

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Applications of T-Mobile US, Inc.)	WT Docket No. 18-197
)	
and)	
)	
Sprint Corporation)	
)	
Consolidated Applications for Consent to)	
Transfer Control of Licenses and)	
Authorizations)	
)	

**MOTION TO ALLOW SUBMISSION OF HIGHLY CONFIDENTIAL DOCUMENTS
TO THE NEW YORK PUBLIC SERVICE COMMISSION**

DISH Network Corporation (“DISH”) submits this motion requesting that the Commission allow DISH to file the highly confidential versions of its Petition to Deny and Reply in the above-referenced proceeding with the New York Public Service Commission (“NYPSC”).¹ Thus far, the Applicants have refused to consent to this submission. As a result, DISH requests that the Commission waive paragraph 11 of the Protective Order and paragraph 7 of the NRUF/LNP Protective Order to the extent necessary for this limited purpose.² Among other reasons, paragraph 11 of the Protective Order and paragraph 7 of the NRUF/LNP Protective Order were not intended to prevent the submission of pleadings that necessarily

¹ Petition to Deny of DISH Network Corp., WT Docket No. 18-197 (Aug. 27, 2018); Reply of DISH Network Corporation, WT Docket No. 18-197 (Oct. 31, 2018).

² See Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, Protective Order, WT Docket No. 18-197, DA 18-624 (June 15, 2018); Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, NRUF/LNP Protective Order, WT Docket No. 18-197, DA 18-777 (July 26, 2018).

include highly confidential information about the transaction to another agency charged with reviewing the same transaction.

I. BACKGROUND

The NYPSC is currently reviewing the proposed transaction.³ On November 16, 2018, the Applicants submitted redacted versions of their FCC Public Interest Statement and Opposition to the NYPSC.⁴ On the same date, DISH submitted redacted versions of its FCC Petition to Deny and Reply filings.⁵ While not requesting confidential treatment for their FCC comments, the Applicants did request confidential treatment for their NYPSC Comments and Reply Comments.⁶

On December 21, DISH requested consent from both Sprint and T-Mobile to file unredacted versions of its Highly Confidential FCC filings with the NYPSC. Sprint and T-Mobile both declined to grant this request without offering any justification, leaving regulators in New York without access to relevant information about the impact of this merger. DISH requests that the Commission permit DISH to file the unredacted versions of its Petition to Deny and its Reply with the NYPSC so that the NYPSC can have the benefit of a full record in evaluating the merger. To be clear, DISH is not requesting that its FCC filings be publically disclosed in the NYPSC proceeding. Rather, DISH would submit its highly confidential FCC filings under seal pursuant to the NYPSC's procedures and the protective order that the NYPSC

³ See Notice Inviting Comments, NYPSC Case No. 18-C-0396 (Oct. 19, 2018).

⁴ See Joint Comments of T-Mobile USA, Inc. and Sprint Communications Co., Case No. 18-C-0396 (Nov. 16, 2018) (“Applicant PSC Comments”).

⁵ See Comments of DISH Network Corporation, New York Public Service Commission Case No. 18-C-0396 (Nov. 16, 2018).

⁶ See Letter from Michelle Piasecki to Jessica Vigers, NY PSC Case No. 18-C-0396 (Nov. 16, 2018); Letter from Michelle Piasecki to Hon. Sean Mullany, NY PSC Case No. 18-C-0396 (Jan. 11, 2019).

has promulgated.⁷ As explained below, these are the same procedures that the Applicants used when filing their own highly confidential materials with the NYPSC.

