



DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
www.dlapiper.com

Nancy Victory  
nancy.victory@dlapiper.com  
T 202.799.4216  
F 202.799.5616

March 11, 2019  
VIA ECFS

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

**Re: Notification of Written *Ex Parte* Presentation  
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:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), notice is hereby provided of a written *ex parte* presentation in the above-referenced docket. In its *ex parte* filings, DISH Network Corporation (“DISH”) asserts that the merger of T-Mobile US, Inc. (“T-Mobile”) and Sprint Corporation (“Sprint” and, collectively with T-Mobile, “Applicants”) will cause mobile wireless service prices to increase. As purported evidence, DISH recites that “[t]he Applicants’ economic experts have admitted that the merger will produce substantial price increases.”<sup>1</sup> In addition, DISH claims the commitment that New T-Mobile will make available the same or better rate plans for three years after the merger closing is full of loopholes and, in any event, such “behavioral” safeguards for consumers reflect underlying problems with the merger.<sup>2</sup> DISH misrepresents the facts and misstates the law.

DISH, given its own track record, is a particularly peculiar “champion” for consumers.<sup>3</sup> While liberties are sometimes taken in the course of advocacy, DISH has gone out-of-bounds in a

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<sup>1</sup> Letter from Pantelis Michalopoulos, Counsel for DISH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, at 1 (Jan. 28, 2019).

<sup>2</sup> Letter from Pantelis Michalopoulos, Counsel for DISH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, at 2-3 (Feb. 7, 2019).

<sup>3</sup> DISH has a track record of price increases for its services, speculative warehousing of spectrum, and failing to meet FCC-imposed deadlines to construct the facilities required to deliver wireless services to the public. Indeed, DISH stands out for its efforts to game the regulatory system by proffering a modernized version of last century’s two-way paging as a substitute for meeting its obligations to start building a real 5G network. This suggests that DISH has little interest in actually delivering real 5G service and its private pecuniary interest is to delay or block those who would actually do so. *See* Letter from Nancy J. Victory, Counsel for



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calculated and misleading way by stating that T-Mobile and Sprint have conceded that the merger will produce price increases. Nothing could be further from the truth. To the contrary, T-Mobile and Sprint's economists, Israel, Keating & Katz ("IKK"), have found the exact opposite—the merger creates net downward pricing pressure.

As DISH also well knows, the Applicants' business plans and financial data show that New T-Mobile will have a 6 percent decline in average revenue per user ("ARPU"). These plans and data are supported by declarations that show how New T-Mobile will use the massive increase in capacity and lower costs created by the merger-enabled new 5G network to take market share from industry leaders AT&T and Verizon. Contrary to the DISH submissions, the real world business economics of the transaction are straightforward and not debatable. New T-Mobile will have large financial incentives to utilize fully this capacity and lower costs by selling more data to more customers at lower prices.

DISH, however, tries to elevate the existence of some gross upward pricing pressure – without considering the transaction's massive efficiencies, its inducement of repositioning by competitors, and the aggressive expansion of cable companies into mobile wireless – into a concession about the merger's effects. However, the existence of gross upward pricing pressure is unremarkable; any analysis of unilateral effects will show upward pricing pressure for any merger where the parties are competitors. If the presence of gross upward pricing pressure by itself were a disqualifying factor, no merger of competitors would ever be approved. Instead, this is just one piece that must be considered jointly with other key pieces (cost efficiencies, quality efficiencies, repositioning, expansion, and entry) under DOJ and Commission merger review standards—not in isolation or as a lone starting point.

DISH never correctly undertakes or completes the analysis performed in the merger simulations, which is to examine the calculated upward pricing pressure combined with the cost efficiencies,

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T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, at 2 and n. 3 (Feb. 12, 2019) (citing 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-highercosts> ("Dish said it's increasing prices for English-language video packages by \$3 to \$5 a month.")) ("Pricing Commitment Response Letter"); *see also* Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, ULS call signs T060430001, T070272001, WQJY944, and WQTX200 (Oct. 25, 2018).



