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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer of Control of Licenses and Authorizations; WT Docket No. 18-197

Dear Ms. Dortch:

On February 4, 2019, John Legere, CEO of T-Mobile US, Inc. (“T-Mobile”) sent a letter to Chairman Pai stating “unequivocally, that New T-Mobile rates are NOT going to go up.”¹ New T-Mobile’s business plan is to reduce—not increase—prices while dramatically improving quality. To remove any remaining doubt or concerns about New T-Mobile’s prices during the time that the merged company is working to combine the T-Mobile and Sprint networks to unlock huge capacity gains, T-Mobile submitted to the Commission a commitment that New T-Mobile will make available the same or better rate plans as those offered by T-Mobile or Sprint as of February 4, 2019 for three years following the merger (the “Pricing Commitment”).²

To be clear, New T-Mobile’s business plan on file since last summer is clearly premised upon lower prices and better service both in the short and long term for American consumers. The Pricing Commitment, however, guarantees that there will be no pricing harm so the Commission can instead focus on the other major benefits of the merger, such as New T-Mobile’s leading nationwide 5G network and its ability to deliver more competition and new services like in-home broadband.

¹ See Letter from John Legere, Chief Executive Officer of T-Mobile US, Inc., to Ajit Pai, Chairman, Federal Communications Commission, WT Docket No. 18-197 (Feb. 4, 2019).

² See Letter from Nancy J. Victory, Counsel for T-Mobile US, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (Feb. 4, 2019) (“Pricing Commitment Letter”).



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DISH, hot on the heels of increasing prices on its own customers,³ attempts to masquerade as the champion of lower prices for consumers (of course as long as they are not DISH's customers).⁴ DISH seems incapable of accepting that a company can make a representation to the Commission and to consumers concerning prices without including secret "loopholes" or hidden pathways for "evasion."⁵ Perhaps DISH's cynicism reflects its own well-known efforts to evade regulatory requirements (including buildout conditions and designated entity auction rules).

Whatever the case, T-Mobile is a consumer-focused Un-carrier that keeps its promises and New T-Mobile will be relentless in following this path after the merger. Again, New T-Mobile's business plan is that prices will go down. The Pricing Commitment is merely "belt and suspenders" and provides a failsafe to anyone who would (wrongly) claim otherwise for the period when we are working to unlock the capacity gains from combining the two networks. For purposes of clarity, the pricing commitment has the following effects:

1. Prices cannot go up for three years following the merger because the current rate plans for T-Mobile or Sprint will be available to all consumers during that period until a better plan is introduced (*i.e.*, a plan with a lower price, a plan with the same price and/or more data, or a plan with a lower price and more data).
2. Consumers will get better service for the same or a lower price during this three-year period as customers on existing plans and new plans alike will experience improvements in the New T-Mobile network's coverage, speed, and quality (including 5G) at no extra charge.

There are no loopholes to exploit or evasive strategies to employ with respect to the Pricing Commitment. New T-Mobile will meet its commitment and provide better service with no increase in price, as promised. It bears reiterating that the Pricing Commitment creates a ceiling and not a floor. To repeat, New T-Mobile's business plan is based on lowering prices and delivering more data on a world-leading 5G network, so prices will drop. Against that backdrop, and in the interest of correcting the record, responses are set forth below that address and refute DISH's false claims.

³ See Gerry Smith, *Comcast, Dish, AT&T to Raise TV Prices to Counter Cord-Cutting*, Bloomberg (Jan. 4, 2019), <https://www.bloomberg.com/news/articles/2019-01-04/comcast-at-t-raise-prices-to-counter-cord-cutting-higher-costs> ("Dish said it's increasing prices for English-language video packages by \$3 to \$5 a month.").

⁴ See Letter from Pantelis Michalopoulos, Counsel for DISH Network Corporation to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197 (Feb. 7, 2019) ("DISH February 7th Letter").

⁵ See *id.* at 1.



