Testimony of

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The State of Competition in the Wireless Market:

Examining the Impact of the Proposed Merger of T-Mobile and Sprint

on Consumers, Workers, and the Internet

Chairman Cicilline, Ranking Member Sensenbrenner, Chairman Nadler, Ranking Member Collins, Members of the Committee: Thank you for the opportunity to testify today.

My name is Chris Shelton. I am President of the Communications Workers of America (CWA). CWA represents approximately 700,000 men and women who work in telecommunications, media, airlines, public service, and manufacturing. CWA represents more than 45,000 employees in the wireless industry.[1]

My own experience in this industry goes back to 1968, when I was hired by New York Telephone as a technician. I've worked in telecommunications and represented telecommunications employees my entire adult life. So I know a little something about this industry.

From the outset, let me be clear: This merger as currently structured would kill American jobs, lower wages, and raise prices to enrich two foreign companies, Deutsche Telekom from Germany and SoftBank from Japan. These are two companies with long histories of violating workers' rights.

I will cover four areas in my testimony today: 1) job losses from the proposed merger; 2) T-Mobile's and Sprint's long history of labor law and employment law violations; 3) the merger's likely impact on wages; and 4) the reasons consumers would be worse off if the merger takes place.

Job Loss. The merger of T-Mobile and Sprint will eliminate an estimated 30,000 jobs across the county. 25,500 of those jobs would be in retail stores, some owned directly by Sprint

[1] CWA has collective bargaining agreements covering more than 45,000 AT&T Mobility employees and several Verizon Wireless units. T-Mobile employees, with CWA support, have joined together to form T-Mobile Workers United, an organization of T-Mobile and MetroPCS call center and retail employees and technicians working to improve conditions at work. As I discuss below, both T-Mobile and Sprint have a long history of violating workers' rights to form a union.

and T-Mobile and others owned by independent retailers. The other job cuts would be in headquarters, eliminating duplicative functions.[2]

Sprint and T-Mobile compete with each other for the same type of customers, often low- and moderate-income households, which is why their stores are located near each other, sometimes right across the street.[3] I attach maps of retail store locations of T-Mobile, Sprint, and their pre-paid brands Metro (T-Mobile) and Boost (Sprint) in Appendix A.

It would make no sense for the merged company to keep all these stores open after the merger. That's not how businesses operate. And even before this merger was announced, Wall Street analysts were projecting store closures and job losses from this merger.[4]

CWA did a study, based on T-Mobile's own history and methodology, which showed the merger would result in a net job loss of:

- 13,700 retail workers in T-Mobile and Sprint stores;
- 11,800 workers in Boost and MetroPCS stores (the companies' prepaid brands);
- 4,500 headquarters employees.[5]

[2] See Fact Sheet: How The T-Mobile/Sprint Merger Will Impact Jobs, https://cwa-union.org/sites/default/files/t-mobile_sprint_merger_jobs_fact_sheet_20181126.pdf; Reply Comments of Communications Workers of America (October 31, 2018) at 5, https://ecfsapi.fcc.gov/file/1031880128823/REDACTED%20-%20CWA%20T-Mobile-Sprint%20Reply%20Comments%2010-31-18.pdf ("CWA Reply Comments"); Comments of Communications Workers of America (August 27, 2018) Appendix D (describing methodology), https://ecfsapi.fcc.gov/file/10827275801503/CWA%20T-Mobile-Sprint%20Comments%208-27-2018.pdf ("CWA Comments").

[3] See CWA Presentation to Federal Communications Commission on Proposed Sprint/T-Mobile Merger (November 28, 2018) at 27, https://ecfsapi.fcc.gov/file/113007585462/Redacted%2011-30%20CWA%20Ex%20Parte%20Notice%20WT%2018-197.pdf (maps showing retail footprint overlaps in New York City and Los Angeles South).

[4] "Could a Sprint merger with T-Mobile kill more jobs than Sprint has?" Chicago Tribune (October 10, 2017), https://www.chicagotribune.com/business/ct-biz-sprint-t-mobile-merger-jobs-20171010-story.html.

