

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY OF VOQAL TO JOINT OPPOSITION
OF T-MOBILE US, INC. AND SPRINT CORPORATION

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October 31, 2018

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I. Summary of Merger-Specific Harms

In their Joint Opposition,¹ Sprint and T-Mobile (the “Parties”) demonstrate by their own words that numerous merger-specific harms will arise as a result of the above-captioned applications. In doing so, they make the case themselves as to why the Commission should adopt Voqal’s proposal for a partial divestiture of 2.5 GHz spectrum in this proceeding. Simply put, the Parties:

- Emphasize that the transaction would allow T-Mobile to acquire rights in the 2.5 Gigahertz (GHz) band that it does not now hold—a merger-specific change;
- Explain that Sprint as a standalone company is financially constrained in its use of the 2.5 GHz spectrum, and that the merged entity (“New T-Mobile”) would operate the 2.5 GHz band differently than Sprint does currently and would going forward, thus demonstrating

¹ Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, WT Docket No. 18-197 (Sep. 17, 2018) (“Opposition”).

a merger-specific change in the incentive and ability of New T-Mobile to exercise market power;

- Assert that “There Are No Viable Near-Term Spectrum Alternatives Available,” to 2.5 GHz spectrum² and that alternative mid-band spectrum bands “are not practical substitutes” and “cannot be relied upon for standalone development of a robust 5G network,”³ in full agreement with Voqal’s conclusion that the 2.5 GHz band is properly treated as a separate product market; and
- Fail to offer any substantive answer to the evidence Voqal and others have proffered that New T-Mobile will exercise market power in the 2.5 GHz band to the detriment of competition.

These basic propositions demonstrate that the Commission should embrace Voqal’s proposal for 2.5 GHz spectrum divestiture if it decides to approve the proposed merger.

Contrary to the Parties’ claim that no petitioner has demonstrated competitive harm that would arise from New T-Mobile’s spectrum holdings, Voqal has demonstrated that New T-Mobile would have an increased incentive and ability to exercise the market power that it acquires to harm competition in the acquisition of 2.5 GHz spectrum, thereby increasing the costs to other companies of deploying a nationwide 5G network. Indeed, if the Commission allows the merger to proceed as the Parties propose, New T-Mobile will control all of the key mid-band spectrum desirable for implementing 5G.

Voqal’s request that the Commission condition approval of the merger on the divestiture of a substantial, contiguous block of Sprint’s 2.5 GHz spectrum will directly address the competitive harms that Voqal identified in its Petition to Deny.⁴

² Opposition at 53.

³ Opposition at 55.

⁴ Petition to Deny the Above-Captioned Applications as Currently Proposed of Voqal, WT Docket No. 18-197 (Aug. 27, 2018) (“Voqal Petition”).

II. The Parties Do Not Contest the Merger-Related Harms Pertaining to 2.5 GHz Spectrum Concentration That Voqal Identified

The Parties ask the Commission to disregard Voqal’s request for partial 2.5 GHz spectrum divestiture. They argue that 2.5 GHz spectrum market power is unrelated to the merger because T-Mobile brings no 2.5 GHz spectrum to the transaction.⁵ This response does not address, let alone contest, the specific adverse merger-related effects Voqal identified if the Commission allows New T-Mobile to retain and expand Sprint’s current 2.5 GHz portfolio.⁶

First, substantial amounts of new EBS spectrum are expected to be allocated in the 2.5 GHz band in the near future as a result of a pending Commission rulemaking, which, among other things, proposes to license significant amounts of currently unallocated EBS spectrum and allow commercial entities to buy EBS licenses.⁷ In their Application, the Parties argue that Sprint is heavily indebted and thus not in a position to develop 5G adequately on its own for lack of capital.⁸ New T-Mobile will have greater resources to acquire new 2.5 GHz spectrum than a stand-alone Sprint. At the same time, if New T-Mobile is allowed to retain vast 2.5 GHz holdings post-merger, its overwhelming position will preclude other capable carriers from competing for new 2.5 GHz allocations because the high level of concentration will foreclose them from obtaining an adequate nationwide 2.5 GHz portfolio. A standalone Sprint, by contrast, would be much more likely to share or sell its 2.5 GHz spectrum, and less likely to acquire more of it. Thus, the merger would substantially worsen the already problematic competitive conditions in markets for 2.5 GHz spectrum.

⁵ Joint Opposition at 26, n. 86.

⁶ See Voqal Petition at 15-17.

⁷ *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, WT Docket No. 18-120, FCC 18-59 (released May 10, 2018).

⁸ Description of Transaction, Public Interest Statement, and Related Demonstrations (“Statement”) at 97, WT Docket No. 18-197 (June 18, 2018) (Sprint’s declining revenue and \$32 billion debt mean that it “lacks the scale and resources to expand its network capital spending (as required to avoid falling further behind in network quality and to begin deploying 5G network technologies)”).

