

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
COMMUNICATIONS WORKERS OF AMERICA

Nell Geiser
Hooman Hedayati
Nneka Maceo
Communications Workers of America
501 Third St. N.W.
Washington, D.C. 20001
(202) 434-1198 (phone)
hhedayati@cwa-union.org

December 09, 2024

Table of Contents

I. INTRODUCTION	1
II. FCC STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK	2
III. THIS MERGER WILL ENTRENCH AND EXTEND T-MOBILE’S DOMINANT POSITION IN MANY LOCAL LABOR MARKETS FOR RETAIL WIRELESS WORKERS..	4
A. Direct Evidence of T-Mobile’s Market Power in the Labor Markets for Retail Wireless Store Employees.....	5
1. The T-Mobile/Sprint Merger’s Anti-Competitive Effects in Many Local Labor Markets for Retail Wireless Store Employees.....	5
2. The Absence of Collective Bargaining Agreements at the Merging Parties Indicates That These Workers Cannot Offset T-Mobile’s Market Power Post-Merger Through Negotiations and Collective Action.....	14
3. T-Mobile’s Past Actions to Prevent Workers from Engaging in Protected Concerted Activity, Achieving Union Recognition, or Negotiating Collective Bargaining Agreements Reflect Its Significant Market Power in Many Labor Markets and Are Contrary to Competiton Law	16
4. Anticompetitive Fissuring Has Further Weakened Workers’ Bargaining Power, Reduced Their Wages (Through, Among Other Things, Wage Theft), And Degraded Workplace Conditions	19
5. Workers at T-Mobile and UScellular Fear This Merger Will Further Weaken Their Bargaining Power	21
B. Besides the Direct Evidence of T-Mobile’s Market Power, the Circumstantial Evidence Also Raises Concern That This Merger May Substantially Lessen the Remaining Head-To-Head Competition in Local Labor Markets.....	22
IV. COMPETITIVE ANALYSIS OF MERGER’S HARM IN MANY DOWNSTREAM CONSUMER WIRELESS MARKETS.....	25
A. Trend Toward Concentration.....	25
B. Anticompetitive Effects of this Trend Toward Concentration	26
IV. APPLICANTS’ CLAIMED EFFICIENCIES AND BENEFITS SHOULD BE MET WITH SKEPTICISM BASED ON T-MOBILE’S TRACK RECORD.....	29
A. T-Mobile Deceived the CPUC About Its CDMA/3G Shutdown Plans.....	29
B. T-Mobile’s Unfair Treatment of Sprint and Metro Dealers Shows Unchecked Market Power.....	30
C. The Proposed Merger May Negatively Impact Roaming and Tower Lease Agreements with Small Rural Carriers.....	31
V. CONCLUSION	31

PETITION TO DENY OF COMMUNICATIONS WORKERS OF AMERICA

I. INTRODUCTION

The proposed merger between T-Mobile and UScellular would harm the public interest considerably, with little countervailing public interest benefits. The merger would substantially lessen competition in local markets where UScellular operates, hurting workers, consumers, and other rural carriers. The Commission should reject the proposed transaction as currently structured and require specific enforceable measures, as outlined in Part V, to ensure that the merger remains in the public interest.

As the U.S. Department of Justice and Federal Trade Commission's Merger 2023 Guidelines note, labor unions can uniquely inform the antitrust agencies "regarding, among other things, wages, non-wage compensation, working conditions, the individualized needs of workers in the market in question, the frictions involved in changing jobs, and the industry in which they work."¹ The Communications Workers of America ("CWA") represents working people in telecommunications, media, information technology, public service, manufacturing, airlines, and other fields. CWA has long advocated for workers' rights to be considered as part of merger review and antitrust enforcement, ranging from the 1980s break-up of AT&T to the merger of T-Mobile and Sprint in 2020. CWA's Petition to Deny highlights how the proposed merger will entrench and extend T-Mobile's dominant position in many local labor markets for retail wireless workers, provides an analysis of the merger's harm in downstream consumer wireless markets, and explains how the Applicants' claimed efficiencies and benefits are overblown and misleading.

¹ U.S. Department of Justice and Federal Trade Commission, Merger Guidelines at 34 (Dec. 18, 2023) [hereinafter "2023 Merger Guidelines"].

II. FCC STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

A fundamental tenet of the FCC’s public interest review is whether the transaction will enhance competition in relevant markets, accelerate private sector deployment of advanced services, promote a diversity of license holdings, and generally manage the spectrum in the public interest.² By enacting Section 7 of the Clayton Act, Congress also “declared that the preservation of competition is always in the public interest.”³ The Commission observed, “A transaction that violates the Clayton Act would not be in the public interest.”⁴ Under well-established antitrust law, this merger raises several significant concerns, which the merging parties must address.

However, it is important to note that the FCC’s review differs from that of antitrust agencies. The FCC’s competitive analysis, “which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.”⁵ The DOJ’s or FTC’s review, for example, is limited solely to examining the competitive effects of the acquisition without reference to diversity, localism, or other public interest considerations.⁶

Moreover, the Commission’s competitive analysis under the public interest standard “is somewhat broader, for example, considering whether a transaction will enhance, rather than

² Memorandum Opinion and Order and Declaratory Ruling, in *In re Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 12-301, Federal Communications Commission (Adopted March 12, 2013), at 6-7 [hereinafter “FCC T-Mobile/MetroPCS Opinion”].

³ *United States v. Tribune Publ’g Co.*, No. CV1601822ABPJWX, 2016 WL 2989488, at *5 (C.D. Cal. Mar. 18, 2016) (quoting *United States v. Ivaco, Inc.*, 704 F. Supp. 1409, 1430 (W.D. Mich. 1989)); see also *F.T.C. v. Swedish Match*, 131 F. Supp. 2d 151, 173 (D.D.C. 2000) (“There is a strong public interest in effective enforcement of the antitrust laws”).

⁴ Staff Analysis and Findings, *In the Matter of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, at ¶ 5 (November 29, 2011), <https://docs.fcc.gov/public/attachments/DA-11-1955A1.pdf>; See also *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 39.

⁵ FCC T-Mobile/MetroPCS Opinion at 7.

⁶ FCC T-Mobile/MetroPCS Opinion at 7.

merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.”⁷

Under the Commission’s review, the Applicants, in this case, T-Mobile and UScellular, bear the burden of showing that the transaction will serve the public interest. If the Commission cannot find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, then it must designate the application for hearing.

Accordingly, the burden is on T-Mobile and UScellular to show that its transaction will enhance competition in both upstream labor markets as well as downstream retail markets. UScellular and T-Mobile have not shown how their transaction will enhance, or even preserve, existing competition in multiple labor markets.

As it moves forward in assessing whether the merger is in the public interest, the FCC must determine the merger’s impact on labor markets and evaluate the reality behind the minimal disclosures the parties have made about workforce impacts. As the DOJ recently stated in a Statement of Interest, “Rivalry among employers to hire and retain workers is [...] foundational to a properly functioning, market based economy.”⁸ Further buttressing the necessity of labor market review, the DOJ and FTC 2023 Merger Guidelines provide, “Where a merger between employers may substantially lessen competition for workers, that reduction in labor market competition may lower wages or slow wage growth, worsen benefits or working conditions, or

⁷ FCC T-Mobile/MetroPCS Opinion at 8.

⁸ Statement of Interest of the United States, filed in *Mizell v. University of Pittsburgh Medical Center*, Case 1:24-cv-00016-SPB (W.D. Pa. filed Sept. 30, 2024), <https://www.justice.gov/atr/media/1371576/dl> [hereinafter “Statement of Interest”].

result in other degradations of workplace quality.”⁹ Moreover, as reflected in the economic scholarship, and as the antitrust agencies noted,

Labor markets frequently have characteristics that can exacerbate the competitive effects of a merger between competing employers. For example, labor markets often exhibit high switching costs and search frictions due to the process of finding, applying, interviewing for, and acclimating to a new job. Switching costs can also arise from investments specific to a type of job or a particular geographic location. Moreover, the individual needs of workers may limit the geographical and work scope of the jobs that are competitive substitutes.