[5] See Fact Sheet: How The T-Mobile/Sprint Merger Will Impact Jobs; CWA Reply Comments at 5; CWA Comments Appendix D (describing methodology).

T-Mobile's and Sprint's track record with call center jobs is also telling. Both send a significant portion of call center work to the Philippines, Guatemala, Honduras, India, Mexico, Panama, the Dominican Republic, Costa Rica, and Canada.[6]

T-Mobile points to its 2012 acquisition of MetroPCS, and says look how many jobs that deal created. But MetroPCS was not a significant competitor. It was in a line of business that T-Mobile wanted to get into, prepaid wireless retail, and at the time of acquisition, located in only 15 markets. After the acquisition, T-Mobile grew the MetroPCS business by expanding nationwide. The job growth came from that fact, and that fact alone. More than 95 percent of MetroPCS locations are operated by authorized dealers, so when T-Mobile is claiming job growth here, almost none of that is on its direct payroll.[7]

T-Mobile's 2018 acquisition of iWireless, a regional carrier in Iowa, shows what happens to jobs when T-Mobile takes over a company that directly competes with it in the same geographic territory. The results aren't pretty. T-Mobile closed more than 72 percent of iWireless corporate stores and more than 93 percent of authorized dealer stores. T-Mobile also shuttered iWireless customer call centers in Des Moines and Cedar Rapids, Iowa. After the closures, T-Mobile left virtually no stores in rural Iowa. People would have to drive an average of 68 miles or more to get help from a retail employee.[8]

I attach a copy of CWA's report *Disrupting Rural Wireless* to my testimony as Appendix B.

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[6] Fact Sheet: How The T-Mobile/Sprint Merger Will Impact Jobs; CWA Comments at 60-61.
[7] CWA Comments at 57.
[8] CWA, "Disrupting Rural Wireless: How a T-Mobile Takeover Harmed Consumers and Small Businesses in Iowa" (Feb. 2019), https://www.tmobilesprintfacts.org/system/files/disrupting-rural-wireless-201902.pdf.

So what is the company's response now? Under pressure, T-Mobile CEO John Legere offers vague promises that the "New T-Mobile" won't close any of the Boost and MetroPCS prepaid stores and that it will retain current T-Mobile employees.

I can tell you that a promise to keep stores open is meaningless. A vague promise to keep employees is meaningless. Without binding and enforceable commitments – and I mean commitments that have no loopholes – such promises are just cheap sales talk and are easily broken. If it is more profitable to close stores, the "New T-Mobile" will close them. If it is more profitable to squeeze employees through lower wages and commissions or to lay off employees, the "New T-Mobile" will do so.

T-Mobile and Sprint have a long history of violation of workers' rights. Both of these companies, and T-Mobile in particular, have long histories of ignoring workers' rights and violating federal labor laws. This history speaks volumes about the trustworthiness and corporate character of these companies.

T-Mobile has an aggressive policy to deny employees their legal right to form a union. It has been found guilty of violating U.S. labor law six times since 2015 and has been subject to approximately 40 unfair labor practice charges since 2011. Findings of illegal activity by the 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).[9]

- 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).[10]

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[9] T-Mobile USA, Inc., 363 NLRB No. 171 (Apr. 29, 2016), *enf'd in relevant part* T-Mobile USA, Inc. v. Nat'l Labor Relations Bd., 865 F.3d 265 (5th Cir. 2017).
[10] T-Mobile USA, Inc., JD-23-17, 2017 WL 1230099 (Apr. 3, 2017).

- Surveilling and interrogating employees about union activity, restricting discussions about working conditions over social media, and prohibiting employees from sending union-related emails.[11]

- Unlawfully prohibiting employees from talking about the union during work time.[12]

- Requiring employees, including one who filed a sexual harassment complaint, to sign an unlawful confidentiality notice prohibiting them from discussing with one another information from employer-led investigations, and threatening discipline, up to and including discharge, if they engaged in those discussions.[13]

In recent years, T-Mobile has been the subject of more unfair labor practice charges per employee than any other big business in the United States, including Walmart.

