings/game-of-phones-examining-the-competitive-impact-of-the-t-mobile_sprint-transaction.

² See Andrew Ross Sorkin, *T-Mobile and Sprint: How Fewer Competitors Could Increase Competition*, THE NEW YORK TIMES, July 30, 2018, <https://www.nytimes.com/2018/07/30/business/dealbook/t-mobile-sprint-merger-competition.html>.

Perhaps the key argument the parties have made in support of their proposed transaction is that by combining their particular spectrum and infrastructure assets, the merger will increase the combined firm's capacity. According to T-Mobile and Sprint, this resulting expansion in capacity would provide the merged firm with incentives to lower prices to attract customers. Such efficiency claims, if supported by verifiable evidence, suggest the merger could, on the whole, benefit, rather than harm, consumers. However, I recognize that merging parties are often unable to provide evidence supporting such claims, as Sprint itself alleged in its challenge to AT&T's earlier attempt to acquire T-Mobile.

The Subcommittee's review is necessarily limited and does not evaluate the broad record that your agencies gather in your role of investigating proposed mergers in the telecommunications industry. As with prior investigations, I am confident that your analysis will consider these and other issues and will be guided by objective legal standards.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Lee", with a stylized flourish at the end.

Mike Lee
United States Senator