In addition, finding a job requires the worker and the employer to agree to the match. Even within a given salary and skill range, employers often have specific demands for the experience, skills, availability, and other attributes they desire in their employees. At the same time, workers may seek not only a paycheck but also work that they value in a workplace that matches their own preferences, as different workers may value the same aspects of a job differently. This matching process often narrows the range of rivals competing for any given employee.¹⁰

Consequently, in its assessment, the Commission must consider whether the merger will “enhance, rather than merely preserve, existing competition” in the relevant labor markets.¹¹

Given the unique features of labor markets, the Commission must consider, among other things,

- that the level of concentration at which competition concerns arise may be lower in labor markets than in downstream product markets,¹²
- that labor markets can be relatively narrow,¹³
- the merging firms’ “power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, or generally degrade benefits and working conditions without prompting workers to quit,”¹⁴ and
- evidence of anticompetitive effects in the labor markets.¹⁵

III. THIS MERGER WILL ENTRENCH AND EXTEND T-MOBILE’S DOMINANT POSITION IN MANY LOCAL LABOR MARKETS FOR RETAIL WIRELESS WORKERS

⁹ 2023 Merger Guidelines at 26-27.

¹⁰ 2023 Merger Guidelines at 27.

¹¹ FCC T-Mobile/MetroPCS Opinion at 8.

¹² 2023 Merger Guidelines at 27.

¹³ 2023 Merger Guidelines at 27.

¹⁴ 2023 Merger Guidelines at 27.

¹⁵ Statement of Interest at 15, 19-20.

In its competitive analysis under the public interest standard, the Commission must assess whether T-Mobile already has significant market power in many local labor markets for retail wireless workers and whether this merger will further increase its power, thereby harming workers.

A. Direct Evidence of T-Mobile’s Market Power in the Labor Markets for Retail Wireless Store Employees

T-Mobile has significant market power, and should this merger close, retail wireless workers’ ability to counterbalance T-Mobile’s power will be hindered. Such position is supported by direct evidence of T-Mobile’s market power, which includes: (a) the anti-competitive effects in many local labor markets for retail wireless store employees that resulted from the T-Mobile/Sprint merger; (b) the absence of collective bargaining agreements at the merging parties, which indicates that these workers cannot offset T-Mobile’s market power through negotiations and collective action; (c) T-Mobile’s past actions to prevent workers from engaging in protected concerted activity, achieving union recognition, or negotiating collective bargaining agreements; (d) anticompetitive fissuring, which has further weakened workers’ bargaining power, reduced their wages (through among other things, wage theft), and degraded workplace conditions; and (e) how retail wireless store employees fear that this merger will further weaken their bargaining power. Accordingly, the Commission’s “degree of scrutiny and concern [should] increase in proportion to the strength and durability of the dominant firm’s market power” in these labor markets.¹⁶

1. The T-Mobile/Sprint Merger’s Anti-Competitive Effects in Many Local Labor Markets for Retail Wireless Store Employees

¹⁶ 2023 Merger Guidelines at 19.

As the 2023 Merger Guidelines note, evidence of “worsened terms” from earlier mergers “is given substantial weight.”¹⁷ The T-Mobile/Sprint merger has worsened terms across downstream consumer and upstream labor markets and follows a longer trend toward concentration in the industry.

During the Commission’s review of the T-Mobile/Sprint transaction, CWA raised concerns about the merger’s impact on competition in local markets for retail wireless workers.¹⁸ In response, T-Mobile and Sprint made pre-merger commitments to create jobs and invest in new facilities. The Commission, however, could not quantitatively verify T-Mobile and Sprint’s claims “to the creation of 168,600 transaction-specific ‘job-years’ in the 5 years post-transaction.”¹⁹ Instead, the Commission noted that “some job gains are possible, particularly in the light of New T-Mobile’s network-related commitments.”²⁰

While the Commission agreed with the CWA “that the transaction has the potential to lead to store closings, and thus could decrease retail employment to some extent,” a majority of Commissioners felt that the CWA did not “offer sufficient evidence to show that the four nationwide wireless service providers have oligopsony power, given the multiple retail job opportunities in urban areas.”²¹ These three Commissioners, for example, questioned “why the magnitude of the barriers for employees to move to other retail sectors in the advent of job losses

¹⁷ 2023 Merger Guidelines at 34.

¹⁸ See, e.g., Communications Workers of America (CWA) Comments (filed Aug. 27, 2018); Communications Workers of America Reply Comments (filed Oct. 31, 2018) (CWA Reply); Communications Workers of America Comments on Applicants’ New Econometric Study (filed Dec. 4, 2018) (CWA Dec. 4 Comments); Communications Workers of America Comments on Applicants’ Revised Network Combination Plan and Economic Analysis and “New T-Mobile In-Home Internet” (filed Mar. 28, 2019) (CWA Mar. 28 Comments) filed In the Matter of Applications of T-Mobile US, Inc., & Sprint Corp., for Consent to Transfer Control of Licenses & Authorizations, Applications of Am. H Block Wireless L.L.C., DBSD Corp., Gamma Acquisition L.L.C., & Manifest Wireless L.L.C. for Extension of Time, 34 FCC Rcd 10578 (2019) [hereinafter “T-Mobile/Sprint”].

¹⁹ T-Mobile/Sprint, 34 FCC Rcd at 10723.

²⁰ T-Mobile/Sprint, 34 FCC Rcd at 10723.

²¹ T-Mobile/Sprint, 34 FCC Rcd at 10723-24.

would be so large, especially given the current low unemployment rate.”²² Thus, the Commission declined to impose jobs-related conditions on approval of the transaction.²³ Workers and consumers paid the price.

The merger review of T-Mobile/Sprint was flawed because it failed to examine potential job losses and wage suppression, which led to “worsened terms.” Failing to find oligopsony power does not mean workers will escape the harms of merging parties' anticompetitive practices. Rather, the outcomes since have demonstrated a discrepancy from antitrust enforcers' expectations. Ultimately, the merger resulted in a highly concentrated wireless sector that is squeezing consumers, workers, and small businesses.

i. T-Mobile/Sprint merger's anti-competitive effects in many local labor markets evidence T-Mobile's significant market power

The T-Mobile/Sprint merger increased the combined company's power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with its workers, and generally degrade benefits and working conditions without prompting many workers to quit.

Setting the scene for this increased market power, T-Mobile broke its promises to grow as an employer. “Jobs will go up every single day of this new company,” T-Mobile's then-CEO John Legere assured a House antitrust subcommittee in 2019.²⁴ Instead, CWA analysis of store location data illustrates T-Mobile's large-scale job cuts following the merger: T-Mobile closed thirty (30) percent of its retail stores – including twenty-six (26) percent of its corporate operated stores and thirty-four (34) percent of its T-Mobile third party licensee stores – which reduced retail store jobs at the combined company by an estimated 21,616 employees since the merger

²² T-Mobile/Sprint, 34 FCC Rcd at 10723-24.

²³ T-Mobile/Sprint, 34 FCC Rcd at 10724.

²⁴ Todd Bishop, *3 years after Sprint merger, T-Mobile employs 9k fewer people, insists it upheld pledge on jobs*, GeekWire, April 11, 2023, <https://www.geekwire.com/2023/3-years-after-sprint-merger-t-mobile-employs-9k-fewer-people-insists-it-upheld-pledge-on-jobs/>.

closed. Thus, contrary to its promises to increase the overall number of jobs, post-merger, T-Mobile reduced overall jobs, with retail workers bearing the brunt.²⁵ As CWA predicted, “T-Mobile’s pre-merger [job] promises were empty rhetoric. The merger has allowed the company’s executives to cut jobs, minimize investments in job-creating infrastructure, and use the savings to buy back their own stock.”²⁶ Overall, T-Mobile’s employment has declined by 18 percent since the merger. The combined T-Mobile and Sprint had approximately 81,500 employees at the time of the merger, whereas T-Mobile’s employment stood at 67,000 at the end of 2023.²⁷

In terms of wages and wage growth, a 2018 study by the Economic Policy Institute found it very likely the labor market for wireless retail was already monopsonized at the time of the merger and that the merger was likely to cause a decline in annual earnings for workers of \$520 to \$3,276 in the 50 most-affected markets. The study’s authors argued that “any reduction in wages post-merger likely reflects the monopsony power that the Clayton Act is meant to prevent in its incipiency.”²⁸

The counterfactual is hard to calculate, namely, the growth in retail wireless sales workers’ wages and benefits, but for the merger. As the 2023 Merger Guidelines note, “in many cases, a transaction will not reduce wage levels, but rather slow wage growth.”²⁹ Retail wireless workers at UScellular and T-Mobile, in a series of interviews conducted by CWA, described downward pressure on their take-home pay post-merger. Some have experienced lower wages

²⁵ *Id.* (noting that T-Mobile’s annual regulatory filing showed that the company employed 71,000 people as of the end of 2022, which was “about 9,000 fewer than the approximately 80,000 people the two companies employed when they merged in early 2020,” and even if one factored the roughly 2,000 open positions listed by T-Mobile, that’s about 7,000 fewer jobs).