Sprint's violation of workers' rights dates back to the landmark *La Conexion Familiar* case in which Sprint fired 226 employees and closed its Spanish-language telemarketing center in San Francisco to avoid a union election.[14] Sprint current and former workers have sued the company multiple times for alleged wage and hour violations affecting thousands of workers.[15]

No matter how many online "Town Hall" pep rallies Mr. Legere stages, the facts are clear that T-Mobile does not respect the rights of its employees that are guaranteed by law.

The merger will reduce wages and benefits for retail wireless workers. Permitting this merger to go through as proposed would drive down wages for all Americans who work in the wireless retail market, in some cases by as much as $3,000 per year.

[11] T-Mobile USA, Inc., JD-57-16, 2016 WL 3537770 (June 28, 2016).
[12] T-Mobile USA, Inc., 365 NLRB No. 15 (Jan. 23, 2017).
[13] T-Mobile USA, Inc., JD(NY)-34-15, 2015 WL 4624356 (Aug. 3, 2015), adopted by NLRB on Sept. 14, 2015.
[14] CWA Comments at 67-70 (citing La Conexion Familiar and Sprint Corp., 322 NLRB No. 137 (1996)).
[15] See Cara Bayles, *Sprint Inks $1.2M Deal To End Workers' Wage And Hour Suit*, LAW360 (Oct. 4, 2017), https://www.law360.com/articles/970869/sprint-inks-1-2m-deal-to-end-workers-wage-and-hour-suit; David McAfee, *$4.85M Settlement for Sprint Workers Gets First OK*, BLOOMBERG (Feb. 29, 2016), https://www.bna.com/485m-settlement-sprint-n57982067900/; *Sprint settles overtime pay suits for $8.8M*, KANSAS CITY BUSINESS JOURNAL (Jan. 15, 2009), https://www.bizjournals.com/kansascity/stories/2009/01/12/daily40.html; See Erin Marie Daly, *Sprint Call Center Workers Win Back Wages*, LAW360 (May 21, 2009), https://www.law360.com/texas/articles/102852/sprint-call-center-workers-win-back-wages.

In recent years, economists have puzzled over a central question. Over the past three decades, productivity has gone up, corporate profits have increased, and executive compensation has skyrocketed. But workers' wages have stagnated. Wages have become detached from productivity gains.[16]

The lack of wage growth is a persistent problem that, without question, has led to the hollowing out of the American middle class and increased income inequality. A central reason for wage stagnation is the decline in collective bargaining coverage in this country. Simply put, unions raise wages.[17] Another reason for wage stagnation, and one that is particularly relevant to this Subcommittee, is the consolidation that has been brought about through mergers between non-union firms. Since 2008, American firms have engaged in one of the largest rounds of mergers in history.[18] By most accounts, industries in America have become increasingly concentrated.[19] And as industries have consolidated, labor markets have also consolidated. As the Council of Economic Advisors explained at the end of the Obama administration:

> The presence of a limited number of firms in the market for a particular type of labor may give each of these firms some power in setting wages. For example, factory line workers have fewer opportunities to "vote with their feet" in a town with one manufacturing plant relative to one with many. Holding other factors equal, higher concentration in a labor market may lead to lower wages just as higher concentration in a product market often leads to higher prices.[20]

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[16] See Economic Policy Institute, "The Productivity-Pay Gap" (updated August 2018), https://www.epi.org/productivity-pay-gap/.

[17] See Economic Policy Institute, "How Today's Union's Help Working People," (August 24, 2017), https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/.

[18] See "Too Much of a Good Thing," The Economist, March 26, 2016, https://www.economist.com/briefing/2016/03/26/too-much-of-a-good-thing.

[19] See generally "Is there a Concentration Problem in America?" Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business, https://promarket.org/wp-content/uploads/2018/04/Is-There-a-Concentration-Problem-in-America.pdf.

[20] Counsel of Economic Advisors Issue Brief (October 2016), Labor Market Monopsony: Trends, Consequences, and Policy Responses, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf, at 4.

