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February 14, 2019

By ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On February 4, T-Mobile attempted to counter the clear evidence that this merger will lead to higher prices by offering a three-year “rate plan” freeze to “remove all doubt and simplify the Commission’s review of the merger[.]”¹ But, T-Mobile’s latest submission—in which the company spends *eight* pages attempting to *clarify and explain* its commitment—serves as Exhibit A to prove why such behavioral conditions are hard to explain, easy to evade, and difficult to enforce. It is for these reasons, among others, that regulators have disfavored such conditions in past merger reviews, a point T-Mobile completely fails to address.² Instead, T-Mobile’s latest attempt at “clarity”³ actually creates more confusion, reinforcing why conduct restrictions are ineffective to guard against this merger’s proven harms. The best way to protect consumers is through competition, not loophole-filled, unenforceable pricing pledges.

T-Mobile’s latest response makes new commitments under the guise of explaining the one it originally made. In doing so, it raises new questions that illustrate the difficulty in interpreting—and enforcing—such pledges. As just one example, on the subject of plan availability, T-Mobile originally stated: “T-Mobile and Sprint legacy rate plans will continue as

¹ Letter from Nancy Victory, T-Mobile Counsel, to Marlene Dortch, FCC, at 2, WT Docket No. 18-197 (Feb. 4, 2019) (“T-Mobile First Pricing Commitment Letter”).

² See Letter from Pantelis Michalopoulos, DISH Counsel, to Marlene Dortch, FCC at 6-7, WT Docket No. 18-197 (Feb. 7, 2019) (citing statement from Mr. Delrahim opposing conduct remedies: “In telecommunications, as in other industries, we strongly favor structural remedies. If a structural remedy isn’t available, then, except in the rarest of circumstances, we will seek to block an illegal merger.”).

³ Letter from Nancy Victory, T-Mobile Counsel, to Marlene Dortch, FCC, at 2, WT Docket No. 18-197 (Feb. 12, 2019) (“T-Mobile Second Pricing Commitment Letter”).

New T-Mobile plans for three years after the merger or until *better plans* that offer a lower price or more data are made available, whichever occurs first.”⁴ Now T-Mobile explains what a “better plan” “simply” is: “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.”⁵ This does not explain; it adds. It is impossible to infer from the original words that “better plan” means the three categories identified in T-Mobile’s latest explanation. And the answer only begets more questions, for example:

- What does “same plan” mean?
- When does a plan become different and what are the implications for price flexibility for that plan?
- What does “same price” mean?
- Would a different dollar amount per month be considered the same price on account of a non-monetary benefit supposedly given a customer?

T-Mobile perfunctorily states: “that’s it.” But that is evidently *not* it because its letter then adds: “consistent with these principles, network improvements in speed, quality, and coverage will not be a basis for eliminating a legacy plan.”⁶ Again, it is unclear what this statement means. What can provide such a basis? And even if a legacy plan is not eliminated, would New T-Mobile be able to lure customers into a new plan by finding a way to make the legacy plan unattractive? Who will interpret and police these distinctions or determine if New T-Mobile is in compliance? And any answers to these questions are sure to give rise to further ones, in an ever branching-out tree of uncertainty.

Further, T-Mobile does not actually “refute” two of the four loopholes DISH identified in its price condition.⁷ Instead, it admits that: (1) “the terms of the Pricing Commitment do not include device or handset offerings”⁸ and (2) T-Mobile can cancel or modify benefits under legacy plans if those benefits are provided by third party services. T-Mobile twice emphasizes “initiated by the third party partner”⁹ as if T-Mobile is a passive entity with no ability whatsoever to negotiate with its partners. Such gaping loopholes render T-Mobile’s pledge effectively meaningless.

Finally, DISH notes that its letter provided only an illustrative, not exhaustive, set of the loopholes in T-Mobile’s commitment and the ways it could be evaded. T-Mobile’s latest explanation of the price commitment is just a further testament to its unworkability.

⁴ T-Mobile First Pricing Commitment Letter at 4.

⁵ T-Mobile Second Pricing Commitment Letter at 3.

⁶ *Id.*

⁷ *See* DISH February 7th Letter at 2-3.

⁸ T-Mobile Second Pricing Commitment Letter at 3.

⁸ *Id.* at 4.

⁹ *Id.*

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Respectfully submitted,

/s
Pantelis Michalopoulos
Counsel to DISH Network Corporation