

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications of T-Mobile US, Inc. and) GN Docket No. 24-286
United States Cellular Corporation)
)
For Consent To Transfer Control of Licenses,)
Authorizations, and Leases)

**PETITION TO DENY OF
PUBLIC KNOWLEDGE
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA
BENTON INSTITUTE FOR BROADBAND & SOCIETY
ACCESS HUMBOLDT
INSTITUTE FOR LOCAL SELF-RELIANCE**

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EXECUTIVE SUMMARY

Public Knowledge, Open Technology Institute at New America, Benton Institute For Broadband & Society, Access Humboldt, and Institute For Local Self-Reliance petition the Federal Communications Commission to deny the above-captioned application of T-Mobile US, Inc. and United States Cellular Corporation, as the application as proposed is anti-competitive and contrary to the public interest. Pursuant to its authority under Sections 214 and 310(d) of the Communications Act, the Commission may deny an application for a transfer of control if it harms, or in the absence of harm, does not benefit the public interest. The record reflects that the transfer of control between T-Mobile US, Inc. and United States Cellular Corporation will harm the public interest. It will result in the loss of the fifth largest marketplace competitor with a network covering approximately 10 percent of the country's population, reallocate spectrum resources predominantly to the three top wireless carriers only to make it nearly impossible for a fourth competitor to emerge in the market, and waste valuable funding secured for building out 5G networks. Furthermore, the record does not show verifiable and transaction-specific benefits to the public interest. For these reasons, the application should be denied.

In addition to denial, Petitioners urge the Commission to consider all applications involving the sale or lease of United States Cellular Corporation's spectrum together in order to ensure that spectrum is allocated fairly and efficiently. Finally, Petitioners urge the Commission to consider imposing conditions on the proposed transaction that will serve the public's best interest, including cellphone unlocking. Overall, the Commission must do what is best for the public interest in its review of this application and, accordingly, the Commission should deny this transaction as proposed.

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I. INTRODUCTION

Public Knowledge, Open Technology Institute At New America, Benton Institute For Broadband & Society, Access Humboldt, and Institute For Local Self-Reliance (collectively, “Petitioners”) petition the Federal Communications Commission (“FCC” or “Commission”) to deny the above-captioned application of T-Mobile US, Inc. (T-Mobile) and United States Cellular Corporation (UScellular)¹ as it is anti-competitive and contrary to the public interest. Petitioners also urge the Commission to consider all applications to transfer licenses held by United States Cellular Corporation together with this transaction for efficiency. Finally, Petitioners urge the Commission to maintain pro-consumer policies and conditions, as previously applied to prior mobile carrier mergers and acquisitions, in consideration of this Application.

¹ Application of T-Mobile USA, Inc. and United States Cellular Operating Company LLC, for Assignments of Authorization or Transfers of Control, File No. 0011180491, MB Docket No. 24-286 (Sept. 13, 2024) (“*Transfer of Control Application*”).

II. THE PETITIONERS HAVE STANDING TO SUBMIT THIS PETITION.

Section 309(d)(1) of the Communications Act and Section 1.939 of the Commission’s Rules allow any “party in interest” to file a petition to deny any application.² To establish party-in-interest standing, “a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it direct injury.³ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action.⁴ An organization may meet these standards in its own right or may demonstrate that one or more of its members meets these requirements,⁵ and the Commission routinely permits groups representing the public interest to participate in proceedings as “parties in interest.”⁶

Here, the Petitioners represent the public interest and allege both a direct injury—harm to competition—and a causal link between that injury and the challenged action. As such, the Petitioners are parties in interest with standing to submit this Petition to Deny.⁷ This Petition was

² 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939.

³ *Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425 (2012).

⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g., Applications Granted for the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, LLC*, WT Docket No. 13-79, Public Notice, 28 FCC Rcd. 5720, 5722 n.20 (2013) (noting that the Petitioners—which included Public Knowledge—had standing to oppose a transfer of control “as representatives of consumers of the relevant services”); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses; Applications of Verizon Wireless and Leap to Exchange Lower 700 MHz, AWS-1 and PCS Licenses; Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses*, WT Docket No. 12-175, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95 (2012) (considering a Petition to Deny filed by Free Press); *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, FCC-188 (2011) (considering a Petition to Deny filed by Free Press et al.) (“AT&T-Qualcomm Order”).

⁷ *See* 47 C.F.R. § 1.939.

filed timely within the period set forth in the *Public Notice*, DA 24-115 released on August 28, October 30, 2024.⁸

III. THE COMMISSION HAS BROAD AUTHORITY TO REVIEW THE PROPOSED TRANSACTION.

As proposed, this transaction will harm the consumer, reduce marketplace competition, and ultimately does not serve the public interest. For these reasons, the Commission should deny the application pursuant to its authority under the Communications Act.

The Commission has the authority to deny the transfer of control application of T-Mobile and UScellular which was filed pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Communications Act” or “Act”). Under Section 310(d) of the Communications Act, the Commission is directed to find whether “the public interest, convenience, and necessity will be served” by the transaction before determining whether the application for transfer of control should be approved.⁹ This determination involves a multistep assessment where the Commission first evaluates whether the transaction “complies with the specific provisions of the Act, other applicable statutes, and the Commission’s rules.”¹⁰ Then, if not violative of statute or rule, the Commission considers “whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes” and balances “potential public interest harms of the proposed transaction against any potential public interest benefits.”¹¹ It is the applicants who bear the

⁸ *T-Mobile And UScellular Seek Fcc Consent To The Proposed Transfer Of Control And Assignment Of Certain Spectrum Licenses, Authorizations, And Spectrum Leases Held By UScellular To T-Mobile*, GN Docket No. 24-286, Public Notice (rel. Aug. Oct. 30, 2024).

⁹ 47 U.S.C. § 310(d).

¹⁰ Applications of T-Mobile, US Inc. & Ka’ena Corp. for Consent to Transfer Control of International Section 214 Authorizations, *Memorandum Opinion and Order*, GN Docket No. 23-171; DA 24-387, ¶ 4 (Apr. 25, 2024) (“*T-Mobile-Mint Order*”).

¹¹ *Id.*

burden of proof to show by a preponderance of the evidence that the transactions serve the public interest.¹²

The Commission’s review must evaluate the transaction within the “broad aims of the Communications Act.”¹³ As the Commission has consistently acknowledged, a review of a proposed merger transaction encompasses both an analysis of the transfer’s anticompetitive effects and “the potential impact of the proposed transaction on the rules, policies and objectives of the Communications Act.”¹⁴ This includes “a deeply rooted preference for preserving and enhancing competition in relevant markets,” creating a competitive analysis standard that the Commission considers broadly and with a “more expansive view of potential and future competition.”¹⁵ In its analysis of the transaction, the Commission must assess “whether a

¹² *Id.*

¹³ *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (“*Verizon-TracFone Order*”) (citing *Western Union Division, Commercial Telegrapher’s Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff’d*, 338 U.S. 864 (1949); see *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; see also *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953)).

¹⁴ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Memorandum Opinion and Order, ¶ 4 (2001). See also Communications Act of 1934, as amended § 1, 47 U.S.C. § 151 (2006) (stating that the Communications Act was created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . and for the purpose of securing a more effective execution of this policy by centralizing authority . . . and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication” in the Commission to implement and enforce the Act.).

¹⁵ *Verizon-TracFone Order*, ¶ 23.

transaction would enhance, rather than merely preserve, existing competition” when determining whether a transaction is in the public interest.¹⁶

The Commission begins its public interest review by applying its standard of review and public interest framework to the record to find whether the proposed transaction harms the public interest.¹⁷ When a proposed transaction will not eliminate a competitor in the market where the applicant operates, the Commission has found that there is not a competitive harm.¹⁸ However, the inquiry does not stop when the Commission determines that a proposed transaction poses no harm to the public interest; the Commission must next consider whether there are public interest benefits.