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I. THE PRICING COMMITMENT PROVIDES COMPELLING GUARANTEES FOR CONSUMERS WITHOUT THE LOOPHOLES ALLEGED BY DISH

DISH Claim: Under the pricing commitment, small improvements in network quality can justify eliminating a less expensive legacy plan.⁶

FACTS: The terms of the Pricing Commitment allow New T-Mobile to replace a legacy rate plan only after it introduces “better plans that offer a lower price or more data.”⁷ A better plan is simply:

- The same plan with a lower price;
- The same plan with more data for the same price; or
- The same plan with a lower price and more data.

Therefore, a legacy plan can be replaced by a new plan only if the new plan provides all of the same features with a lower price, all of the same features with more data at the same price, or all of the same features with both a lower price and more data. That’s it. Consistent with these principles, network improvements in speed, quality, and coverage will not be a basis for eliminating a legacy plan.

DISH Claim: New T-Mobile can increase bills through handset or device costs because an increase in the price of a handset or other device, or a price increase effected through the imposition of a device or handset fee, would be exempt from T-Mobile’s pledge.⁸

FACTS: The terms of the Pricing Commitment do not include device or handset offerings because devices are sold separately from rate plans and their pricing and availability are generally driven by the device manufacturers.⁹ Devices are not part of rate plans for a good reason. T-Mobile revolutionized the industry when it gave customers the freedom to buy and bring their devices from any source—not just their own wireless carrier. New T-Mobile will continue to allow customers to bring their own devices and thus have control over the costs of their equipment. If customers have their own devices or can get a device cheaper elsewhere, they are welcome to use those devices on the New T-Mobile 5G network for no additional fee. New T-Mobile, of course, will have very strong incentives to offer favorable device and handset

⁶ *Id.* at 2.

⁷ *See* Pricing Commitment Letter at 2.

⁸ DISH February 7th Letter at 2.

⁹ *See* Pricing Commitment Letter at 3 n. 10.



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pricing as it seeks to migrate Sprint customers to the New T-Mobile network and upgrade all subscribers to 5G-capable devices, so consumers will continue to have a panoply of economical options for devices.

DISH Claim: New T-Mobile will be able to increase customers' bills through additional "fees and surcharges."¹⁰

FACTS: The Pricing Commitment does not allow New T-Mobile to create or increase "fees and surcharges." First, T-Mobile pioneered the "Taxes and Fees Included" program and the promise included in that rate plan is covered by the Pricing Commitment. Those rate plans in effect as of February 4, 2019 will continue with *no added charge* for post-merger increases in taxes or fees. It is the customer's choice. Second, for rate plans that do not have "Taxes and Fees Included," New T-Mobile may adjust retained legacy rate plans under the existing terms of those plans "to pass through cost increases in taxes, fees and surcharges" that are initiated by the government or by third parties, whom New T-Mobile cannot control.¹¹

DISH Claim: New T-Mobile can cancel benefits enjoyed by current customers and would be unconstrained from increasing prices associated with its promotions.¹²

FACTS: Again the Pricing Commitment does not allow New T-Mobile to discontinue benefits. The terms of the Pricing Commitment allow New T-Mobile to adjust legacy plans "to modify or discontinue third party partner benefits based on changes in the terms of the offering *initiated by the third party partner*."¹³ As with the allowance for taxes, fees, and surcharges, this allowance is also intended to permit adjustments *only* in response to third party actions.

DISH's claim that New T-Mobile would be "unconstrained" from increasing prices on any promotion, increasing overall effective rates,¹⁴ is incorrect and ignores the unambiguous language of the Pricing Commitment. Any adjustment applies only to changes "initiated by the third party partner."¹⁵ Therefore, New T-Mobile would have no ability to increase prices unilaterally.

¹⁰ DISH February 7th Letter at 3.

¹¹ See Pricing Commitment Letter at 3.

¹² DISH February 7th Letter at 3.

¹³ Pricing Commitment Letter at 3 (emphasis added).

