

Docket No.: A.18-07-011 and A.18-07-012

Exhibit No.: _____

Hearing Date: _____

Witness: Timothy F. Bresnahan

ALJ: Karl Bemederfer

Commissioner: Clifford Rechtschaffen

SUPPLEMENTAL TESTIMONY OF TIMOTHY F. BRESNAHAN

ON BEHALF OF JOINT APPLICANTS

November 7, 2019

SUPPLEMENTAL TESTIMONY

TABLE OF CONTENTS

I. WITNESS IDENTIFICATION..... 1

II. PURPOSE OF SUPPLEMENTAL TESTIMONY 1

**III. AMENDED SCOPING RULING – QUESTION NO. 1: CHANGES TO REBUTTAL
TESTIMONY..... 3**

**IV. AMENDED SCOPING RULING – QUESTIONS NO. 2-8: NO FURTHER
CHANGES 5**

V. CONCLUSION..... 6

1 **I. WITNESS IDENTIFICATION**

2

3 **Q. Please state your name and position.**

4 **A.** My name is Timothy F. Bresnahan. I am the Landau Professor in Technology and the
5 Economy in the Department of Economics at Stanford University.

6

7 **Q. Please describe your professional qualifications and experience.**

8 **A.** My professional qualifications and experience are extensively described in my written Rebuttal
9 Testimony submitted in these proceedings on January 29, 2019.¹

10

11 **Q. What other testimony have you previously provided in these proceedings?**

12 **A.** In addition to my earlier written testimony, I provided live testimony during a hearing in these
13 proceedings on February 7, 2019.

14

15 **II. PURPOSE OF SUPPLEMENTAL TESTIMONY**

16

17 **Q: What is the purpose of your Supplemental Testimony?**

18 **A.** The purpose of my Supplemental Testimony is to respond to the Assigned Commissioner's
19 Amended Scoping Ruling dated October 24, 2019.

20

21 **Q. Can you please give a high level overview of your earlier testimony?**

22 **A.** My earlier testimony, responding to the testimony of Dr. Selwyn,² analyzed the competitive
23 effects and the procompetitive benefits of the proposed merger between T-Mobile and Sprint. My
24 conclusions were, and remain, based on real-life data showing how consumers actually use their mobile
25 phones.³ This rich data set allowed me to measure at a granular level how individual customers' choice
26 of carrier reflects the value they place on network quality and showed that consumers of all types

¹ Hearing Ex. Jt Appl. 6-C at 1:6-2:3.

² Hearing Ex. Pub. Adv-002C.

³ Hearing Ex. Jt Appl. 6-C at Attachment A ("ABH White Paper") ¶ 2.

1 significantly value network quality.⁴ I further explained that network quality improvements resulting
2 from this transaction will allow consumers of all carriers (not just current customers of Sprint and T-
3 Mobile) to benefit from more robust competition provided by the New T-Mobile, improving quality
4 and declining prices.⁵ Accordingly, I concluded that the transaction is pro-consumer and
5 procompetitive.

6

7 **Q. Can you please summarize your Supplemental Testimony?**

8 **A.** I am aware that, subsequent to my earlier testimony, T-Mobile and Sprint entered into a
9 Stipulation and Order with the DOJ and also agreed to certain commitments to the FCC in connection
10 with their approval of the underlying merger. I will refer to these developments as the DOJ and FCC
11 Commitments, respectively.⁶ These developments do not change any of the conclusions in my earlier
12 testimony. I continue to believe that the transaction will benefit consumers, including low income
13 consumers. It is my opinion that these new developments are likely to further increase the tendency of
14 the transaction to expand output and enhance consumer welfare and thus further strengthen the
15 procompetitive benefits of this transaction.

16

17 **Q: Was this Supplemental Testimony prepared by you or under your direction and are the**
18 **responses you have provided true and correct and complete to the best of your knowledge?**

19 **A.** Yes, this Supplemental Testimony was prepared by me and under my direction and the
20 responses I have provided are true and correct and complete to the best of my knowledge. I have
21 attached a declaration to that affect to confirm the same. See Attachment A.