The Commission must then determine whether the “proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.”¹⁹ Any claimed benefit must be transaction-specific, meaning that it must “naturally arise[] as a result of the transaction and likely could not be accomplished in the absence of the transaction,”²⁰ and verifiable, meaning that the applicants must provide “evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.”²¹ In addition, the applicants must show whether the “benefit likely will be accomplished in the absence of the proposed transaction and whether the benefit will flow through to consumers and accrue to the public interest.”²²

¹⁶ *Id.*

¹⁷ Lumen Technologies, Inc. & Connect Holding, LLC Application for Consent to Transfer Control, *Memorandum Opinion and Order and Declaratory Ruling*, 37 FCC Rcd 9523, 9532 ¶ 23 (2022) (“*Lumen-Connect Order*”).

¹⁸ *Id.*, ¶ 24.

¹⁹ *Verizon-TracFone Order*, ¶ 14.

²⁰ *Id.*

²¹ *Lumen-Connect Order*, ¶ 25.

²² *Id.*

The Commission has the authority to review this proposed transaction and must evaluate the transaction thoroughly to ensure that the public is not only left unharmed, but is benefitted by this transaction. In doing so, the Commission should deny the application in the public interest because this transaction will harm the public interest and, further, applicants have failed to show that there is a verifiable, transaction-specific benefit to both consumers and the broader public interest as a direct result of this transaction.

IV. THE TRANSACTION AS PROPOSED SHOULD BE DENIED BECAUSE IT HARMS THE PUBLIC INTEREST.

The applicants have not shown by a preponderance of the evidence that the transaction as proposed will pose no harm to the public interest. For this reason, the transfer of control application should be denied.

A. The Transaction Will Consolidate Spectrum Holdings and Eliminate a Competitor for Nearly Thirty-Five Million Americans.

The proposed transaction does not serve the public interest and is harmful to consumers and competition. UScellular is the fifth-largest carrier in the United States and has a network that covers 34 million people, which is approximately 10 percent of the country's population.²³ If this transaction is approved, more than 34 million Americans will lose a wireless competitor. Any transaction that completely eliminates a competitor for 10 percent of the United States population, while boosting just the top competitors, will harm the consumer, as these markets will see less competition and higher prices as an effect. In these locations where UScellular does have a presence, its pricing structure adds competition to the wireless market nationwide, as nationwide carriers must compete with UScellular while maintaining a priority to have the same pricing across the country. In the markets of several states, UScellular competes with the top

²³ *Transfer of Control Application*, Declaration of Michael S. Irizarry, ¶ 14.

three wireless providers and has an impact on the prices that these larger providers set nationwide. A transaction of this magnitude, which completely wipes out a smaller, competitive market participant does not serve the public interest, as competition will be harmed on local and national levels. Because it harms the public interest, this application should be denied.

B. The Proposed Transaction Will Strengthen the Top-Three Competitors, and Undermine the Importance of a Fourth Competitor in the Market.

Furthermore, the proposed transaction harms competition by strengthening the top-three mobile wireless market competitors. The DOJ only approved the merger between T-Mobile and Sprint subject to a condition designed to ensure the emergence of a fourth nationwide competitor.²⁴ While EchoStar hopes to fulfill this role in the future, this proposed transaction eliminates the remaining fourth competitor for tens of millions of Americans. A market with a minimum of four competitors best assures low prices and continued service innovation, and is what is in the public's best interest. As the Department of Justice has noted, eliminating the fourth competitor has many potential consequences including: eliminating head-to-head competition, leaving the market vulnerable to increased coordination among the remaining three carriers, higher prices, reduced innovation, reduced quality, and fewer choices.²⁵ Furthermore, "Four-to-three mergers deservedly raise eyebrows, and evidence from other countries showed that 4-3 mergers in the wireless market would increase prices."²⁶

²⁴ Knowledge at Wharton Staff, *The T-Mobile-Sprint Merger: Can Dish Network Help Make It Happen?*, Knowledge at Wharton (Aug. 9, 2019), available at <https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/sprint-t-mobile-merger-2/>.