²⁶ *Id.* quoting CWA.

²⁷ T-Mobile, Form 10-K for the years ending 12/31/19 and 12/31/23; Sprint, Form 10-K for the year ended 12/31/19, <https://www.sec.gov/Archives/edgar/data/101830/000010183019000022/sprintcorp201810-k.htm>.

²⁸ Adil Abdela and Marshall Steinbaum, Economic Policy Institute, “Labor Market Impact of the Proposed Sprint-T-Mobile Merger,” December 17, 2018, <https://www.epi.org/publication/labor-market-impact-of-the-proposed-sprint-t-mobile-merger/>.

²⁹ 2023 Merger Guidelines at 27 n.51.

post-merger. One T-Mobile worker, for example, reported that she was making the same hourly rate *without* the monthly bonuses that T-Mobile had promised for the past two to three years following the T-Mobile/Sprint merger. As a result of this broken promise, this worker reported that she is now making about \$1,000 less each month. While T-Mobile has attempted to compensate for the loss in monthly bonuses through small increases to hourly pay, and a more recent employer-provided bonus, this worker reported that such bonuses are nearly not as much as what retail wireless sales workers used to get. Another T-Mobile worker reported that following the T-Mobile/Sprint merger, the company cut commission from fifty (50) percent to thirty (30) percent. This worker similarly reported that T-Mobile attempted to compensate for this reduction by increasing the hourly wage by fifty (50) cents, but that it did not make up the difference resulting from the commission cut. A third of T-Mobile workers reported a similar wage experience, indicating that the company advertised a four thousand (4,000) dollar commission structure. Yet, that structure never materialized, and the reduced monthly bonuses workers received and hourly increase of fifty (50) cents did not offset the commission cuts. In terms of bonuses, this same worker reported that she used to receive monthly bonuses of three to four thousand (3,000 to 4,000) dollars, and more recently, she has not received a bonus of over two thousand (2,000) dollars.

Moreover, the T-Mobile/Sprint merger degraded job quality, which “encompasses non-pecuniary aspects that workers value, such as working conditions and terms of employment.”³⁰ For example, a T-Mobile call center worker reported that the call volume doubled following the merger, noting the deteriorated working conditions as “hard” and “mentally draining.” This

³⁰ 2023 Merger Guidelines at 27 n.51.

worker further reported that T-Mobile cut multiple departments after the merger, which created staffing shortages, and provided no additional pay to compensate.

These reports on wages and working conditions are not limited to T-Mobile and UScellular workers, as other wireless retail workers reported similar wage cuts and stagnation following the T-Mobile/Sprint merger. In a survey of over ninety Verizon Wireless retail workers in the summer of 2021, ninety-five percent of workers reported their commissions had declined in the previous year, primarily due to changes in commission structure made unilaterally by management.³¹

The cuts and stagnation in wages have prompted some retail wireless workers to quit, but many have remained. This stickiness reflects T-Mobile's significant market power in these local labor markets.³²

ii. T-Mobile can exert significant market power because of, among other things, the significant barriers retail wireless workers face when switching to different occupations

In its review of the T-Mobile/Sprint merger, the Commission was overly optimistic about the ability of workers to migrate to other jobs and did not adequately appreciate the power imbalances and friction in these labor markets.³³ One mistake the Commission made in reviewing T-Mobile's acquisition of Sprint is that it underestimated the magnitude of the barriers for workers to switch to other retail sectors by failing to consider the unique characteristics of many labor markets. Labor markets, as the federal antitrust agencies found, "often exhibit high

³¹ CWA survey of Verizon Wireless retail workers, 2021, on file with CWA.

³² 2023 Merger Guidelines at 27 (assessing the merging firms' "power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, or generally degrade benefits and working conditions without prompting workers to quit").

³³ T-Mobile/Sprint, 34 FCC Rcd at 10723-24.

switching costs.”³⁴ One reason is the “investments specific to a type of job.”³⁵ In the case of wireless retail, these unique factors include the ability to explain wireless technology, knowledge of key features consumers are looking for, and the ability to sell products successfully. These features are unique to the retail wireless occupation; because of this, retail wireless workers often experience job and industry stickiness.

In the series of recent interviews that the CWA conducted, one UScellular worker reported that while the skills obtained are somewhat transferable to other retail jobs, such as car or furniture sales, these jobs have little overlap with retail wireless sales, and thus the transition is not perceived as an easy one. This same worker reported less availability of other types of sales jobs compared to retail wireless and suggested that retail wireless jobs pay more than other entry-level jobs. Another UScellular worker reported industry-specific knowledge of “software integrations to conduct POS sales that integrate with a network.” This same worker indicated that he valued understanding the complex nature of retail financing contracts and the ability to demystify the jargon for customers so that they understand all the risks involved.

The unique features of the labor market for retail wireless sales, coupled with relatively fewer options for other sales occupations depending on the geographic location, and the consolidation among wireless carriers – results in high switching costs for workers and search frictions due to the process of finding, applying, interviewing for, and acclimating to a new job. Thus, the Commission erred in summarily concluding that the four nationwide wireless service providers lacked oligopsony power, “given the multiple retail job opportunities in urban areas.”³⁶

³⁴ 2023 Merger Guidelines at 27.

³⁵ 2023 Merger Guidelines at 27.

³⁶ T-Mobile/Sprint, 34 FCC Rcd at 10723-24.

As the antitrust agencies generally found, and the evidence shows here, “labor markets can be relatively narrow.”³⁷

i. T-Mobile can exert significant market power in labor markets with low concentration levels

As the 2023 Merger Guidelines note, the “level of concentration at which competition concerns arise may be lower in labor markets than in product markets, given the unique features of certain labor markets.”³⁸ Thus, the remaining nationwide wireless service providers need not have “oligopsony power,” as the Commission assumed, to harm workers with anti-competitive practices.³⁹

The Treasury Department’s 2022 Report, *The State of Labor Market Competition*, discussed how firms can exert market power over their workers even if they are not oligopsonies or monopsonies, explaining that market power may be inherent in the firm-worker relationship.⁴⁰ The report described that much of the theory of labor markets and wage setting is premised on the idea that individual workers and firms search for one another, seek and find matches that maximize productivity and wages, and bargain over employment terms. Workers are generally at an informational disadvantage relative to firms, not knowing what other similarly placed workers earn, the competitive wages for their labor, or the existence of workplace problems like discriminatory conduct or unsafe working conditions. Workers also may have limited or no ability to switch locations and occupations quickly and may lack the financial resources to support themselves while they search for jobs that pay more and better match their skills and

³⁷ 2023 Merger Guidelines at 27.

³⁸ 2023 Merger Guidelines at 27.

³⁹ T-Mobile/Sprint, 34 FCC Rcd at 10724.

⁴⁰ U.S. Department of the Treasury, *The State of Labor Market Competition* (March 7, 2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf> [hereinafter “2022 Treasury Report”].

abilities. These conditions can enable firms to exert market power, and consequently offer lower wages and worse working conditions, even in labor markets that are not highly concentrated.⁴¹

ii. The Commission erred as a matter of law in the T-Mobile/Sprint merger when it offset the harm in labor markets to gains to consumer welfare downstream

In its decision in the T-Mobile/Sprint merger, the Commission stated, “Although we acknowledge that some job losses are possible, we find that the potential resulting efficiencies and overall consumer welfare benefits would be likely to outweigh harm to specific employees from the elimination of some jobs.”⁴² If the merger may substantially lessen competition or tend to create a monopsony in any upstream labor market, then it violates the Clayton Act and the FCC’s public interest standard. It is black letter law that the merging parties cannot offset their merger’s harm to workers by purported benefits to downstream consumers.⁴³

A related mistake is that the Commission staff discounted CWA’s analysis because “the analysis primarily focuses on the impact of the transaction on T-Mobile’s and Sprint’s retail employment and does not consider the potential industry-wide or economy-wide employment impact.”⁴⁴ But if a merger harms one class of workers, it is not saved because it may benefit others. Many mergers, for example, might benefit their senior executives and Wall Street

⁴¹ 2022 Treasury Report at i.

