

September 16, 2019

The Honorable Ken Paxton
Attorney General, State of Texas
300 W. 15th Street
Austin, TX 78701

Dear Attorney General Paxton:

I'm writing to express our disappointment at your decision to join the lawsuit to block the T-Mobile\Sprint merger, and to ask you to reconsider. We make this request for two reasons: First, because there are numerous compelling reasons why free-market conservatives are highly skeptical of antitrust interventions; and second, because the evidence is clear that the merger will contribute toward a faster rollout of wireless broadband in the U.S. and in Texas.

As you know, the Institute for Policy Innovation (IPI) is a 33 year-old free-market public policy "think tank" based in Dallas. We focus on policies related to economic growth, including innovation in communications technologies, and have testified in many states, including our home state of Texas, numerous times. IPI helped lead the groundbreaking Texas SB5 initiative in 2005 in which Texas became the template for the nation in deploying statewide video franchise reform, which increased telecom competition and incentivized the rollout of broadband throughout the state. On policies related to innovative new communications technologies, we know this ground well.

It requires enormous investment to build and maintain broadband networks. In any given year, the companies providing broadband services dominate the list of top companies making intense capital expenditures in the U.S. In order to compete in this hugely capital-intensive business, companies must attain adequate scale, and neither T-Mobile nor Sprint have been able to compete in this space on their own. Through the merger, the new company will attain critical mass of both capital and spectrum such that it will likely become a significant competitor in a space where neither otherwise can successfully compete alone.

Wireless broadband solutions, including 5G, are critical toward the goal of rolling out broadband to rural areas, of which Texas has a sizeable amount. So Texas has a major stake in this merger.

There is no policy reason why an Attorney General who believes in free-markets and limited government should move to block the T-Mobile\Sprint merger. The Trump administration's Justice Department and Federal Communications Commission have already approved the deal. It's odd that the only Republican who has disagreed and joined 14 Democrats to block the deal is the Attorney General of Texas. We respectfully ask you to reconsider.

Free-Market Proponents Trust Markets, not Government

Within the free-market philosophy, the proper place for antitrust interventions is after harm to consumers has been demonstrated. When government officials act before consumer harm has been demonstrated, they step squarely into F.A. Hayek's famous "knowledge problem," arrogantly assuming that they know in advance what a particular market should look like, how many competitors there should be, what the results of a particular business transaction will be, etc. The fact is that no government official or group of government officials has enough information or big enough brains to be able to do any of that, and it also overlooks the likelihood that intervening will almost surely result in harmful unintended consequences.

Humility, then, compels the proponent of markets to allow consumer and businesses to freely make decisions in the marketplace with minimal interference from government, and to act only when there is evidence of harm. Those running the businesses, after all, know their industries better than government officials do. It is already a violation of U.S. law to use market power monopolistically such that it harms consumers, but it is not a violation of law to increase market power through a merger. We understand why Democrats, who distrust markets and bizarrely think that corporations make profit by harming their customers, would be inclined to aggressively use antitrust to control industries, determine outcomes, and block mergers. What's puzzling is for a proponent of free-markets to do so.

This is not a "naïve" approach to economic regulation—there is already abundant power at the disposal of the Justice Department and your office to prosecute companies that use market power to harm consumers. But until harm has been demonstrated, proponents of free-markets forbear as an act of policy humility, in recognition of one of Dick Armey's favorite sayings: "The market is rational and the government is dumb."

The Trump Administration Has Already Reviewed and Approved the Sprint\T-Mobile Merger

Given everything we've said above, as you can probably imagine we're not big fans of federal merger review, either. But in fact the T-Mobile\Sprint merger has already been reviewed and approved by the Trump administration, both by the Justice Department and by the Federal Communications Commission (FCC). This is particularly noteworthy because, under President Trump, the Justice Department has NOT taken a "hands off" approach to antitrust, and actively opposed the AT&T\TimeWarner merger. So they're not timid about antitrust.

As a result of federal review, the federal government has already obtained a robust set of structural remedies from the new T-Mobile. These remedies and conditions include:

- Within three years, 97% of the country's population will be covered by its new 5G network. Within six years, 99% will be covered.
- Similarly, within three years 85% of rural Americans will have coverage, and 90% within six years.
- T-Mobile will invest at least \$40 billion in its new network and services.
- T-Mobile will offer the same or better rate plans to its current T-Mobile and Sprint customers for three years, while offering better and faster service. (This condition alone precludes any antitrust argument based on harm to consumers.)
- T-Mobile will be divesting significant assets to DISH such that DISH can also become a significant, facilities-based competitor.
- T-Mobile will create at least an additional 3,600 new jobs within a year of closing, and at least an additional 11,000 new jobs by year six.

These and many other unprecedented structural remedies will be backed up by a detailed build schedule with hard deadlines and a verification and enforcement regime overseen by the FCC.

Now, we at IPI aren't particularly happy about any of these commitments and remedies, since we think the companies should have been permitted to merge with little to no federal interference. Nonetheless, the scope and extent of these concessions undermines any possible remaining legitimate concern that a free-market, limited government attorney general could have.

Conclusion

Of course, the companies themselves, their vendors and trade associations have made very detailed technical and business arguments in support of the merger. You already have those. What we thought we could provide was a reminder that joining 14 Democrats to block a merger that has already been approved by the Trump administration is oddly out-of-step with conservative, free-market principles.

We thank you for your service to Texas, respectfully ask you to reconsider your position, and ask you to withdraw from this ill-considered effort to block a meritorious business transaction. We would be happy to discuss this matter with you in more detail and to try to understand any rationale of yours that we may have missed or misunderstood.

Sincerely,



President