²⁵ See *United States et al. v. Deutsche Telekom AG, et al.*, Civil Action No. 1:19-cv-02232-TJK, Competitive Impact Statement, at 7, available at <https://www.justice.gov/atr/case-document/file/1189501/dl>.

²⁶ Melody Wang and Fiona Scott Morton, *The Real Dish on the T-Mobile/Sprint Merger: A Disastrous Deal From the Start*, ProMarket (Apr. 23, 2021), available at <https://www.promarket.org/2021/04/23/dish-t-mobile-sprint-merger-disastrous-deal-lessons/>.

This transaction eliminates the fourth wireless competitor in many markets while further advantaging the dominant incumbents, especially as each of the three major carriers stands to receive billions of dollars worth of spectrum licenses as UScellular divests its assets. As a result of this transaction, pending transactions suggest that T-Mobile will receive 30 percent of UScellular's spectrum.²⁷ AT&T will receive UScellular spectrum worth \$1.018 billion.²⁸ Finally, Verizon Wireless will receive a similar amount worth around \$1 billion.²⁹ The remaining spectrum will go to two smaller operators, although it is unclear how much and even if this spectrum will actually go to small competitors.³⁰ This sale divests the majority of the spectrum that UScellular has to the three top market competitors and gives these three major carriers a boost in a market that covers 10 percent of the country. Propelling only the top three competitors while eliminating a smaller competitor is an anti-competitive move that will harm the market and raise prices for consumers for years to come. For these reasons, the proposed transaction affirmatively harms the public interest by reducing competition and the application should be denied.

C. The Proposed Transaction Harms Consumers by Wasting or Passing on Unfair Windfalls to T-Mobile in the Form of Legacy USF Monetary Support Allocated to UScellular.

The Universal Service Fund (USF) is integral in supporting the infrastructure costs for small mobile providers to build out their networks in rural and underserved areas. Any waste of

²⁷ *Transfer of Control Application*, Public Interest Statement, at 4.

²⁸ *UScellular announces sale of select spectrum assets to AT&T for \$1.018 billion*, UScellular (Nov. 7, 2024), available at <https://investors.uscellular.com/news/news-details/2024/UScellular-announces-sale-of-select-spectrum-assets-to-ATT-for-1.018-billion>.

²⁹ *UScellular announces sale of select spectrum assets for \$1.0 billion*, UScellular (Oct. 18, 2024), available at <https://investors.uscellular.com/news/news-details/2024/UScellular-announces-sale-of-select-spectrum-assets-for-1.0-billion>.

³⁰ *Id.*

USF dollars is directly harmful to the public interest. The public helps to support the USF by paying pass-through USF charges tied to their bills and, in turn, greatly benefits from the USF through its support mechanisms including the Lifeline, E-rate, and High Cost Programs. The USF supports rural telephone companies that are registered as ETCs eligible telecommunications carriers (ETCs) and for some carriers provides frozen capped funds for continuing high-cost support.³¹ UScellular is one of these carriers and has received \$96,947,448.00 and around \$58,099,246.00 the first three quarters of 2024.³² This funding is substantial and in line with the 5G Fund and High Cost program in general, is meant to be used by UScellular to develop and modernize networks. As a likely result of the proposed transaction, either T-Mobile will cease to use many of UScellular's towers and related infrastructure that was built with legacy High Cost funds or will reap benefits from these funds that were not intended for use by a top-three national wireless carrier. The resultant misallocation of USF funds is contrary to the public interest. For this reason, and the preceding reasons, the Commission should deny the application because the proposed transaction harms the public interest by hurting both competition and consumers.