⁴² T-Mobile/Sprint, 34 FCC Rcd at 10724.

⁴³ 2023 Merger Guidelines at 27; see also *Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co.*, 334 U.S. 219 (1948); *United States v. Swift & Co.*, 122 F. 529, 534 (C.C.N.D. Ill. 1903), modified, 196 U.S. 375 (1905) (the fact that consumer surplus increased did not excuse the bid-rigging); *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 105 (3d Cir. 2010) (noting that “Highmark’s improperly motivated exercise of monopsony power, like the collusive exercise of oligopsony power by the cheese makers in *Knevelbaard*, was anticompetitive and cannot be defended on the sole ground that it enabled Highmark to set lower premiums on its insurance plans”) (citing *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979 (9th Cir. 2000)). As the Supreme Court noted, an antitrust plaintiff does not have to show that a restraint harms competition in both the buyer-side (or labor) market and the seller-side (or consumer-facing) market. Harm in either market suffices. *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2154, 210 L. Ed. 2d 314 (2021).

⁴⁴ T-Mobile/Sprint ¶ 329 n. 1147.

investment firms, but that does not excuse the harm caused to the firms' many workers.

Commissioner Geoffrey Starks correctly raised this in his dissent to the T-Mobile/Sprint merger:

As the Order states, job losses and gains are relevant to the Commission's assessment of whether a transaction is in the public interest. Notwithstanding the fact that the bulk of the savings realized through this merger will undoubtedly come from consolidating operations and thereby reducing staffing, the Order only grudgingly concedes that "the transaction has 'the potential to lead to store closings'" and that "some job losses are possible" But the record contains evidence that between 20,000 and 30,000 U.S. jobs could be lost as a result of this transaction, the bulk of them in retail, with the remainder in "overhead" positions at the headquarters of T-Mobile and Sprint. While much of our work on this proceeding has focused on abstract issues of competition, I am very concerned about the direct impact that this transaction will have on thousands of workers around the country.⁴⁵

Commissioner Starks' concerns materialized with the reduction of an estimated 21,616 retail wireless workers following that merger.

To avoid the mistakes made in its review of the T-Mobile/Sprint merger, the Commission must consider the aforementioned evidence of anticompetitive effects in the affected labor markets, which reflected T-Mobile's substantial market power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, and generally degrade benefits and working conditions without prompting many workers to quit.

2. The Absence of Collective Bargaining Agreements at the Merging Parties Indicates That These Workers Cannot Offset T-Mobile's Market Power Post-Merger Through Negotiations and Collective Action

Unions are important in promoting competition in labor markets. As the Treasury Department's 2022 report noted, "[o]rdinarily collective action through unionization can provide a counterbalance to employer power."⁴⁶ The Treasury Department also noted that "the decline in

⁴⁵ T-Mobile/Sprint, 34 FCC Rcd at 10748.

⁴⁶ Treasury Report at 46.

union density rates further weakens workers' bargaining power, leaving them with less ability to counterbalance firms' wage setting power."⁴⁷ In assessing a merger's likely competitive effects in labor markets, one first must consider whether the merging parties are unionized. In this case, neither merging party is unionized, providing no means for workers through union bargaining to counterbalance the significant market power that will result should this merger close.

As an illustration, CWA has documented the differences between AT&T Mobility on the one hand and T-Mobile and Verizon Wireless on the other concerning wages, benefits, and rights at work.⁴⁸ Workers at AT&T, through their union contract, are guaranteed pay, benefits, and working conditions. In contrast, for workers at the non-union carriers, management can change working conditions at will. In terms of wages, all matters related to pay for workers at AT&T are defined in their collective bargaining agreement, which guarantees pay increases every six (6) months until one reaches the top of the scale for their respective job title, and every worker for that job title is on the same pay schedule. In contrast, workers at T-Mobile and Verizon Wireless receive raises based on supervisor evaluations, which can differentiate from worker to worker, and such raises can be revoked. In terms of job security, AT&T cannot engage in contracting out of work if it results in layoffs, workers covered by the collective bargaining agreement receive preferential hiring into open positions, and laid-off employees have a right to be recalled to their jobs if their respective position is reactivated. In contrast, non-union workers have no protection against contracting or layoffs.

These comparisons demonstrate a clear power imbalance between employers and workers at T-Mobile. Where collective bargaining exists, CWA has heard from union-represented retail workers at AT&T Mobility that some of the primary reasons workers in this industry switched

⁴⁷ *Id.* at ii.

⁴⁸ See https://cwa-union.org/pages/att_mobility_comparison.

from non-unionized carriers' stores or licensee stores to union stores were better pay, more stable schedules that facilitate family care responsibilities, and the presence of grievance procedures and just cause requirements that protect workers from being fired without cause or progressive discipline. Workers recognized that the absence of collective bargaining power hindered their efforts to counterbalance monopsony power and consequently switched to unionized workplaces when feasible.

Case law and scholarship have increasingly recognized the inherent power imbalance between employers and workers – a common-sense truism that other fields, such as labor and employment policy, understand from addressing real-world scenarios of exploitation. This imbalance in power is recognized in labor law and should also be acknowledged in competition law and practice.⁴⁹ T-Mobile has exerted its disproportionate power to avert the potential for workers to unionize and negotiate collective bargaining agreements, as explained in more detail below. CWA understands that labor markets are far from perfectly competitive and thereby require labor market institutions – including collective bargaining, minimum wage legislation, anti-discrimination legislation, and unemployment insurance – to operate fairly for workers and support broadly shared economic prosperity. Without collective bargaining agreements, the prospects for retail wireless workers at a combined T-Mobile/UScellular to offset its significant power through negotiations and collective action will diminish, thereby increasing the merging parties' market power and risk of further harm to workers.

3. T-Mobile's Past Actions to Prevent Workers from Engaging in Protected Concerted Activity, Achieving Union Recognition, or Negotiating Collective Bargaining Agreements Reflect Its Significant Market Power in Many Labor Markets and Are Contrary to Competition Law

⁴⁹ See 29 U.S.C. § 151, preamble to the National Labor Relations Act.

As explained in detail in CWA's comments submitted to the Commission during its review of the T-Mobile/Sprint merger, T-Mobile's history speaks volumes about its trustworthiness and corporate character.⁵⁰ T-Mobile has won the dubious distinction of being one of the worst labor law violators in the country. Findings of illegal activity by federal courts, the National Labor Relations Board (NLRB), and an Administrative Law Judge include, among other things:

- Maintaining unlawful rules forbidding workers from speaking to each other and others about wages and working conditions (nationwide violation; U.S. Court of Appeals for the 5th Circuit affirmed the Board's order).⁵¹
- Creating, maintaining, dominating, and assisting an internal organization called T-Voice to try to discourage workers from forming, joining, or supporting an independent union (nationwide violation).⁵²
- Refusing to negotiate with CWA over a successor contract for a unit comprising field technicians in Connecticut (the U.S. Court of Appeals for the DC Circuit granted the NLRB's application for enforcement).⁵³
- Surveilling and interrogating employees about union activity, restricting discussions about working conditions over social media, and prohibiting employees from sending union-related emails.⁵⁴
- Unlawfully prohibiting employees from talking about the union during work time.⁵⁵
- Requiring employees, including one who filed a sexual harassment complaint, to sign an unlawful confidentiality notice prohibiting them from discussing information from employer-led investigations with one another and threatening discipline, up to and including discharge, if they engaged in those discussions.⁵⁶

More recently, on January 12, 2024, the United States Court of Appeals for the District of Columbia Circuit granted the NLRB's application for enforcement of its order and held that an

⁵⁰ See Comments of Communications Workers of America, Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of the Licenses and Authorizations, WT Docket No. 18-197, at 67-70 (Aug. 27, 2018).

⁵¹ T-Mobile USA, Inc., 363 NLRB No. 171 (Apr. 29, 2016), *enfd* in relevant part T-Mobile USA, Inc. v. Nat'l Labor Relations Bd., 865 F.3d 265 (5th Cir. 2017).

⁵² T-Mobile USA, Inc., JD-23-17,2017 WL 1230099 (Apr. 3, 2017).

⁵³ T-Mobile USA, Inc., 365 NLRB No. 23 (Feb. 2, 2017), enforcement granted by T-Mobile USA, Inc. v. Nat'l Labor Relations Bd., 717 F. App'x 1 (D.C. Cir. 2018).