Second, the Parties repeatedly argue that combining T-Mobile’s 600 MHz holdings with Sprint’s 2.5 GHz holdings creates engineering possibilities that will make New T-Mobile’s network qualitatively superior to those of the individual companies if their spectrum portfolios are held separately.⁹ It is not viable for the Parties to argue simultaneously, as they do, that this spectrum combination is at the core of their proposed merger while New T-Mobile’s acquisition of Sprint’s 2.5 GHz spectrum is not merger specific.

Voqal demonstrated in its Petition to Deny that New T-Mobile’s acquisition of this spectrum would allow it to impose below-competitive prices on sellers and lessors of 2.5 GHz spectrum, many of which are nonprofit educational entities.¹⁰ At the same time, New T-Mobile would be able to raise the costs its wireless rivals would incur to develop 5G service because, among other things, they would have to work around the absence of the critical mid-band spectrum.¹¹

III. 2.5 GHz Spectrum Is a Properly-Defined Product Market

The Parties offer nothing more than a pro forma demurrer to Voqal’s demonstration that 2.5 GHz is a properly defined market. Their response is confined to a few sentences in a footnote, asserting that “2.5 GHz spectrum is not a ‘market.’”¹² They offer no explanation other than noting the Commission’s inclusion of 2.5 GHz spectrum in its computations under “a blended spectrum screen” and stating—irrelevantly—that T-Mobile brings no 2.5 GHz spectrum to the transaction.¹³

⁹ See Voqal Petition at 9 & n. 34 (citing Statement at 32-33).

¹⁰ Voqal Petition at 15.

¹¹ See Opposition at 55. The Opposition points out the shortcomings of currently-available spectrum alternatives: “Millimeter wave band spectrum can be used for short range, high capacity services, but will not serve users that require more wide-area wireless offerings—the short range associated with this spectrum makes it cost prohibitive to cover large geographic areas” [footnote omitted].

¹² *Id.* at 26, n. 86.

¹³ *Id.*

Far from contesting the numerous characteristics that Voqal cited showing that 2.5 GHz spectrum is a properly-defined product market,¹⁴ the Parties devote pages in the Joint Opposition to describing the unique features that make 2.5 GHz special and their advocacy establishes that the 2.5 spectrum is properly treated as a product market:

- Spectrum bands, other than 2.5 GHz, posed as alternatives in various other petitions “are not viable spectrum solutions and would not enable the standalone companies to increase network capacity in the near term (or potentially ever, as the availability of almost all of this spectrum is uncertain).”¹⁵
- Alternative mid-band spectrum bands for 5G “are not practical substitutes for the spectrum resources involved in the transaction . . .”¹⁶ The Joint Opposition contains a table listing five possible sources of mid-band spectrum totaling between 293 and 389 MHz,¹⁷ and then proceeds to demolish all 2.5 GHz alternatives as too limited in quantity, slated to be allocated too far in the future to be useful, too restricted by applicable regulation, or all of the above.¹⁸

In sum, as Voqal set forth in its Petition to Deny, and as numerous other parties including the Commission have stated, the 2.5 GHz band is the indispensable “sweet spot” for 5G.¹⁹ That demonstrates that if divestiture is ordered, then the 2.5 GHz band needs to be at the center of divestiture even without regard to its status as a product market.

IV. Prior Commission Decisions Are Irrelevant to the Spectrum Concentration Issues the Proposed Merger Presents

The Parties argue that the Commission should reject Voqal’s Petition to Deny in part because “Sprint’s 2.5 GHz holdings fully comply with the Commission’s spectrum aggregation rules and policies, and are the result of Commission approval of prior transactions.”²⁰

¹⁴ Voqal Petition at 4-11.

¹⁵ Opposition at 54.

¹⁶ *Id.* at 55.

¹⁷ *Id.* at 56, Table 6.

¹⁸ *Id.* at 56-59.

¹⁹ Voqal Petition at 4.

²⁰ Opposition at 123-124 & nn. 458-59.

Contrary to the Parties' contention, the issue is not whether Sprint's 2.5 GHz spectrum holdings are permissible. Voqal is not seeking to relitigate or have the Commission reexamine Sprint's current holdings. Rather, the issue is whether T-Mobile's acquisition of Sprint's spectrum, in combination with T-Mobile's existing holdings, is permissible and in the public interest.

The Parties seem to suggest that prior Commission decisions leading to Sprint's current spectrum holdings support the proposed merger. The Parties refer to three Commission actions governing the control of ever-concentrating 2.5 GHz spectrum portfolios: the 2005 decision in which the FCC approved license transfers in connection with the Sprint-Nextel merger; the 2008 decision in which the Commission approved license and lease transfers when Sprint and Clearwire simultaneously pooled their 2.5 GHz spectrum interests and Sprint took majority ownership in Clearwire; and the 2013 decision approving transfers in connection with Softbank acquiring control of Sprint, and Sprint buying out all minority shareholders in Clearwire.²¹

None of these decisions raised concerns similar to those raised in Voqal's Petition to Deny the Parties' proposed merger; market conditions at the time of those decisions were drastically different from those that exist today. To cite only one example, the Commission in 2005 found that combining Sprint and Nextel's 2.5 holdings would "not likely result in public interest harms" in part because "the 2.5 GHz band [did] not appear to be a uniquely suitable input for any specific market."²² That is no longer true. The Parties explain at length in their Application and Joint Opposition that Sprint's 2.5 GHz holdings are unique

²¹ Opposition at 124, n. 458.