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quality improvements and other factors to determine how the simulations predict that consumers will fare. This is akin to doing a math exercise in which you only count the negative number in the equation, ignore all positive numbers and fail to account for how they interact with each other. This is not just bad math; it is stupid math and irresponsible because it produces the opposite result from what the facts actually show.

T-Mobile and Sprint have done their homework and had renowned economists submit declarations backed by hard facts—and a complete analysis—to show that the merger results in prices decreasing and consumer welfare increasing. This conclusion is confirmed by numerous proof points before the Commission that include:

- A business plan predicated on consumers paying less for more. The plan calls for a 6 percent decline in ARPU backed by numerous declarations showing New T-Mobile will use the massive capacity and lower costs created by the merger to take market share for the short term and the long term.
- An economic analysis by IKK showing that, following the merger, “consumers benefit in each year of the 2019 to 2021 transition period (as well as the following years through 2024). In the IKK baseline case, the merger creates \$359 billion in incremental consumer surplus.” “[T]he total gains in consumer surplus correspond to gains of \$1,036 per subscriber.” The IKK “analysis demonstrates that the projected combination of lower marginal costs and higher network quality will prevent any adverse unilateral competitive effects in the 2019 through 2021 period, in fact, the merger will strengthen competition and increase consumer welfare.”<sup>4</sup>
- Drs. John Asker, Timothy F. Bresnahan and Kostis Hatzitaskos also have provided a detailed merger analysis based on real world consumer behavior that demonstrates that Sprint and T-Mobile are not disproportionately close competitors to one another and that consumers place substantial value on the sorts of network quality improvements that the merger will facilitate. This latter conclusion is particularly true of heavy data users,

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<sup>4</sup> Letter from Nancy J. Victory, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, at 3 (Feb. 21, 2019).



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including in localities with significant African America, Hispanic, low income, or credit challenged populations.<sup>5</sup>

- Dr. David Evans has calculated that the transaction will cause the industry-wide amount of data provided to subscribers to be as much as 120 percent higher and the price per GB of data be as much as *55 percent lower* by 2024.<sup>6</sup>
- Dr. Harold Furchtgott-Roth examined the potential consumer savings from New T-Mobile competition for in-home broadband and found that the cumulative benefits of in-home broadband replacement service, wireless substitution and competitive responses of monopoly/duopoly fixed broadband providers could result in over \$13 billion in annual consumer savings.<sup>7</sup>
- Prof. Steven Salop and Dr. Yianis Sarafidis found no likelihood of increased coordination post-merger because: (1) network efficiencies will drive down costs and make it more likely for New T-Mobile to continue its disruptive maverick behavior; (2) demand in the wireless market will create incentives for New T-Mobile to grow its subscriber base before expected future efficiencies are fully realized; and (3) the 5G transition makes coordination unlikely.<sup>8</sup>
- Dr. Glenn Woroch evaluated possible competitive effects of the merger and found that any attempts by New T-Mobile to raise prepaid prices would be futile because of consumer behavior and competitors' responses and that all major carriers will have strong incentives to compete aggressively for prepaid subscribers.<sup>9</sup>

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<sup>5</sup> Letter from Nancy J. Victory, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (Nov. 6, 2018).

<sup>6</sup> Joint Opposition of T-Mobile and Sprint, WT Docket No. 18-197, at App. G ¶15 (Sept. 17, 2018).

<sup>7</sup> *Id.* at App. J pg. 2 (Sept. 17, 2018).

<sup>8</sup> *Id.* at App. H (Sept. 17, 2018).

<sup>9</sup> *Id.* at App. I pg. 11 (Sept. 17, 2018).