⁵⁴ T-Mobile USA, Inc., JD-57-16, 2016 WL 3537770 (June 28, 2016).

⁵⁵ T-Mobile USA, Inc., 365 NLRB No. 15 (Jan. 23, 2017).

⁵⁶ T-Mobile USA, Inc., JD(NY)-34-15, 2015 WL 4624356 (Aug. 3, 2015), adopted by NLRB on Sept. 14, 2015.

employer-sponsored group of T-Mobile call center workers, known as T-Voice, constituted as an unlawful labor organization dominated by the company, and thus, violated the National Labor Relations Act.⁵⁷ In its order, the Board held that T-Mobile violated the NLRA by dominating T-Voice and thus did not statutorily qualify as a “labor organization” as defined by the NLRA; as such, the Board remedially ordered the disestablishment of T-Voice.⁵⁸ T-Mobile’s unlawful conduct arose at a time when CWA had continuously attempted to support call center workers at T-Mobile to organize since 2005. Following the unlawful creation of T-Voice in 2015, CWA filed an unfair labor practice charge with the Board in 2016 challenging T-Voice’s existence. CWA’s charge resulted in protracted litigation and ultimately made its way to the D.C. Circuit Court in 2021, resulting in the 2024 decision.⁵⁹ The D.C. Circuit upheld the Board’s decision on all grounds, finding T-Mobile’s arguments unpersuasive or lacking merit, and notably sustained the Board’s remedial order.⁶⁰

Thus, T-Mobile has exercised its market power to contravene the policy of the United States with respect to labor markets: namely, by discouraging “the practice and procedure of collective bargaining” and preventing workers from exercising their “full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”⁶¹

T-Mobile’s anti-union efforts reflect its significant market power in many labor markets and are contrary to competition law. The United States agrees with this concept, as it recently submitted a Statement of Interest in a case where a dominant hospital allegedly worked to

⁵⁷ T-Mobile USA, Inc., v. NLRB, 90 F.4th 564 (D.C. Cir. 2024).

⁵⁸ T-Mobile USA, Inc. & CWA, AFL-CIO (“T-Mobile II”), 372 N.L.R.B. No. 4 (Nov. 18, 2022); Section 8(a)(2) of the NLRA makes it an unfair labor practice for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” 29 U.S.C. § 158(a)(2).

⁵⁹ See CWA v. NLRB, 994 F.3d 653, 452 U.S. App. D.C. 38 (D.C. Cir. 2021).

⁶⁰ T-Mobile USA, Inc., v. NLRB, 90 F.4th 564 (D.C. Cir. 2024).

⁶¹ 29 U.S.C. § 151.

“suppress and stifle efforts” of its workers “to collectively organize,” which “hamper[ed] the ability of employees to negotiate salary increases or improve working conditions.”⁶² As the United States informed the court, the “anti-unionization tactics by a monopsonist arguably limit unionized rivals’ ability ‘to compete profitably,’” by lowering the monopsony’s “costs relative to the rival’s.”⁶³ Accordingly, the United States instructed the court to consider these anti-unionization acts as part of the defendant’s alleged overarching anticompetitive scheme to monopsonize the relevant labor market.

In this case, T-Mobile’s anti-unionization efforts, coupled with its power to cut or freeze wages, slow wage growth, exercise increased leverage in negotiations with workers, and generally degrade benefits and working conditions without prompting many workers to quit, reflect its significant market power in many local labor markets for retail wireless workers.

4. Anticompetitive Fissuring Has Further Weakened Workers’ Bargaining Power, Reduced Their Wages (Through, Among Other Things, Wage Theft), And Degraded Workplace Conditions

Besides anti-union tactics, another important factor in assessing the health of competition in labor markets is workplace fissuring. Firms can increase their leverage over workers and their market power by outsourcing significant portions of their business operations. Wireless carriers have employed this approach, outsourcing a significant share of their retail, call center, and technician workforce.⁶⁴

The 2022 Treasury Department report on labor market competition explained that “[f]issuring reduces the power of collective action by removing the immediate nexus between

⁶² Statement of Interest at 6.

⁶³ Statement of Interest at 20.

⁶⁴ Communications Workers of America. Comment submitted to FTC-DOJ workshop titled “Making Competition Work: Promoting Competition in Labor Markets.” December 2021.

workers and the firm for which they perform services,” and thus, “workers are prevented from bargaining directly with the entity that has the economic power.” The report cites Kaplan and Dube (2010), who found that “contracting reduces union power because contracted workers can be permanently replaced by a switch in the contractor of record, even if they are unionized.”⁶⁵

In recent years, workplace fissuring has continued apace in the wireless retail sector through wireless carriers’ practice of outsourcing their branded retail stores to third-party authorized retailer licensees. For example, AT&T escalated its use of authorized retailers—from 61 percent of stores in January 2018 to 73 percent in March 2023—which resulted in a loss of 10,000 union-represented jobs.

Workplace fissuring disempowers retail wireless workers. In a 2023 survey that CWA conducted with the National Employment Law Project of more than 200 wireless retail licensee workers, we explored how workplace fissuring had detrimental impacts on workers and consumers, including unstable and suppressed wages, wage theft, inadequate training, retaliatory work environments, fraudulent sales practices, unpredictable schedules, and poor customer service.⁶⁶

Among the workers surveyed, nearly three quarters earned less than \$16 per hour in base pay, and about 80 percent reported worrying about meeting basic financial responsibilities (for example, paying for their mortgage, rent, groceries) because of receiving less than their expected levels of bonuses, incentive payments, or commission. More than 90 percent of licensee retail workers surveyed reported that an employer had stolen wages from them in at least one of four ways—paid them below the minimum wage rate, denied them overtime premiums, denied them

⁶⁵ Treasury Report at 11.

⁶⁶ CWA, *New Report: Over 90% of ‘Authorized Retail’ Workers at Leading Telecom Carriers Report Wage Theft; Nearly Three Quarters Make Less Than \$16 an Hour* (February 7, 2023), <https://cwa-union.org/news/releases/new-report-over-90-authorized-retail-workers-leading-telecom-carriers-report-wage>.

due commissions or bonuses or incentive payments, or required them to work off the clock. Eighty percent of workers surveyed reported that their hours or workdays changed from one week to the next. More than half of licensee retail workers surveyed reported that they did not receive the training they needed to do their jobs effectively.

Workers reported major obstacles to voicing their concerns and improving their working conditions. More than half (108 of 204) of authorized retail workers surveyed reported that they had experienced negative treatment from their employer for raising workplace issues. A worker at a T-Mobile authorized retailer in Oklahoma reported that her employment was imperiled when she raised concerns about cutbacks to her hours following a raise in her pay rate. “Since my hourly pay rate was raised, I have lost hours on my schedule. When I raised this issue to my boss, he threatened to fire me.”

UScellular has a higher degree of fissuring in its retail operations than T-Mobile – licensees operate 68 percent of UScellular branded stores compared to 53 percent for T-Mobile. As described below in relation to litigation by MetroPCS licensees over their treatment following the T-Mobile/Sprint merger, licensee stores are particularly easy for a carrier to jettison in its efforts to achieve merger synergies. Therefore, workers in UScellular’s licensee stores are particularly vulnerable to losing their jobs.

5. Workers at T-Mobile and UScellular Fear This Merger Will Further Weaken Their Bargaining Power

In their interviews with CWA, retail wireless workers have expressed concern that this merger will further increase T-Mobile’s power to reduce job security and generally degrade working conditions. These interviews also suggest that UScellular is depressing wages in anticipation of the merger. Workers have experienced a significant reduction in take-home pay

since the company reduced workers' commissions in the spring of 2023.⁶⁷ Workers whom CWA interviewed reported a decrease in monthly take-home pay between five hundred (500) dollars and two thousand (2,000), depending on their sales performance. The workers viewed these cuts as potentially making UScellular more attractive as a merger target.

Retail wireless workers at UScellular and T-Mobile told CWA that they fear the proposed merger will result in job cuts. One UScellular retail worker said, "Prevailing sentiment is we will be out of a job." The same worker said the proposed merger "comes at [the] expense of workers and consumers. Our midwestern area goes down to two companies, a dual monopoly to set prices where they want to, jack[ing] the prices up on the consumers, and consumers have no recourse."

Because of earlier mergers, T-Mobile has amassed significant power in labor markets. In acquiring one of its few remaining rivals, T-Mobile will have even greater power in the local markets where it competes with UScellular to attract and retain retail cellular workers.