V. THE PROPOSED TRANSACTION DOES NOT BENEFIT THE PUBLIC INTEREST.

Should the Commission find that the proposed transaction does not harm the public interest, it must then determine whether the transaction leads to a result that enhances competition and benefits the public interest. Based on the record, it is clear that the benefits applicants claim the proposed transaction will bring are not verifiable, nor are they transaction-specific. The applicants plainly have not shown by the preponderance of the evidence that the

³¹ Frozen High Cost Support, Universal Service Administrative Co., available at <https://www.usac.org/high-cost/funds/legacy-funds/frozen-high-cost-support/> (last accessed Dec. 12, 2024).

³² Data available at <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi>.

transaction as proposed benefits the public interest. For this reason, the Commission should find, regardless of whether the proposed transaction harms the public interest, that the public interest is not benefited by this transaction.

A. Applicants Have Not Shown that there are Verifiable and Transaction-Specific Benefits to the Public Interest as a Result of the Proposed Transaction.

Among other things, applicants claim that customers will benefit from the proposed transaction from “increased network capacity, higher speeds, and reduced congestion.”³³ The proposed benefits include: (1) both UScellular and T-Mobile subscribers will benefit from a better network experience.; (2) UScellular customers will have the choice of paying less for T-Mobile Services or keeping their current plan, all while enjoying a world-class 5G network; (3) the transaction will improve service to rural areas for customers of both companies; (4) the transaction will expand availability of T-Mobile’s home internet service, particularly in rural areas; (5) UScellular customers will be rapidly and seamlessly migrated and network integration will occur quickly.³⁴ Taken in turn, the record has not established that these proposed benefits are naturally arising as a result of the transaction and are verifiable. The Commission should deny this application because the balance of the record demonstrates that the public interest will be harmed through this transaction.

B. Applicants Have not Demonstrated That United States Cellular Corporation Will Fail Without the Proposed Transaction.

Applicants argue that an additional benefit of the proposed transaction is that this transaction will prevent the demise of UScellular’s failing business. But UScellular is an ongoing market competitor not, as applicants claim, a company with such “structural disadvantages that

³³ *Transfer of Control Application*, Public Interest Statement, Executive Summary, at *i*.

³⁴ *Transfer of Control Application*, Public Interest Statement, Executive Summary at *i-ii*.

permeate nearly every aspect of its business”³⁵ that the Commission must bless this transaction without concern for its competitive implications. Applicants maintain that this transaction, paired with spectrum sales of UScellular’s other holdings, will prevent the complete loss of a carrier with no replacements and that a merger or acquisition is the best course of action. This is a false choice. While UScellular does not have a nationwide footprint, it is important in many local markets and covers a population of nearly 35 million people, which is 10 percent of the United States population. According to the UScellular President and CEO, the company is experiencing improved subscriber trajectory, solid ARPU growth, and strong investments in advanced networks.³⁶ UScellular has a large footprint that it can utilize to continue its growth to become a larger wireless competitor. In this vein, UScellular can still operate fully and sell some of its spectrum holdings to build the funds necessary to improve its services and become a stronger competitor.

By emphasizing the challenges US Cellular faces, applicants make arguments that are tantamount to a “failing firm” defense, without expressly invoking it, and for good reason: the failing firm defense is narrow in scope and is rarely invoked in court or before the Agencies.³⁷ As the Delegation of the United States to the Competition Committee of the OECD noted, “[w]hen invoked, the defense is rarely successful.”³⁸ As the DOJ and Federal Trade

³⁵ *Transfer of Control Application*, Public Interest Statement, at 10.

³⁶ UScellular, *UScellular Reports Third Quarter 2024 Results*, Press Release (Nov. 1, 2024), <https://investors.uscellular.com/news/news-details/2024/UScellular-reports-third-quarter-2024-results/default.aspx>.

³⁷ *Transfer of Control Application*, Public Interest Statement, at 16. (“Ultimately, UScellular’s efforts proved to be unsuccessful, untimely, and/or insufficient to materially improve the company’s position.”).

