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T-MOBILE TWEAKS SPRINT DEAL RATIONALE AS OPPONENTS SEE PROBLEMS

By David McLaughlin & Todd Shields

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T-Mobile US Inc. is offering a revised rationale for buying Sprint Corp., a turn that critics say is a sign the carrier's earlier arguments weren't winning over U.S. officials who can bless or kill the deal.

T-Mobile told the Federal Communications Commission in a filing earlier this month that it needs the Sprint merger to help it compete more vigorously against giants AT&T Inc. and Verizon Communications Inc. In September, the company focused on how the tie-up would give it an edge in quickly building an advanced wireless network known as 5G, a goal of the Trump administration.

"It's a big shift," said Allen Grunes, a former lawyer with the Justice Department's antitrust division who is representing the Communications Workers of America, which opposes the deal. T-Mobile, he said, appears to be "running into the situation where the people at the agencies weren't buying what they were selling, and they had to switch gears."

The $26.5 billion combination would cut the number of nationwide wireless providers to three from four by uniting the third and fourth-biggest mobile carriers. Critics, which also include policy groups and Dish Network Corp., which owns airwaves it intends to use for mobile service, say the deal risks eliminating competition from the two companies that have done the most to shake up the industry with lower prices and better plans.

The takeover needs approval from the FCC and the Justice Department's antitrust division. Each relies on different standards when considering a merger, with the FCC focused on whether it is in the "public interest" and the Justice Department considering whether a deal would harm competition. The FCC described the November filing as "a substantial body of new material on economic issues central to the review."

Rob McDowell, a former FCC commissioner, now at Cooley LLP, who represents T-Mobile in the merger, said there was no issue with the 5G argument not working and the company was merely supplementing the record with its Nov. 6 filing.

"The arguments are not mutually exclusive," McDowell said. "The competition argument and the 5G argument are essentially the same."

Wall Street appears unfazed by the contrasting reports as investor sentiment about the deal's prospects for closing hasn't changed dramatically. The spread between the offer price per share for Sprint and the trading price, an indication of the deal's risk, has dropped from an Oct. 31 high and is trading about where it was in June.

Financial analysts rejected the reading of the filings as a sign of hurdles for the deal, which they predict has a smooth path to approval.

“T-Mobile has done a really good job of making the point, together we’re stronger and we’re going to be better for the consumer, “ said Jennifer Fritzsche of Wells Fargo & Co.

Amy Yong, a New York-based analyst with Macquarie Bank, said she didn’t think the different reports signaled the company’s strategy had fundamentally changed. “Maybe it’s a slight shift in tone to address more about competition.”

The proposed Sprint acquisition isn’t the first time T-Mobile has been at the center of a proposed wireless merger. The Justice Department blocked the carrier’s sale to AT&T in 2011. Then in 2014, Sprint and T-Mobile abandoned a merger attempt because of opposition from the Justice Department and the FCC. The agencies were concerned the deal would harm competition by cutting the number of national wireless carriers.

Tara Darrow, a spokeswoman for T-Mobile, didn’t return emails and telephone calls seeking comment. Sprint representatives didn’t immediately respond to requests for comment.

Andrew Schwartzman, a lecturer at Georgetown University Law Center and an expert in telecommunications law, said T-Mobile’s new filing may signal that the companies encountered resistance from regulators and are trying a new argument. Still, the deal faces “fundamental obstacles,” Schwartzman said.

“I doubt that the regulators are receptive to the additional arguments that have been made in support, including suggestions that approval is needed to win a 5G race with China, that cable companies will soon be significant competitors in wireless and that Sprint will fail without a merger,” he said.

T-Mobile’s latest economic analysis was produced by Cornerstone Research, a San Francisco-based firm specializing in litigation and regulatory work. The economists who developed the report described it as “complementary” to the June analysis, which was prepared by Washington-based economic consulting firm Compass Lexecon.

FCC reviews are more transparent, as merging companies and opponents of deals make public filings with the agency. Justice Department investigations are confidential. The agencies can approve deals as proposed, put conditions on them such as the sales of assets, or move to stop them.

Blair Levin, a former FCC chief of staff who is now at the Brookings Institution, said the carriers have an uphill climb to approval.

“The first filing was not sufficient,” Levin said. “So the question is will incremental changes put it over the top? Or is the government suggesting that while the companies should get a second bite at the apple, their case has a serious flaw?”