22

⁴ *Id.* at 12:1-13:17; 17:3-10.

⁵ *Id.* at 4:2-5:20; 17:11-23.

⁶ The FCC Commitments are set forth in an ex parte filed with the Federal Communications Commission (“FCC”) on May 20, 2019 in connection with that agency’s review of the Transaction (the “FCC Commitments”). The DOJ Commitments are set forth in the Proposed Final Judgment (“PFJ”) and the Stipulation & Order filed by the U.S. Department of Justice in the U.S. District Court for the District of Columbia on July 26, 2019 (the “DOJ Commitments”). The Asset Purchase Agreement among T-Mobile, Sprint Corporation and Dish Network Corporation (“DISH”) dated July 26, 2019 (the “Asset Purchase Agreement”) also sets forth various contractual terms among the parties regarding the divestiture of the Sprint prepaid assets to DISH. I understand that each of these documents has been filed in the record of this proceeding, and I am incorporating each of them by reference herein.

1 **III. AMENDED SCOPING RULING – QUESTION NO. 1: CHANGES TO REBUTTAL**
2 **TESTIMONY**

3
4 **Q: The first question identified in the Amended Scoping Ruling is “What changes are**
5 **required to previously submitted written or oral witness testimony resulting from Sprint, T-**
6 **Mobile or Dish Network entering into the DOJ and FCC Commitments?” Can you please**
7 **respond and direct our attention to those changes, if any?**

8 **A:** Yes. There are no changes required to my prior testimony as a result of the DOJ or FCC
9 Commitments. That testimony remains accurate and consistent with my conclusions presented here. I
10 stand by all the testimony I submitted in this proceeding.

11

12 **Q. Could you elaborate?**

13 **A.** Yes. First, let me provide you with my understanding of the DOJ and FCC Commitments. At
14 a high level, my understanding is that the U.S. Department of Justice has approved the proposed
15 merger conditioned on the divestiture of certain assets, including the Boost and Virgin product lines, to
16 DISH Network (“DISH”), along with a seven-year commitment to carry DISH’s traffic on the New T-
17 Mobile’s network at favorable prices and service quality terms. The seven year commitment to provide
18 DISH with service will allow DISH to serve its wireless customers immediately upon the close of its
19 acquisition of Boost and Virgin while DISH builds out its network.⁷ I further understand that the
20 parties have committed to the FCC that New T-Mobile will meet specific 5G network build targets,
21 including those requiring coverage in rural areas, and will offer a mobile broadband product in
22 competition with fixed line broadband to 90% of Americans.⁸ Please note that I do not intend this to be
23 an exhaustive recitation of all of the commitments.

24

25 **Q. What is your experience evaluating remedies in merger cases?**

26 **A.** I have considerable knowledge of and experience evaluating divestiture remedies in merger
27 cases as well as commitments made as part of the merger approval process. Understanding the guiding

⁷ See Amended Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032 (“Amended Wireless Notification”) (September 19, 2019), Exhibit P (PFJ).

⁸ See *id.*, Exhibit S (FCC Commitments).

1 economic principles for such commitments to be successful is an important part of merger analysis, and
2 my years of experience in research, teaching and consulting as an industrial organization economist
3 have given me a thorough grounding in these areas.

4 The Antitrust Division of the U.S. Department of Justice (the “Antitrust
5 Division”) sometimes requires divestitures as a condition for its approval of a merger.
6 The Antitrust Division may also require other commitments or rules as part of a merger
7 or other antitrust investigation. Typically, these divestiture and other commitments are
8 embedded in a “consent decree” entered by a court. As Deputy Assistant Attorney
9 General and Chief Economist of the Antitrust Division, I reviewed proposed
10 divestitures in a number of merger cases, reviewed proposed commitments in a number
11 of different kinds of cases, and also participated in the Antitrust Division’s review of all
12 outstanding consent decrees from past mergers. That experience, plus my years of
13 research, teaching, and consulting as an industrial organization economist, has given
14 me a thorough understanding of the economic principles guiding divestitures and
15 commitments that are likely to increase competition in an industry.