Recently, a number of economists have been measuring the impact that mergers have on wages, particularly as more industries become highly concentrated.[21] Professor Eric Posner of the University of Chicago has observed that "[c]oncentration is far more serious in labor markets than in product markets; wage suppression is much more significant than price inflation."[22] The antitrust agencies, under both Democratic and Republican leadership, have begun to focus on the problem of labor market power.[23]

Collective bargaining can mitigate this effect.[24] Indeed, the preamble to the National Labor Relations Act recognizes that "protection by law of the right of employees to organize and bargain collectively" may restore "equality of bargaining power between employers and employees."[25] In antitrust terms, collective bargaining can create countervailing power. But, as

[21] See Ioana Elena Marinescu and Herbert J. Hovenkamp, Anticompetitive Mergers in Labor Markets (2018), Faculty Scholarship at Penn Law, https://scholarship.law.upenn.edu/faculty_scholarship/1965 at 9 ("Until recently, imperfect competition in the labor market has not received much attention in antitrust enforcement. One possible reason is the belief that there are many jobs out there, so a merger is unlikely to lead to a monopsony and to substantially affect workers' opportunities in the labor market. However, a growing body of empirical evidence indicates that labor market monopsony is a real issue."); *See also* Jose Azar, Ioana Marinescu, and Marshall Steinbaum "Labor Market Concentration," National Bureau of Economic Research Working Paper no. 24147 (December 2017), National Bureau of Economic Research Working Paper no. 24147; Kevin Rinz, "Labor Market Concentration, Earnings Inequality, and Earnings Mobility," CARRA Working Paper no. 2018-10 (2018), https://www.census.gov/library/working-papers/2018/adrm/carra-wp-2018-10.html.

[22] See Eric A. Posner, "Why the FTC Should Focus on Labor Monopsony," https://promarket.org/ftc-should-focus-labor-monopsony/.

[23] The head of the Antitrust Division under former President Obama stated that antitrust enforcement efforts must benefit not only consumers, but "also benefit workers, whose wages won't be driven down by dominant employers with the power to dictate terms of employment." Acting Assistant Attorney General Renata Hesse of the Antitrust Division Delivers Opening Remarks at 2016 Global Antitrust Enforcement Symposium (September 20, 2016), https://www.justice.gov/opa/speech/acting-assistant-attorney-general-renata-hesse-antitrust-division-delivers-opening. The current Chair of the Federal Trade Commission has directed FTC staff to include effects on the labor market in their merger investigations. See Pallavi Guniganti, "FTC will look at labour monopsony, Hoffman says," Glob. Competition Review, June 8, 2018, https://globalcompetitionreview.com/article/usa/1170360/ftc-will-look-at-labour-monopsony-hoffman-says. The current head of the Antitrust Division has increased enforcement efforts directed at so-called "no poaching" agreements among employers. See "US: DOJ Antitrust Division announced criminal prosecution for No Poaching agreements," Competition Policy International (Feb. 7, 2018), https://www.competitionpolicyinternational.com/us-doj-antitrust-division-announced-criminal-prosecution-for-no-poaching-agreements/.

[24] Efraim Benmelech, Nittai Bergman, Hyunseob Kim, "Strong Employers and Weak Employees: How Does Employer Concentration Affect Wages?" National Bureau of Economic Research Working Paper no. 24307 (February 2018), https://www.nber.org/papers/w24307.

[25] See 29 U.S.C. § 151.

I have already discussed, both T-Mobile and Sprint have long histories of violating workers' rights.

The Economic Policy Institute and the Roosevelt Institute did a study of the proposed T-Mobile and Sprint merger in order to see what impact it is likely to have on the wages of retail wireless workers.[26] After the merger, those workers will lose one option that is available to them today about where to work. The results are instructive. According to the authors,

> We find that the merger would reduce earnings in the affected labor markets. Specifically, in the 50 most affected labor markets, we predict that weekly earnings will decline by $63 on average (across markets) using the specification with the largest magnitude, and $10 on average using the smallest magnitude specification. These weekly earnings declines correspond to annual earnings declines of as high as $3,276 (or $520 under the smallest-magnitude specification).[27]

To put this finding in context, it means that the proposed merger could lead to an aggregate annual earnings reduction of between $82.8 million and $543.6 million for the roughly 220,000 retail wireless workers in the United States.[28] This would be nothing other than a transfer of wealth from workers to corporate owners, pure and simple. Importantly, these and other researchers have also found that unionization mitigates the earnings-reducing effect of concentration.[29]

I attach a copy of the EPI/Roosevelt Institute study entitled "Labor market impact of the proposed Sprint-T-Mobile merger" to my testimony as Appendix C.