II. THE COMMISSION SHOULD ALLOW DISCLOSURE TO THE NYPSC

While paragraph 11 of the Protective Order and paragraph 7 of the NRUF/LNP Protective Order on their face prohibit use of highly confidential information “in any other administrative, regulatory, or judicial proceedings,” these provisions should not be read to prevent other regulators *considering the same transaction* from receiving information about that transaction. For example, the Wireline Bureau granted Qwest’s motion to modify various protective orders to allow it to file highly confidential information with the Tenth Circuit appealing a Commission order in the same set of proceedings. The Bureau found that the limited modification was appropriate because access to highly confidential information was necessary “[i]n order for the Tenth Circuit to properly evaluate the issues presented to it on appeal.”⁸

There are two considerations supporting the confidential and limited disclosure of DISH’s highly confidential filings to the NYPSC.

First, it is essential for the NYPSC to be allowed to evaluate the issues presented fully and from all sides. The Applicants have placed highly confidential into the NYPSC record that the Applicants believe supports the transaction. From the surrounding context, this information pertains to New T-Mobile’s estimated network speeds, revenue per user, and alleged benefits to consumer welfare.⁹ These are all issues squarely addressed by DISH’s FCC comments. Further,

⁷ See Ruling Adopting Protective Order, NY PSC Case No. 18-C-0396 (Dec. 20, 2018).

⁸ Petition of Qwest Corp. for Forbearance, *Memorandum Opinion and Modified Protective Orders*, 25 FCC Rcd. 14234, 14240 (Oct. 6, 2010). The Wireline Bureau had granted similar relief to Verizon for purposes of its appeal. See Petition of Qwest Corp. for Forbearance, WC Docket No. 04-223, *Memorandum Opinion and Modified Protective Orders*, 23 FCC Rcd. 1716 (Feb. 8, 2008).

⁹ See Applicant PSC Comments at 14-15, 16, 25.

the Applicants' economic expert, Dr. Harold Furchtgott-Roth, submitted comments containing highly confidential information that he characterizes as "[b]ased on similar work that has been submitted for the record to the Federal Communications Commission" where he analyzes alleged consumer benefits from the merger.¹⁰ These issues were also addressed in DISH's filings.¹¹ Thus, for the issues to be joined, the NYPSC should also have at its disposal opposing parties' view of the same and other confidential information submitted by the Applicants.

Second, the Applicants' own behavior shows there is no reason to believe that the confidentiality of the information is liable to be compromised. The Applicants believe that New York law provides sufficient protection for their highly confidential information.¹² The Applicants submitted two letters to the NYPSC explaining why New York law protects information whose disclosure would "cause substantial injury to the Applicants' competitive position."¹³

III. CONCLUSION

Because the Applicants have placed unredacted highly confidential materials in the NYPSC's record, the NYPSC must be able to view DISH's filings so that it can fully evaluate the implications of this transaction for the interest of New York consumers. DISH therefore requests that the Commission waive paragraph 11 of the Protective Order and paragraph 7 of the

¹⁰ See Harold Furchtgott-Roth, *Consumer Benefits in New York from the Proposed T-Mobile-Sprint Merger* at 2, Attachment B to Applicant PSC Comments (citing Declaration of Harold Furchtgott-Roth, Appendix J to Opposition of T-Mobile and Sprint, WT Docket No. 18-197 (Sept. 17, 2018)).

¹¹ See Reply of DISH Network Corporation at 94, WT Docket No. 18-197 (Oct. 31, 2018).

¹² See Letter from Michelle Piasecki to Jessica Vigers, NY PSC Case No. 18-C-0396 (Nov. 16, 2018); Letter from Michelle Piasecki to Hon. Sean Mullany, NY PSC Case No. 18-C-0396 (Jan. 11, 2019) (citing New York Public Officers Law §§ 89 (5) and 87 (2), and 16 NYCRR § 6-1.3).

¹³ *Id.*

NRUF/LNP Protective Order to the extent necessary for the limited purpose of allowing DISH to share its highly confidential Petition to Deny and Reply with the NYPS.

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CERTIFICATE OF SERVICE

I, Andrew Golodny, hereby certify that on January 30, 2019, I caused true and correct copies of the foregoing to be served by electronic mail upon the following:

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Sincerely,

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