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Aside from all of the foregoing evidence in the record, consistent with the New T-Mobile business plan and the financial incentives created by the merger, 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 and Sprint as of February 4, 2019 for three years following the merger (the “Pricing Commitment”).<sup>10</sup> To emphasize this commitment, John Legere, CEO of T-Mobile, sent a letter to Chairman Pai stating “unequivocally, that New T-Mobile rates are NOT going to go up.”<sup>11</sup> Indeed, New T-Mobile’s business plan is to reduce—not increase—prices, while dramatically improving quality.<sup>12</sup>

DISH challenged the Pricing Commitment by submitting a laundry list of claimed loopholes or alleged opportunities for evasion. In response, the Applicants provided item-by-item answers showing there are no loopholes or hidden surprises.<sup>13</sup> In doing so, the Applicants pointed out that, under the commitment, customers will receive the benefit of network improvements (whether LTE or 5G) within those rate plans at no added charge. As a result, customers will receive improved service quality while enjoying the same price and terms under the commitment. With this showing, DISH has been effectively silenced, except to repeat in rote fashion that there must be loopholes, notwithstanding the fact that none exist.

DISH then shifted gears to equate the Pricing Commitment with a behavioral merger condition and asserted that “regulators have disfavored such conditions in past merger reviews.”<sup>14</sup> This is clearly not true as a matter of fact or law. The Pricing Commitment merely formalizes the New

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<sup>10</sup> Letter from Nancy J. Victory, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (Feb. 4, 2019) (“Pricing Commitment Letter”).

<sup>11</sup> Letter from John Legere, Chief Executive Officer, T-Mobile, to Chairman Ajit Pai, Federal Communications Commission, WT Docket No. 18-197 (Feb. 4, 2019).

<sup>12</sup> Pricing Commitment Letter, at 1, 2.

<sup>13</sup> See Pricing Commitment Response Letter.

<sup>14</sup> See Letter from Pantelis Michalopoulos, Counsel for DISH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, at 6-7 (Feb. 7, 2019) (citing statement from Mr. Makan 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.”).



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T-Mobile business plan as set forth in the representations made by the Applicants before the Commission and Congress. As noted in an earlier response to DISH:

“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.”<sup>15</sup>

Indeed, the Commission has repeatedly accepted commitments or relied on conditions to ensure that merger applicants will do what they promise to do. This includes pricing conditions where the future costs of service for consumers are being contested by merger opponents.<sup>16</sup>

In sum, DISH continues to misstate the economic evidence submitted by the Applicants, assert there are commitment loopholes where none exist, and seek to convert commitments that the Applicants will do what they promise into danger signs. As documented above, the record shows that prices will not go up, but rather will decline and service to T-Mobile’s customers will vastly improve. This is what New T-Mobile will do—and what DISH and other competitors fear will happen—once the merger is approved.

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<sup>15</sup> Pricing Commitment Response Letter, at 1.

<sup>16</sup> See, e.g., *In the Matter of Applications of Level 3 Communications, Inc. and Century Link, Inc.*, Memorandum Opinion and Order, WC Docket No. 16-403, 32 FCC Rcd. 9581 at \*8 (Oct. 30, 2017) (“To mitigate this possibility of competitive harm, we condition our approval of the Applications on the combined company refraining from increasing rates for any service provided by CenturyLink or Level 3 at the ten locations identified in Appendix B for five years following the closing date of the Transaction.”); *In the Matter of Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Holding Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 at 12395 (Jul. 25, 2008) (“We accept this voluntary commitment and conclude that it will mitigate the harm from any post-merger price increases. In addition, Applicants may not reduce the number of channels in either their current packages or their new packages for three years.”).



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Please direct any questions regarding the foregoing to the undersigned counsel for T-Mobile.

Respectfully submitted,

**DLA Piper LLP (US)**

*/s/ Nancy J. Victory*

Nancy J. Victory  
Partner

NV

cc: David Lawrence  
Kathy Harris  
Linda Ray  
Catherine Matraves  
Jim Bird  
David Krech