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COMMENTS OF ITIF

Before the

Federal Communications Commission

Washington, D.C.

In the Matter of: Applications of T-Mobile US, Inc. and Ka'ena Corporation for Transfer Control of International Section 214 Authority Held by Mint Mobile, LLC and UVNV, Inc.	))))))))	GN Docket No. 23-171

June 21, 2023

INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation ("ITIF") appreciates the opportunity to comment on the Federal Communications Commission's ("FCC" or "Commission") review of T-Mobile's US, Inc. and Ka'ena Corporation's ("T-Mobile") application for Transfer Control of International Section 214 Authority Held by Mint Mobile, LLC and UVNV, Inc. ("Mint").[1]

The Commission should narrowly tailor its review of this merger to the purposes of Section 214. Because this proposed merger presents little chance of consumer harm and a strong probability of consumer benefits, the Commission should approve it as consistent with the statute and recent Commission precedent.

THE COMMISSION SHOULD LIMIT ITS REVIEW TO FACTORS RELEVANT TO INTERNATIONAL SECTION 214 AUTHORIZATION

The Commission is not the primary agency charged with enforcement of antitrust laws, and its jurisdiction over mergers comes from the transfer of Commission-issued authorizations such as, in this case, International Section 214 authorizations. Therefore, the Commission should limit its merger review to those issues which give rise to its jurisdiction. Here, the issue is national security threats arising from foreign-owned carriers. Indeed, Chairwoman Rosenworcel recently characterized international Section 214 authorization as pertaining to "national security and law enforcement assessments."[2] The Commission's Public Notice regarding this application also explicitly found that it does not require referral to the Executive Branch agencies for review for national security, law enforcement, foreign policy, and trade policy issues.[3] That Team Telecom has decided to review it anyway is even more reason for the FCC itself to erect further barriers.

It would be inappropriate for the Commission to parlay the narrow jurisdictional hook of Section 214 to block a merger or impose extraneous conditions in the name of public interest. The "public interest" is only an intelligible principle when it is in service of the Commission's statutorily prescribed authority. It is not a freewheeling grant to go on a generalized policymaking expedition.

THE MERGER IS UNLIKELY TO HARM CONSUMERS

Mint is a Mobile Virtual Network Operator ("MVNO"), meaning it does not have its own network infrastructure but resells wireless service from others' spectrum. Specifically, Mint currently operates entirely on T-Mobile's network. Therefore, the effect on the market will be minimal: no other MNO is losing business and T-Mobile is not gaining significant real market share. Consumers would continue to use their existing plans and devices just with a bill from the combined company rather than Mint alone.

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[1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. See About ITIF: A Champion for Innovation, https://itif.org/about.

[2] Statement of Chairwoman Jessica Rosenworcel, Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Order and Notice of Proposed Rulemaking (IB Docket No. 23-119) April 20, 2023 https://docs.fcc.gov/public/attachments/FCC-23-28A2.pdf.

[3] Applications filed for the transter of control of Mint Mobile, LLC and UVNV, Inc. to T-Mobile US, Inc., Public Notice (GN Docket No. 23-171) May 22, 2023 https://docs.fcc.gov/public/attachments/DA-23-429A1.pdf.

Prepaid mobile services, like Mint, are also a distinct market from standard mobile plans. Indeed, all the major MNOs have a product tailored to the prepaid market, and other unaffiliated prepaid brands still exist.[4] Those affiliated with T-Mobile have extant long-term deals, so T-Mobile would have little ability to drive them out of the marketplace.

The prepaid mobile marketplace has continued to thrive after the Verizon-Tracfone merger, and the T-Mobile-Mint merger is, if anything, less threatening to consumers.[5] Mint has fewer customers than Tracfone did at the time and will have a smoother transition since its users are already on T-Mobile's network.

THE MERGER IS LIKELY TO BENEFIT CONSUMERS

In addition to the lack of cause for concern, there are affirmative reasons to believe this merger would benefit consumers.

First, Mint customers would likely be able to get devices more cheaply since T-Mobile has larger scale and, therefore, more leverage in negotiating with device manufacturers. Second, the merger would lower the operating costs of Mint since it would be able to take advantage of T-Mobile's business infrastructure and eliminate double marginalization, which would otherwise result in higher consumer prices without making either company more profitable. Third, Mint currently has no brick-and-mortar stores.[6] The merger would allow Mint customers to access in-person customer care, retail, and repair services while also maintaining online options. This increase in the volume and variety of services is an unalloyed benefit to consumers.

CONCLUSION

The Commission plays an important role in managing the mobile marketplace, and it should diligently enable business arrangements that benefit consumers. In the case of this merger, the benefits would likely outweigh the costs. Thank you for your consideration.

Joe Kane
Director of Broadband and Spectrum Policy

[4] *See e.g.,* Alex Hughes, "MVNOs: What are they and what are the best options?," *Tom's Guide* Jan. 25, 2023 https://www.tomsguide.com/reference/mvnos-what-are-they-and-what-are-the-best-options.

[5] FCC grants approval of Verizon-Tracfone transaction subject to conditions to protect consumers, Federal Communications Commission, Nov. 22, 2021 https://docs.fcc.gov/public/attachments/DOC-378084A1.pdf.

[6] "Does Mint Mobile have stores?," *Mint Mobile,* https://www.mintmobile.com/help/does-mint-mobile-have-stores/.