¹⁴ DISH February 7th Letter at 3.

¹⁵ Pricing Commitment Letter at 3.



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II. THERE ARE NO LOOPHOLES IN T-MOBILE'S COMMITMENT OR OPENINGS FOR SUPPOSED "EVASIVE STRATEGIES"

DISH also provides an "illustrative sample" of tactics that it claims New T-Mobile could use to raise prices for customers despite the commitment. As explained below, these claims are unfounded and not allowed under the simple language of the Pricing Commitment.

DISH Claim: New T-Mobile could drive subscribers to newer, more expensive plans by lowering the data cap, making it more difficult for "legacy" customers to use their plans for popular streaming services, or increasing the penalties for legacy plans going over the data cap.¹⁶

FACT: DISH misunderstands or mischaracterizes T-Mobile's and Sprint's unlimited plans, neither of which have a "data cap." Contrary to DISH's assertions, there are no caps to lower and no penalties can be associated with nonexistent caps. In fact, as network capacity dramatically increases following the merger, we expect to see even higher data consumption by both legacy and new unlimited plan subscribers and, therefore, would have even less reason to constrain data use through caps or penalties.¹⁷

DISH Claim: New T-Mobile can evade the Pricing Commitment by decreasing the quality of video streaming (*e.g.*, from 720p or 1080p HD to 480p) for legacy plan subscribers while maintaining HD quality for new plan subscribers.¹⁸

FACT: Contrary to DISH's claims, New T-Mobile customers will continue to be able to stream at the video quality provided in their existing plans, regardless of whether they subscribe to new or legacy plans. If a customer has chosen a plan that includes 720p or 1080p streaming, he or she will still be able to stream in 720p or 1080p.¹⁹

¹⁶ DISH February 7th Letter at 4.

¹⁷ Like all carriers, T-Mobile and Sprint use network management practices to maximize customer quality of service and experience, including deprioritization of heavy users, who may notice reduced speeds during periods of congestion. This deprioritization is not the result of a cap. Extremely heavy (*e.g.*, 50 GB per month or more) users on both new and legacy plans will continue to be subject to deprioritization and may notice reduced speeds during times of network congestion.

¹⁸ See DISH February 7th Letter at 4.

¹⁹ Streaming quality for legacy or new plan subscribers may decrease during periods of network congestion and/or as a result of network management practices to maximize customer quality of service and experience during such periods.



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DISH Claim: New T-Mobile can evade the Pricing Commitment by increasing the cost for legacy plan subscribers to purchase or upgrade a new phone, increasing their down payment for a new phone or making it harder for legacy subscribers to upgrade their devices.²⁰

FACT: There will be no such impediments for legacy subscribers. As mentioned above, both legacy and new plan subscribers will be able to purchase phones from New T-Mobile at consumer-friendly prices and without additional fees, or bring their own devices to the New T-Mobile network.

DISH Claim: New T-Mobile can evade the Pricing Commitment by eliminating legacy plan benefits, restricting promotions to new plans or eliminating promotions for legacy plans.²¹

FACT: This claim ignores the plain meaning of the Pricing Commitment—*i.e.*, to offer “the same or better” plans.²² If a legacy plan already includes various benefits or promotions, then they are, by definition, part of the plan and cannot be unilaterally decreased or eliminated under the Pricing Commitment.²³

DISH Claim: New T-Mobile could eliminate unlimited video streaming for legacy plans.²⁴

FACT: Again, DISH ignores the plain text of the Pricing Commitment. Binge On is a benefit and feature of some existing legacy plans and, therefore, it is protected under the commitment. As such it cannot be unilaterally eliminated for those legacy plans.²⁵

DISH Claim: New T-Mobile could also circumvent the Pricing Commitment by requiring new plans for 5G-enabled phones.²⁶

²⁰ See DISH February 7th Letter at 4-5.

²¹ See *id.* at 5.

²² See Pricing Commitment Letter at 2. We note that promotions will be honored under their existing terms.