²² *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd. 13967, 14022, ¶151 (2005).

and irreplaceable for 5G purposes. New T-Mobile’s nationwide dominance of the 2.5 GHz band would give it a unique competitive advantage as the only company having the necessary low-, mid-, and high-band spectrum for deploying 5G.

V. 2.5 GHz Spectrum Divestiture Must Be Carefully Executed, But It Can Be Effected Without Undue Disruption to Wireless Broadband Service to the Public and EBS Licensees’ End Users

The Parties cite the 2013 Commission decision approving SoftBank’s acquisition of Sprint to support their contention that “divestitures of 2.5 spectrum” would “disrupt” broadband services and Sprint’s “well-established relationships” with its educational partners and “threaten access to wireless equipment and services, and jeopardize the benefits that Sprint has long provided the educational community.”²³

The Parties acknowledge that New T-Mobile plans to empty the 2.5 GHz band of 4G uses nationwide, including service to EBS licensees, and repurpose it exclusively for 5G.²⁴ The Parties assert they can accomplish this transformation without undue disruption.²⁵ If they can effect such a systematic change without trouble, surely divestiture of only part of this spectrum can be carried out with equal ease.

As to Sprint’s current relationship with EBS, divestiture would supply two indispensable benefits: it would restore competition for EBS spectrum that has not existed since 2008, and induce New T-Mobile to deploy 5G more vigorously due to the spur of more effective competition from other carriers.

Nonetheless, the issue of transitioning existing EBS service provided over Sprint’s network and preserving current benefits to EBS is an important topic for the Commission to

²³ Opposition at 124, n. 459.

²⁴ Statement at 37 (as part of the transition, “Sprint customers’ 2.5 GHz LTE traffic will move to T-Mobile’s AWS spectrum”).

²⁵ Statement at 38-41 (explaining how the Parties will ensure a smooth transition).

weigh in this proceeding. We note that there have been two recent filings by EBS entities in the above-captioned docket supporting Commission approval of the proposed merger. Both of those filings stress the value EBS licensees place on the services they receive from spectrum lessees' networks that are constructed using 2.5 GHz spectrum.²⁶

With regard to divestiture, as the old saw goes, the devil is in the details. Voqal set forth three divestiture options in its Petition to Deny.²⁷ One of these options involves primarily divestiture of BRS commercial spectrum and confines EBS divestiture to a single channel group. Such a plan would minimize the impact on the EBS band and licensees. Nonetheless, while Voqal believes that it is necessary to present concrete ideas for 2.5 GHz spectrum divestiture to the Commission, we are not wedded to the three alternatives set forth in our Petition. We encourage, in the context of this proceeding and other consultations, that the Commission ascertain the needs and concerns of EBS licensees in order to tailor a divestiture plan that serves their needs, protects them from undue disruption during implementation of the divestiture plan, and serves the public interest in promoting competition.

²⁶ See Joint Reply Comments of the National EBS Association and Catholic Television Network, WT Docket No. 18-197 (Oct. 31, 2018) ("Joint NEBSA/CTN Comments"); Comments of Hispanic Information and Telecommunications Network, Inc., WT Docket No. 18-197 (Oct. 25, 2018) ("HITN Comments"). NEBSA and CTN observe that "many EBS licensees lease their 2.5 GHz spectrum to Sprint and, in turn, rely on the Sprint network to provide a variety of educational services. To the extent that the merged entity will facilitate 5G networks being deployed more quickly and across the nation, EBS licensees and their educational constituents will benefit by having access to faster and more robust networks that rely on 2.5 GHz spectrum." Joint NEBSA/CTN Comments at 2-3. HITN states, in part: "HITN has been increasingly interested in making its television programming and services readily available for smartphone access across high speed and robust mobile platforms . . . A move to 5G will improve network speeds, boost network capacity, and lower the cost of broadband wireless service . . . HITN believes that Sprint's proposed merger with T-Mobile presents certain benefits that mitigate in favor of Commission approval of the application, provided that T-Mobile commits to a continued productive interactive partnership with its educational Lessors." HITN Comments at 3, 4.

²⁷ Voqal Petition at 19-20.

Respectfully submitted,

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October 31, 2018

CERTIFICATE OF SERVICE

I, John Schwartz, do hereby certify that on this 31st day of October, 2018, I caused a copy of the foregoing Reply to Joint Opposition to be served upon the following individuals by United States Postal Service or, as indicated below, by electronic delivery:

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