B. Besides the Direct Evidence of T-Mobile's Market Power, the Circumstantial Evidence Also Raises Concern That This Merger May Substantially Lessen the Remaining Head-To-Head Competition in Local Labor Markets

As CWA showed in comments submitted to the Commission during its review of the T-Mobile/Sprint merger, the wireless market was already highly concentrated before that merger, with a Herfindahl-Hirschman index (HHI) of 2,811, which was predicted to increase to 3,243 because of this merger.⁶⁸ This concentration was also reflected in labor markets. As described above, a study by the Economic Policy Institute analyzed the situation of wireless retail workers

⁶⁷ This commission cut was described by workers CWA interviewed and in discussion forums online, e.g.: https://www.reddit.com/r/UScellular/comments/13hb4pp/commission_structure_changes/.

⁶⁸ Goldman, Debbie, Allen Grunes, and Maurice E. Stucke. 2018. "Comments of Communications Workers of America Before the Federal Communications Commission, in the Matter of Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations, WT Docket No. 18-197." Public Comment, August 27, 2018.

in the context of the T-Mobile/Sprint merger and found it very likely their labor market was already monopsonized, leaving workers with little bargaining power.⁶⁹

The proposed takeover of UScellular by T-Mobile would further increase retail store concentration in cities and rural areas where UScellular operates. CWA conducted a simple market share analysis of postpaid wireless retail store outlets to develop a preliminary assessment of the impact of the proposed merger on retail workers and the public. Our analysis includes all corporate and licensee stores for the four major facilities-based carriers.⁷⁰

Through a state-level analysis and a deeper dive into Dane County, Wisconsin, it is clear that the combined market share of T-Mobile and UScellular would significantly increase concentration in many of the states where UScellular is present, with the largest increases in Maine, Oklahoma, Wisconsin, and West Virginia. Of the 18 states where UScellular is present, only three would see an HHI change for retail outlets of less than 100. Therefore, even if the geographic market were broadly defined at the state level, given these HHIs, the merger is presumptively illegal under the 2023 Merger Guidelines.⁷¹ Thus, the Commission should conduct a more granular market-level analysis to assess the merger’s potential impact on wireless retail store workers.

Table 2: State-level analysis of wireless retail store market share

State	USM	T	VZ	TMUS	Pre-Merger HHI	Post-Merger HHI	Change in HHI
CA	0.70%	31.20%	29.00%	39.10%	3343.74	3387.42	43.68
IA	37.10%	8.80%	33.70%	20.40%	3005.7	3658.66	652.96
IL	4.70%	25.90%	33.30%	36.10%	3105	3348.46	243.46
KS	8.40%	21.70%	38.00%	31.90%	3003.06	3367.62	364.56
MD	1.60%	25.60%	34.00%	38.80%	3319.36	3401.28	81.92

⁶⁹ Adil Abdela and Marshall Steinbaum, Economic Policy Institute, “Labor Market Impact of the Proposed Sprint-T-Mobile Merger,” December 17, 2018, <https://www.epi.org/publication/labor-market-impact-of-the-proposed-sprint-t-mobile-merger/>.

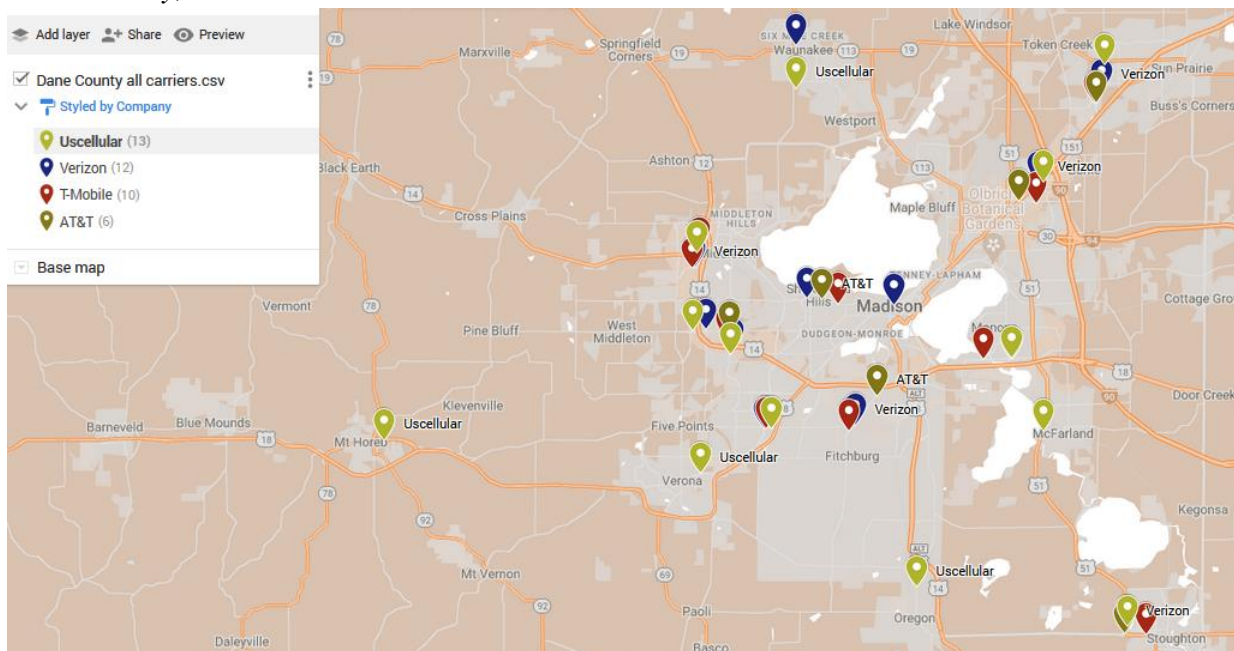
⁷⁰ We exclude big box retailers that act as resellers but do not offer all the capabilities of a wireless specialist store.

⁷¹ 2023 Merger Guidelines at 6.

ME	39.00%	18.10%	25.70%	17.10%	2801.51	4213.31	1411.8
MO	8.50%	32.50%	27.00%	32.00%	2881.5	3434	552.5
NC	11.20%	25.10%	33.90%	29.80%	2792.7	3354.94	562.24
NE	17.30%	14.20%	48.00%	20.50%	3225.18	3716.5	491.32
NH	12.90%	18.10%	46.60%	22.40%	3167.34	3634.32	466.98
OK	16.00%	33.20%	19.20%	31.60%	2725.44	3787.84	1062.4
OR	10.70%	25.20%	34.00%	30.20%	2817.57	3356.85	539.28
TN	6.60%	29.70%	35.20%	28.60%	2982.65	3374.69	392.04
TX	0.20%	38.10%	24.40%	37.40%	3445.77	3461.01	15.24
VA	4.80%	20.70%	38.60%	35.90%	3230.3	3429.02	198.72
VT	3.00%	42.40%	45.50%	9.10%	3959.82	4214.22	254.4
WA	4.70%	25.50%	32.80%	37.00%	3117.18	3356.88	239.7
WI	27.80%	17.60%	32.40%	22.20%	2625.2	3603.76	978.56
WV	14.00%	29.40%	19.10%	37.50%	2831.42	3654.62	823.2

For example, a visual inspection of wireless retail locations in Dane County, Wisconsin shows the extensive overlap between store locations. Based on their experience observing the fall-out from the T-Mobile/Sprint merger, workers expect T-Mobile to close UScellular stores where there is overlap between the two today.

Dane County, WI store locations



The proposed merger will eliminate the remaining head-to-head competition between T-Mobile and UScellular for workers, worsening the existing market power wireless carriers can exert over workers. Given that the concentration metrics alone are significantly higher than the 2023 Merger Guidelines' 1800-point threshold and the merger in many labor markets will increase the HHI by more than 100 points, the presumption of anticompetitive effects increases, and the stronger the evidence that the merging parties will need to rebut this strong presumption of anticompetitive harm.⁷²

IV. COMPETITIVE ANALYSIS OF MERGER'S HARM IN MANY DOWNSTREAM CONSUMER WIRELESS MARKETS

The proposed merger of T-Mobile and UScellular raises serious competitive concerns for retail wireless consumers. The transaction would significantly increase concentration in numerous local geographic markets using the Herfindahl–Hirschman Index (HHI). NewStreet Research's analysis of local-level HHI found an increase of 625 (from 2,483 to 3,108) with cable excluded from the analysis and an increase of 386 (1,992 to 2,378) with cable included.⁷³ The 625 increase would be higher than the 548 increase in the national HHI after the T-Mobile/Sprint merger.⁷⁴

A. Trend Toward Concentration

The wireless marketplace in the United States has been highly concentrated for over twenty years. The six major national wireless networks that operated in 2001 were reduced to four in 2005 with the merger of Cingular and AT&T Wireless, as well as Sprint and Nextel. The US wireless marketplace faced further consolidation with the merger of T-Mobile and Sprint in

⁷² 2023 Merger Guidelines at 6.