The Merger Would Harm Consumers with Higher Prices. Finally, I want to spend just a small amount of time on how and why the proposed merger would be bad for consumers.

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[26] "Labor market impact of the proposed Sprint–T-Mobile merger" (December 17, 2018), https://www.epi.org/files/pdf/159194.pdf.
[27] Id. at 1.
[28] See CWA Notice of Ex Parte Meeting, March 1, 2019, https://ecfsapi.fcc.gov/file/1030225339358/CWA%20Ex%20Parte%20%202-27-19.pdf, at 4.
[29] Efraim Benmelech, Nittai Bergman, Hyunseob Kim, "Strong Employers and Weak Employees: How Does Employer Concentration Affect Wages?" National Bureau of Economic Research Working Paper no. 24307 (February 2018), https://www.nber.org/papers/w24307.

A few years ago, SoftBank (the parent company of Sprint) approached Assistant Attorney General William Baer of the U.S. Department of Justice Antitrust Division and Chairman Tom Wheeler of the Federal Communications Commission about a possible deal with T-Mobile. Both of these officials made it crystal clear to Sprint's owners not to push ahead with it. As Baer and Wheeler put it, "The idea of eliminating a pesky rival may have made sense for Sprint. But not for the American consumer." Sprint reluctantly ditched the idea.[30]

Sprint and T-Mobile are each other's closest competitors. Their prepaid brands, in particular, compete aggressively for lower-income customers and persons of color in large, urban U.S. markets.[31]

And while these companies trumpet the alleged benefits of this merger for rural America, data in their own FCC filings show the contrary. Even six years after a T-Mobile/Sprint merger, 46 million Americans – which include most of the merged company's rural customers – would not receive the benefits of its next-generation 5G network. Rather, they would be forced to settle for a service that has significantly lower performance than the urban and suburban parts of the network. The "digital divide" between urban and rural America is likely to get worse, not better.[32]

I attach a copy of the Declaration of Dr. Andrew Afflerbach analyzing the impact of the proposed T-Mobile/Sprint merger on rural America to my testimony as Appendix D.

Last time I checked, the antitrust laws and the requirements under the Communications Act have not changed. Congress has not repealed them. And keep in mind, the antitrust laws are

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[30] Bill Baer and Tom Wheeler, "Here's who loses big time if Sprint and T-Mobile are allowed to merge," CNBC (May 19, 2017), https://www.cnbc.com/2017/05/19/heres-who-loses-big-time-if-sprint-and-t-mobile-are-allowed-to-merge-commentary.html.

[31] See Reply to Opposition by Free Press (October 31, 2018), at 2, 14-18, https://www.freepress.net/sites/default/files/2018-11/redacted_tmobile_sprint_reply_comments_free_press.pdf.

[32] CWA Comments at 47-52 and Appendix A: Declaration of Andrew Afflerbach, Ph.D., P.E. ("[B]ased on my review of the information presented in the Applicant's [Public Interest] Statement, the merged New T-Mobile would only provide marginally better broadband options than stand-alone T-Mobile in much of rural America.").

laws, they are not just recommendations or suggestions. A merger that was presumptively unlawful in 2015 or 2016 is presumptively unlawful today.

Our economy is at a crossroads. We as a nation must decide whether we will permit the inexorable drive towards corporate consolidation and concentrated power at the expense of employees, customers, communities, and our economy.

This bad deal is not saved by 5G, 6G or 7G. It is not saved because the next technological development is on the horizon. It is not saved by speculating about competition with cable companies.

This deal, if it goes ahead, will destroy 30,000 American jobs and hurt consumers. The harms are real. The alleged benefits are pure sales talk. This merger would kill American jobs and raise prices for consumers to benefit two foreign companies, Deutsche Telekom from Germany and SoftBank from Japan.

Thank you for giving me the opportunity to testify.