16 I understand that the parties, the Antitrust Division, and a number of States have
17 entered into a consent decree requiring among other things, the divestiture of Boost and
18 Virgin and the other commitments I just described. This consent decree is being
19 reviewed by the U.S. District Court for the District of Columbia.

20

21 **Q. You mentioned “guiding economic principles” – what are those principles
22 with regard to the DOJ and FCC commitments?**

23 **A.** In my experience, the guiding principles of commitments and similar remedies
24 are: (1) that the commitments be verifiable, and (2) that compliance with the
25 commitments will avoid anti-competitive effects and/or lead to pro-consumer
26 outcomes.

27

28 **Q. Taking those principles into account, has your conclusion changed
29 regarding the effects of the transaction?**

30 **A.** No, my conclusions have not changed and I continue to believe that the
31 transaction is pro-consumer and procompetitive. In particular, I anticipate that the

1 commitments here will be verifiable. For example, the build-out commitments are
2 staged over time with identifiable benchmarks. After three years, new T-Mobile will
3 provide low-band 5G coverage to 97% of the U.S. population and to 85% of the Rural
4 U.S. Population. Both figures will rise after six years, to 99% and 90%, respectively.⁹
5 Because the commitments appear to be written in precise language, my experience tells
6 me that compliance can be verified relatively easily.

7 Moreover, these verifiable commitments are directed towards increasing
8 capacity. As I explained in my prior testimony, with expanded capacity New T-Mobile
9 will have a powerful incentive to sell services using that capacity as the marginal cost
10 of providing service to subscribers is lowered dramatically.¹⁰ Thus, in complying with
11 the commitments New T-Mobile will expand output generally. This is a procompetitive
12 outcome as greater output will result in lower prices for consumers.¹¹

13

14 **IV. AMENDED SCOPING RULING – QUESTIONS NO. 2-8: NO FURTHER CHANGES**

15

16 **Q. The Assigned Commissioner’s Amended Scoping Ruling also includes seven other**
17 **questions. Do you have any comment on those questions?**

18 **A.** No. I have no particular response to any of the other questions. I understand that those
19 questions are primarily being addressed by other witnesses for the Joint Applicants.

20

21 **Q. Do you have any opinion regarding the divestiture of Sprint’s prepaid assets?**

22 **A.** Similar to my testimony above, based on my extensive prior experience evaluating and
23 supporting or opposing divestiture remedies, and taking into consideration the particular assets at issue
24 here, the divestiture of Sprint’s prepaid assets is likely to only increase competition. For example,
25 during my earlier testimony, Judge Bemserfer asked me about the possibility of coordinated effects
26 leading to a lessening of competition post-merger.¹² Although already unlikely given standard

⁹ *Id.*

¹⁰ Hearing Ex. Jt Appl. 6-C at 4:2-5:20; 17:11-23.

¹¹ *See id.*

¹² *See* Hearing Tr. at 793:9-796:20 (Bresnahan cross).

1 economic analysis of coordinated effects, as I answered at the time,¹³ the divestiture of Sprint's prepaid
2 assets provides further assurance that pricing coordination is unlikely to break out.

3

4 **V. CONCLUSION**

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6 **Q. Does this conclude your supplemental testimony?**

7 **A.** Yes.

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¹³ *Id.*; see also Hearing Ex. Jt Appl. 6-C at 35:12-36:12

ATTACHMENT A

DECLARATION

I, Timothy F. Bresnahan, have reviewed the responses to the questions posed in the following Supplemental Testimony and declare under penalty of perjury under the laws of the State of California that the responses to the questions posed are true and correct to the best of my knowledge, information and belief, and if called to testify thereon I am prepared to do so.

Dated: November 7, 2019



Timothy F. Bresnahan