⁷³ Jonathan Chaplin, "Regulatory risk for T-Mobile's acquisition of USM", NewsStreet Research (May 31, 2024), <https://www.newstreetresearch.com/research/regulatory-risk-for-t-mobiles-acquisition-of-usm/>.

⁷⁴ *Id.*

2020. According to FCC’s 2022 Communications Marketplace Report, in 2017, before the announcement of the T-Mobile/Sprint merger, the weighted average HHI (weighted by population across the 172 EAs in the United States) for mobile wireless services was 3,106, which increased to 3,596 at the end of 2021.⁷⁵

Thus, where, as here, an industry has gone from having many competitors to become concentrated, the merger “may suggest greater risk of harm, for example, because new entry may be less likely to replace or offset the lessening of competition the merger may cause.”⁷⁶ Given the high HHIs post-merger (both in the downstream and upstream markets), this merger is presumptively anticompetitive under the 2023 Merger Guidelines. Moreover, in the context of this trend toward concentration, the Commission, like the antitrust agencies, should identify an even “stronger presumption of harm from undue concentration” and “a greater risk of substantially lessening competition” when the merger eliminates competition between the merging parties.⁷⁷

B. Anticompetitive Effects of this Trend Toward Concentration

The Sprint/T-Mobile merger harmed not only workers but also consumers. The Bureau of Labor Statistics reported a continuous decline in wireless telephone prices for all urban users between December 1997 (\$100 per month) and April 2020 (\$43.34).⁷⁸ T-Mobile and Sprint promised to hold off on raising prices for three years if they were allowed to merge.⁷⁹ But as then Commissioner Jessica Rosenworcel aptly observed in her dissent at that time: “Even if the merged company keeps its promise, keeping rates constant is not an especially good deal for

⁷⁵ 2022 FCC Communications Marketplace Report at 60-61, <https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf>.

⁷⁶ 2023 Merger Guidelines at 22.

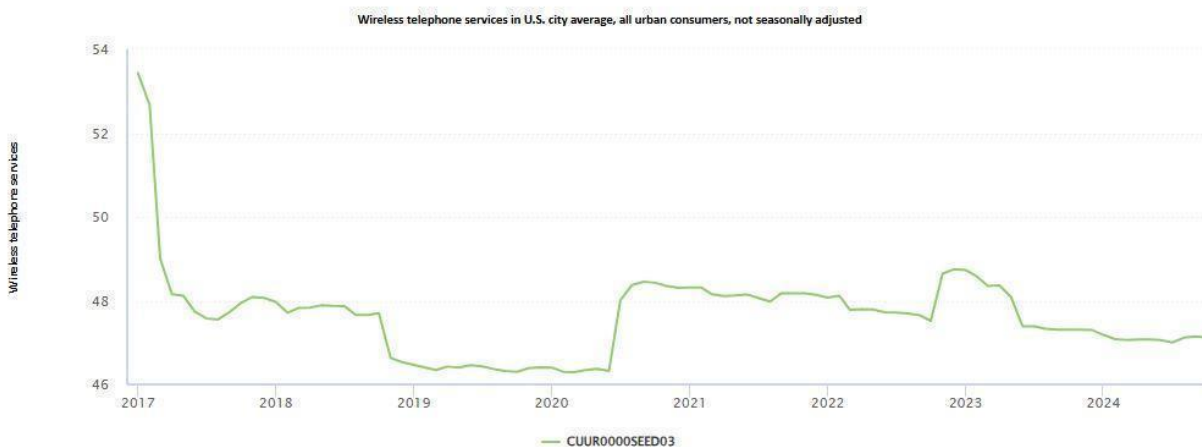
⁷⁷ 2023 Merger Guidelines at 22.

⁷⁸ U.S. Bureau of Labor Statistics, CPI for All Urban Consumers (CPI-U), <https://data.bls.gov/>.

⁷⁹ T-Mobile/Sprint, 34 FCC Rcd at 10748.

consumers when wireless prices have been falling.” Rosenworcel pointed to government data showing a 27 percent decline in wireless prices and an even greater decline in price per megabyte of 72 to 83 percent, suggesting that “a price freeze meant to temporarily mask upward pricing pressure caused by industry consolidation isn't an especially good deal for consumers.”⁸⁰

But after the FCC and DOJ signed off on this deal with the misguided hope that their behavioral remedies would maintain competition with the help of a brand new fourth competitor, and after the states lost their antitrust challenge to the T-Mobile/Sprint Merger in early 2020, the price for wireless services *increased* for the first time since 2009, by a small, but significant amount (2% in 2020 and 1.7% in 2021), and wireless prices have not reached the pricing levels before the merger.⁸¹



Source: US Bureau of Labor Statistics: Wireless telephone services in U.S. city average, all urban consumers, not seasonally adjusted.

As FCC Chair Rosenworcel presciently observed in her dissent, “The T-Mobile/Sprint merger will end a golden age in wireless that helped bring to market lower prices and more

⁸⁰ T-Mobile/Sprint, 34 FCC Rcd at 10748.

⁸¹ U.S. Bureau of Labor Statistics, CPI for All Urban Consumers (CPI-U), <https://data.bls.gov/>. See also 2022 Communications Marketplace Report, at 83 (released December 30, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf>.

innovative services. It will mean an end to the competitive rivalry that reduced prices by 28 percent during the last decade.”⁸²

Consequently, the wireless market is already highly concentrated for consumers and workers. Neither consumers nor workers benefited from the purported efficiencies of the T-Mobile/Sprint merger. Thus, given this evidence of anticompetitive effects, the FCC should be especially wary of further concentration in the affected markets by the instant merger.

The DOJ remedies in the T-Mobile/Sprint merger included selling Boost and Sprint’s other prepaid brands to DISH and providing seven-year access to T-Mobile’s network to facilitate the creation of a new fourth national wireless network.⁸³ The possibility of a DISH failure would result in further consolidation of the wireless market. DISH’s corporate parent, Echostar, faces an uncertain future following a failed effort to merge its satellite television business with DirecTV. DISH reported ending 2020 with 9.06 million wireless subscribers, which decreased to 8.55 million in 2021, 7.98 million in 2022, 7.73 million in 2023, and 7.2 million as of June 30, 2024.⁸⁴ The failure of DISH to thus far emerge as a viable competitor following the T-Mobile/Sprint merger illustrates the limits of court-imposed conditions to create a viable competitor and the unreliability of merging parties’ promises.

Retail wireless workers interviewed by CWA also raised concerns about a lack of alternatives for customers if T-Mobile acquires UScellular. Workers in Wisconsin, for example, pointed out that AT&T does not have very good coverage in their area. Therefore, customers will only have two viable options after the merger: T-Mobile or Verizon.

⁸² T-Mobile/Sprint, 34 FCC Rcd at 107487.

⁸³ Margerite Reardon, *How Dish Network saved the T-Mobile Sprint merger*, CNET (April 5, 2020), <https://www.cnet.com/tech/mobile/how-dish-network-saved-the-t-mobile-sprint-merger/>.

⁸⁴ DISH’s 10k filings with the SEC, available at <https://ir.echostar.com/financial-information/sec-filings-dish>.

IV. APPLICANTS' CLAIMED EFFICIENCIES AND BENEFITS SHOULD BE MET WITH SKEPTICISM BASED ON T-MOBILE'S TRACK RECORD

In their Public Interest Statement, the Applicants note that the merger will result in better network experience and improved service for rural customers, lower prices for UScellular customers, expansion of T-Mobile's Home Internet Service to rural areas, seamless customer migration, increased competition, and no competitive harm.⁸⁵

First, even if T-Mobile's claimed benefits are born out, the merger remains contrary to the public interest as any purported downstream efficiencies cannot offset the harm to workers upstream. If the merger may substantially lessen competition or tend to create a monopoly in upstream labor markets, then it violates the Clayton Act and the FCC's public interest standard. The merging parties cannot offset their merger's harm to one set of workers by benefits to downstream consumers or other distinct groups of workers.⁸⁶

Second, any purported efficiency claims by T-Mobile should be greeted with skepticism, given its failure to deliver the promised efficiencies to workers and consumers after it acquired Sprint.