²³ Certain benefits or promotions may be provided by third party partners and would remain subject to the Pricing Commitment’s proviso that New T-Mobile would be permitted to adjust legacy plans to modify or discontinue third party partner benefits based on changes in the terms of the offering initiated by the third party partner.

²⁴ See DISH February 7th Letter at 6.

²⁵ As previously noted, video streaming provided by third party partners would remain subject to the Pricing Commitment’s proviso that New T-Mobile would be permitted to adjust legacy plans to modify or discontinue third party partner benefits based on changes in the terms of the offering initiated by the third party partner.

²⁶ See DISH February 7th Letter at 6.



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FACT: The Pricing Commitment does not permit New T-Mobile to discontinue a plan unless it offers a plan with the same or better terms. That is not contingent on the device that the subscriber brings to New T-Mobile's network. As discussed above, any subscriber can bring any compatible device of his or her choosing to any plan. If a phone is not 5G capable, however, it will not have the technical ability to take advantage of 5G benefits. That is a function of the technology of the device, not a restriction that New T-Mobile would place on customers.

DISH Claim: New T-Mobile could remove the ability of legacy plans to use phones as hotspots.²⁷

FACT: This claim also ignores the Pricing Commitment's clearly stated terms. The amount of data a customer has for using his or her phone as a hotspot is a feature of current legacy plans and, therefore, it is protected under the Commitment.

III. ALL EXISTING T-MOBILE AND SPRINT MVNO AGREEMENTS WILL BE HONORED BY NEW T-MOBILE

Finally, DISH claims that the Pricing Commitment will not prevent price increases for resellers and MVNOs.²⁸ However, in addition to demonstrating that business and economic forces provide strong disincentives against New T-Mobile increasing resale and MVNO prices,²⁹ T-Mobile has also already committed that New T-Mobile will honor all existing agreements with resellers and MVNOs for the remaining terms of such agreements, which includes honoring the prices stipulated therein.³⁰

IV. CONCLUSION

The Pricing Commitment is iron-clad. It does not have loopholes to exploit or leave no room for evasive strategies. It guarantees that consumers will have the same or better rate plans

²⁷ See *id.*

²⁸ See *id.* at 7.

²⁹ See, e.g., *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197, Description of Transaction, Public Interest Statement, and Related Demonstrations at 123-24 (filed June 18, 2018); *Joint Opposition of T-Mobile and Sprint*, WT Docket No. 18-197 at 88-91 (Sept. 17, 2018) ("Joint Opposition"); *Declaration of Mark Israel, Michael Katz, and Bryan Keating*, App. F to Joint Opposition of T-Mobile and Sprint, WT Docket No. 18-197 at 23-25 (Sept. 17, 2018); *Joint Supplemental Declaration of Professor Steven C. Salop and Dr. Yianis Sarafidis*, Appx. H of Joint Opposition of T-Mobile and Sprint, WT Docket No. 18-197 at 46-49 (Sept. 17, 2018); *Declaration of Dr. Glenn A. Woroch*, Appx. I of Joint Opposition of T-Mobile and Sprint, WT Docket No. 18-197 at 25-26 (Sept. 17, 2018).

³⁰ Joint Opposition at 89.



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for three years after the merger closes. It also guarantees that New T-Mobile customers will receive the benefits of network improvements over that three-year period at no additional cost. However, this is just the ceiling and not the floor for prices and does not scratch the surface of the numerous other benefits that the merger will bring consumers. New T-Mobile will aggressively go beyond this baseline to ensure that consumers will pay less and get more as a result of the merger as documented in the New T-Mobile business plan and declarations from T-Mobile executives.

Respectfully submitted,

DLA Piper LLP (US)

/s/ Nancy J. Victory

Nancy J. Victory

cc: Chairman Ajit Pai
Commissioner Michael O’Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks
David Lawrence
Kathy Harris
Linda Ray
Kate Matraves
Jim Bird
David Krech