³⁸ OECD Competition Committee, *The Failing Firm Defence: Key findings, summary and notes*, OECD Roundtables on Competition Policy Papers, No. 103 (2009) at 175, para. 2, available at <https://www.oecd-ilibrary.org/docserver/c90c3d1e-en.pdf>

Commission’s Horizontal Merger Guidelines stated in 2010, agencies

do not normally credit claims that the assets of the failing firm would exit the relevant market unless all of the following circumstances are met: (1) the allegedly failing firm would be unable to meet its financial obligations in the near future; (2) it would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; and (3) it has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger.³⁹

The latest Merger Guidelines confirm that the failing firm defense’s three requirements are confined in a narrow scope.⁴⁰ In light of the three circumstances required to invoke this defense, the Commission has a record of rejecting implicit failing firm arguments.⁴¹

UScellular has not attempted to argue that it meets the failing firm defense’s strict requirements, and indeed, it cannot. UScellular’s various business challenges do not show that it risks business failure—prior to the announcement of the proposed transfer of control it publicly discussed recent business successes and milestones. Even if these plans were to ultimately fail, UScellular has not shown that some form of reorganization would not be possible. Nor has it shown that there are no alternative paths forward, such as alternate buyers or partnerships that would not result in the loss of a competitor from the market. UScellular is not a failing firm, and

³⁹ U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 11 (2010), available at <https://www.justice.gov/atr/file/810276/dl>.

⁴⁰ U.S. Department of Justice and Federal Trade Commission, *Merger Guidelines* § 3.1 (2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

⁴¹ See *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, and EchoStar Communications Corporation*, CS Docket No. 01-348, *Hearing Designation Order*, FCC 02-284, at 80 ¶ 216 (rel. Oct. 18, 2002) (“One possible interpretation of the Applicants’ argument, though the Applicants themselves do not articulate it, is that absent the merger, [they] would be driven from the market or marginalized...If the applicants are implicitly making such a ‘failing firm’ argument, we do not find it to be persuasive.”).

this transaction as proposed cannot proceed even under the theory that UScellular is a “failing firm.”

VI. THE COMMISSION SHOULD CONSIDER TRANSACTIONS RELATING TO THE SALE OF UNITED STATES CELLULAR CORPORATION AND ITS REMAINING SPECTRUM HOLDINGS TOGETHER.

The transaction itself is complex on its face and involves two steps: the restructuring of UScellular and its owned entities to a new entity to hold all UScellular assets, and then the transfer of these consolidated holdings to T-Mobile. However, this transaction only related to the sale of just 30% of UScellular’s spectrum holdings to T-Mobile. For its other holdings, UScellular has agreed to sell the remainder of its spectrum holdings to four providers: AT&T, Verizon, and two undisclosed competitors.⁴² The major transactions to AT&T and Verizon are valued at around \$1 billion for each transaction. The total transactions amount to over \$6 billion, 4.5 million consumers, and spectrum that covers nearly 35 million people. Because of this, these transactions are related and should be considered together with the present application. Consolidation would enable the Commission’s review of the spectrum concentration issue common to each transaction.⁴³ The Commission should wait until the remaining applications are filed to consolidate the sale of UScellular’s spectrum holdings.

⁴² Reuters, *UScellular to sell some spectrum licenses to AT&T for \$1 bln* (Nov. 7, 2024), <https://www.reuters.com/business/media-telecom/us-cellular-sell-some-spectrum-licenses-att-1-bl-2024-11-07/>

⁴³ See, e.g., Public Notice, *Wireless Telecommunications Bureau Consolidates Review of Verizon Wireless-Spectrumco-Cox, Verizon Wireless-Leap Wireless, and T-Mobile-Verizon Wireless Transactions*, 27 FCC Rcd 9093 (2012) (“After review of the records . . . we conclude that there is a commonality of issues, particularly with respect to the aggregation of spectrum and the public interest arguments raised by the applicants and various petitioners and commenters. For administrative convenience, given the commonality of issues, we consolidate the records in WT Docket Nos. 12-4 and 12-175 and the record associated with the Verizon Wireless - Leap Wireless Applications for purposes of our review and consideration of those issues.”).