A. T-Mobile Deceived the CPUC About Its CDMA/3G Shutdown Plans

T-Mobile has a history of failing to comply with binding promises. The California Public Utilities Commission (CPUC) found that T-Mobile had deceived the CPUC by falsely promising under oath during evidentiary hearings, in written testimony, and in a subsequent briefing that T-Mobile would make its CDMA network available to Boost Mobile customers during a three-year

⁸⁵ Description of Transaction, Public Interest Statement, and Related Demonstrations at ii-v, In the Matter of Applications of T-Mobile US, Inc. and United States Cellular Corporation For Consent To Transfer Control of Licenses and Authorizations, GN Docket No. 24-286 (September 13, 2024).

⁸⁶ 2023 Merger Guidelines at 27.

customer migration period from 2020 until 2023.⁸⁷ T-Mobile’s premature sunset of its CDMA network resulted in further operational challenges for DISH and forced it to switch to AT&T as its MVNO in July 2021.⁸⁸

B. T-Mobile’s Unfair Treatment of Sprint and Metro Dealers Shows Unchecked Market Power

Shortly after the close of the Sprint merger, T-Mobile terminated its relationship with many third-party wireless dealers (who operate as licensees), including hundreds of nonexclusive dealers; eliminated certain dealer compensation; and required all “Metro by T-Mobile” dealers to purchase accessories from one T-Mobile selected vendor.⁸⁹ A Metro Dealers Unity Group online petition against these changes generated over 2,400 signatures.⁹⁰ Sprint dealers filed several lawsuits in four states for “unlawful,” “anti-competitive,” and “predatory conduct,” of which two are still active, including a federal class action by 15 small businesses filed in the Eastern District of New York, and a New York state lawsuit filed by five small businesses in Nassau County, New York.⁹¹ Thus T-Mobile used its market power to exert control over licensees, causing

⁸⁷ See In the Matter of Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a), Order Denying Rehearing of Decision 22-11-005, California Public Utilities Commission, Application 18-07-011 (Date of Issuance, June 9, 2023), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M511/K125/511125927.PDF>.

⁸⁸ Dade Hayes, *Dish Network Agrees To Pay AT&T \$5B In 10-Year Wireless Services Deal*, Deadline (July 19, 2021), <https://deadline.com/2021/07/att-dish-network-team-for-5-billion-wireless-deal-1234795564/>.

⁸⁹ Joe Paonessa, “Metro By-T-Mobile Ends Relationships With All Non-Exclusive Stores, Online Sales Have Returned,” Best MVNO, April 6, 2020, <https://bestmvno.com/metropcs/metro-by-t-mobile-terminates-non-exclusive-dealers-online-sales/>; Monica Allevan, “Metro by T-Mobile dealer concerns ‘not going away,’” Fierce Telecom, October 5, 2020, <https://www.fiercewireless.com/operators/metro-by-t-mobile-dealer-concerns-not-going-away>; @metropcscommunity March 1, 2020. https://twitter.com/metro_community/status/149874308943479194.

⁹⁰ Change.org petition, “Protect the Prepaid Industry- stop T-Mobile from making negative changes to Metro Dealers,” <https://www.change.org/p/department-of-justice-stop-t-mobile-from-making-negative-impacts-to-metro-by-t-mobile-dealer-stores>.

⁹¹ Digital Land Wireless, Inc. et al v. Arch Telecom Inc. et al, E.D.N.Y., Case No. 23-1582; 170 East 116 Street Inc. et al v. T-Mobile USA, Inc. et al. (Sup. Ct. of NY for Nassau County); See also Monica Allevan, *Former Sprint wireless dealers file suit against T-Mobile*, Fierce Wireless, February 23, 2022, <https://www.fiercewireless.com/wireless/former-sprint-dealers-file-suit-against-t-mobile>. See

financial hardship to a number of small businesses.

C. The Proposed Merger May Negatively Impact Roaming and Tower Lease Agreements with Small Rural Carriers

Due to the valuable spectrum assets and thousands of towers owned by UScellular, it has become a major regional reseller of wireless services to other rural wireless carriers and MVNOs through competitive roaming agreements. The proposed merger could upend these established relationships and destabilize the remaining and struggling small carriers if T-Mobile fails to offer comparable roaming agreements, refuses to enter into reciprocal roaming agreements that would allow its own customers to roam on small carriers' network, and decommissions UScellular's rural cell sites.

Given T-Mobile's broken promises to DISH and its own retail licensees, the Commission should not place weight on any voluntary commitments T-Mobile may offer. Further, the parties' failure to proactively make commitments to deal fairly with rural carriers could lead to harm to rural customers and undermine claimed efficiencies in network operations.

V. CONCLUSION

The Commission should not approve the transaction without clear and enforceable commitments by the Applicants to protect retail wireless workers generally and in the affected local markets where T-Mobile and UScellular operate. Further, the Commission should take seriously the concerns of rural wireless carriers, which play an important role in the connectivity ecosystem and currently rely on roaming agreements with UScellular.

Promoting competition in labor markets does not fall on one agency. America has a market power problem in many markets. Addressing this market power problem, contrary to the Commission's assumption in T-Mobile/Sprint, does not primarily fall on the state agencies, the

NLRB, and the EEOC. The NLRB and DOJ’s Antitrust Division, for example, announced in 2022 their collaboration, which focuses “on protecting workers who have been harmed or may be at risk of being harmed as a result of conduct designed to evade legal obligation and accountability (such as misclassifying employees or fissuring workplaces); interference with the rights of workers to obtain fair market compensation and collectively bargain (through labor market concentration/labor monopsony or other anticompetitive practices); and the imposition of restrictive agreements or workplace rules, such as noncompete, nonsolicitation, mandatory arbitration, and nondisclosure provisions.”⁹²

Given the anti-competitive practices in many retail wireless labor markets after the T-Mobile/Sprint merger, the FCC cannot conclude, as it did in 2019, that the labor markets for wireless retail outlets are robustly competitive “given the multiple retail job opportunities in urban areas.” If that were true, then T-Mobile could not inflict the harm it caused to retail wireless workers after acquiring Sprint. Given the direct evidence of T-Mobile’s market power in the labor markets for retail wireless store employees and the justified concerns of wireless workers about this particular transaction, the FCC should require more from T-Mobile than promises.

Accordingly, the Commission should require the Applicants to:

- a. Ensure that the transaction does not cause a reduction in U.S. employment and that no employee of T-Mobile or UScellular loses a job because of this transaction.
- b. Commit to complete neutrality in allowing employees to form a union of their choosing, free from any interference by the employer.
- c. Commit to no degradation of pay/benefits for five years post-merger.

⁹² NLRB, “National Labor Relations Board and Department of Justice Announce New Partnership to Protect Workers,” <https://www.nlr.gov/news-outreach/news-story/national-labor-relations-board-and-department-of-justice-announce-new#:~:text=The%20Agencies'%20collaboration%20will%20focus,workers%20to%20obtain%20fair%20market> (July 26, 2024).

- d. Commit to additional measures to protect competition in labor markets, including:
- i. *Mandatory arbitration agreements should be voidable at the employee's election.* Besides depressing wages and benefits, employers with market power can degrade work conditions and raise employees' costs of enforcing their rights under labor law. The Commission should require that any mandatory arbitration agreements that the merging parties require their workers to sign, including waivers of joint, class, or collective action or mandatory arbitration clauses, are voidable at the employee's election.
 - ii. *Prohibit the implementation and enforcement of existing non-compete agreements on non-senior executive employees.* As the FTC's recent rule reflects, employee non-competes are generally anticompetitive. The Commission should prohibit the enforcement of any non-competes on non-senior executive employees, including workers in the merging parties' wireless retail stores.
- e. Commit to extending other rural carriers' roaming agreements with UScellular under the same terms.

Respectfully submitted,

/S/ Nell Geiser

Nell Geiser, Director of Research
Communications Workers of America
501 3rd St NW
Washington, DC 20001
ngeiser@cwa-union.org

Dated: December 9, 2024