VII. THE COMMISSION MUST IMPOSE PRO-CONSUMER CONDITIONS ON THE TRANSACTION IN LINE WITH PREVIOUS WIRELESS CARRIER TRANSFERS OF CONTROL IF APPLICATION IS APPROVED.

In addition to its authority to review the transaction to determine if it violates law or is contrary to the public interest, the Commission has authority to impose conditions related to the transaction that affirmatively promote the public interest.⁴⁴ If the Commission were to determine that the transfer of control was permissible, at all, it could only find that the application is in the public interest if it includes the following conditions: impose an unlocking requirement, maintain a service speed threshold, commit to pro-labor policies, require that traffic is treated open and fairly, carry over or recoup legacy funding for 5G support, and ensure that customers have access to the Lifeline program. In line with conditions that have been imposed on similar transactions in past years, and given the unique circumstances of this transaction in particular, the Commission must apply these conditions to ensure that this transaction benefits the public interest.

Following the T-Mobile-Mint Merger and building on the momentum for cell phone unlocking generally, the Commission must require T-Mobile to adhere to the same 60-day unlocking period that was agreed to in the T-Mobile Mint Merger.⁴⁵ As the record clearly shows, unlocking is vitally important to promote competition in the wireless market, and is therefore a policy that will serve the public interest if this application is approved.⁴⁶

Next, the Commission must require T-Mobile to comply with certain service speed thresholds to ensure that networks are reliable, consistent, and free from slow-downs and

⁴⁴ *T-Mobile-Mint Order*, ¶ 4.

⁴⁵ *T-Mobile-Mint Order*, ¶ 19.

⁴⁶ *Letter from Public Knowledge, New America's Open Technology Institute, Consumer Reports, National Consumers League, National Consumer Law Center, NTEN, Benton Institute for Broadband & Society, National Digital Inclusion Alliance, The Horace Cousens Industrial Fund, Free Press, Falmouth Service Center, Homeless Prevention Council, Media Justice, Next Century Cities*, WT Docket No. 24-186 (filed Oct. 18, 2024).

throttling. In addition, and consistent with the Safeguarding and Securing the Open Internet Order, the Commission must require that traffic on T-Mobile's network is treated openly and fairly in accordance with net neutrality principles.⁴⁷

In addition, the Commission must consider this transaction's effect on the labor market and require that the parties commit to pro-labor and pro-consumer actions and policies such as ensuring that no employees lose their jobs as a result of this transaction, promoting neutrality in the formation of unions, and ensuring that labor market competition remains strong by prohibiting non-competes and mandatory arbitration agreements.

Finally, related to USF support, the Commission must consider how to approach the legacy High Cost funds that may be wasted as a result of this transaction and determine whether T-Mobile should repay losses or any windfall earnings. Further, the Commission should include an analysis of the impact of the transaction on the Lifeline program, determine whether Lifeline households will be harmed by this transaction, and mitigate harm. If the Commission is able to impose these conditions as requested, while it is clear that this proposed transaction *is not* in the public interest, these conditions will serve critical roles in making sure that consumers and competition have protections.

VIII. CONCLUSION

For the reasons stated above, the Commission should deny the Application, or refer the matter for a hearing pursuant to Section 310(d).

Respectfully submitted,

⁴⁷ See *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52 (May 7, 2024).

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December 9, 2024

DECLARATION OF JOHN BERGMAYER

I, John Bergmayer, declare under penalty of perjury on this 9th day of December 2024 that:

1. I have read the foregoing Petition to Deny of Public Knowledge.
2. This declaration is submitted in support of the Petition to Deny applications in FCC Docket Number GN 24-286.
3. I am the Legal Director for Public Knowledge, an advocacy organization that has worked extensively to improve affordable, non-discriminatory access to broadband and telecommunications services.
4. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

/s/ John Bergmayer
John Bergmayer
Legal Director

CERTIFICATE OF SERVICE

I, Peter Gregory, certify that on December 9, 2024, a copy of the foregoing pleading was served electronically via email upon:

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December 9, 2024