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Acting Chairwoman Jessica Rosenworcel
Federal Communications Commission
45 L Street, NE
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 Acting Chairwoman Rosenworcel:

DISH Network Corporation (“DISH”) provides this response to T-Mobile’s April 11, 2021 letter.¹ T-Mobile’s letter is the company’s latest unconvincing attempt to justify its blatantly anticompetitive decision to prematurely shut down the operation of the legacy Sprint CDMA network (the “CDMA network”). Critically, T-Mobile makes no effort to challenge the central basis of DISH’s concerns: that the accelerated shutdown of the CDMA network likely will harm millions of Boost consumers, many who already face economic challenges. This is because the harms are indisputable. If allowed to proceed with its newly announced January 1, 2022 shutdown date, the outcome you warned against when you dissented from the Commission’s approval of the Sprint/T-Mobile merger will unfortunately be realized: the merger “will do nothing to make it easier for Americans to stay connected.”²

T-Mobile spends seven pages attempting to disclaim any responsibility for harms resulting from its own decision to prematurely shut down the CDMA network. At the same time, T-Mobile’s CEO Mike Sievert is publicly attempting to preserve the company’s image, erroneously asserting that “[t]he truth of the matter is of the 9 million customers that Boost has give or take, by the end of this year almost 90% of them will already have a handset that is totally compatible with T-Mobile’s network ... nobody’s having anything unplugged.”³ But, as Americans are suffering under the stresses imposed by the COVID-19 pandemic, chipset shortages remain across the globe, and key manufacturers like LG are exiting the handset market, the “un-carrier’s” latest letter makes clear that T-Mobile believes the

¹ Letter from Kathleen O’Brien Ham, T-Mobile, to Acting Chairwoman Jessica Rosenworcel, FCC, WT Docket No. 19-348 (April 11, 2021) (“*TMO 4/11 Letter*”).

² *Applications of T-Mobile US, Inc., and Sprint Corporation, For Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, ULS File Nos. 0008741236, 0008741420, 0008741603, and 0008741789 et al., WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, Statement of Commissioner Jessica Rosenworcel, Dissenting (2019) (“*Sprint/T-Mobile Merger Approval Order*”).

³ Mike Sievert, Fox Business: The Claman Countdown, at 4:46 (March 12, 2021), available at <https://video.foxbusiness.com/v/6239743908001#sp=show-clips>.

shutdown it is causing is not its problem to solve. T-Mobile cannot have it both ways. Equally as egregious is the fact that as T-Mobile moves forward with plans to leave vulnerable Boost consumers out in the cold, the company is recouping tens of billions of dollars in profits from its merger with Sprint.

DISH is not asking for T-Mobile to do anything except honor the commitments it made to regulators under oath and keep the CDMA network operational until at least July 2023. While T-Mobile had no problem making these statements to give comfort to regulators that its acquisition of Sprint would not result in consumer harms, T-Mobile is now hiding behind narrow contractual provisions in its attempt to perpetrate the exact harms it promised it would not cause.

Mr. Sievert has even gone so far as to intimate that the shutdown is being done at *the FCC's behest*. When asked about discussions with the FCC on this topic, Mr. Sievert answered:

Yes and they want us to move as quickly as possible and in fact required that we move incredibly quickly with an unprecedented set of commitments that they demanded we move to a network that requires that all of our assets be on the destination T-Mobile network very quickly... ***They not only asked us to do it, they required us to do it.***⁴

This statement is at odds with the very reason Boost is under DISH's ownership today: the Boost divestiture was required by both the FCC and Department of Justice ("DOJ") to remedy the anticompetitive harms that would have otherwise resulted from the consolidation of the wireless market from four to three carriers. As the FCC explained "the proposed transaction in the absence of conditions risks eliminating price competition between the Applicants' brands for some customers"⁵ and "[b]y placing Boost in the hands of an independent competitor [DISH]—instead of the merging parties—the divestiture results in a transaction structurally distinct from the complete consolidation of the Applicants' brands modeled in our static merger simulation analysis."⁶ Similarly, the DOJ concluded that: "[t]he combination of T-Mobile and Sprint would eliminate head-to-head competition between the companies and threaten the benefits that customers have realized from that competition in the form of lower prices and better service"⁷ and the remedies imposed "require[] structural relief in the form of divestitures designed to ensure the development of a new national facilities-based mobile wireless carrier competitor to ultimately remedy the anticompetitive harms that flow from the change in the market structure that otherwise would have occurred as a result of the merger."⁸ T-Mobile conveniently ignores this context and tries to blame everyone – including the FCC – instead of taking corporate responsibility for its own decision. It's not hard to see why: T-Mobile's timeline will disenfranchise Boost customers and will undermine the remedy imposed by regulators by hampering

⁴ *Id.* at 5:38 (emphasis added).

⁵ *Sprint/T-Mobile Merger Approval Order* at 10661.

⁶ *Id.* at 10665.

⁷ United States of America, et. al., v. Deutsche Telekom AG, et al., Competitive Impact Statement, Civil Action No. 1:19-cv-02232-TJK, at 7 (filed July 30, 2019).

⁸ *Id.* at 8.

DISH's ability to provide competition in the wireless market and stifling DISH's ability to utilize the MVNO agreement signed by the parties.⁹

Shutting Down the CDMA Network on January 1, 2022 Will Harm Consumers

T-Mobile attempts to defend its new timeline by, among other things, perpetuating the fantasy that a January 1, 2022 decommissioning date represents “a giant leap forward in performance and capabilities”¹⁰ for impacted customers. DISH does not dispute that the New T-Mobile network provides advantages for consumers. But, as DISH has explained, a forced migration of this scale under this accelerated time frame is simply not possible and will leave potentially millions of vulnerable Boost subscribers disenfranchised. Thus, if a consumer does not have a device and/or SIM card capable of accessing T-Mobile's network, as is the case for the majority of Boost consumers, these advanced features are of no use. Rather than “hav[ing] access to high-speed broadband with vastly superior capabilities,”¹¹ millions of Boost consumers potentially will not have access to *any* services at all come January 1, 2022 because of T-Mobile's heartless decision.¹² T-Mobile bizarrely seeks to cast this shutdown as a public interest benefit, but contrary to its claims, the harms that would befall consumers – especially low income Boost consumers that rely on their wireless devices to stay connected during a global pandemic – will be very damaging.

As T-Mobile knows, technology migrations are complex tasks that require time to plan, execute, and implement successfully. DISH is working to mitigate the harms of this shutdown, but we are constrained by T-Mobile's new timeline: instead of having until July 2023 to complete our migration, we now have just 261 days. The early shutdown is exacerbated by the current supply chain chip crisis (meaning less chips are available for replacement handsets) and the recent exit of LG (Boost's largest device supplier) from the consumer handset business, severely limiting our ability to even secure compatible inventory. Further, this rapid timeline is unprecedented: in March, Verizon announced that it will extend the shutdown of its own CDMA network until December 31, 2022. This is the *third time* Verizon has extended this deadline since announcing in **2016** it would ultimately decommission its CDMA network.¹³ Verizon made the decision to extend operations for another year even as less than *1 percent* of its customer base is currently still accessing the company's 3G network, thanks to its multi-year migration effort. T-Mobile ignores these facts and instead states “[t]he migration of the wireless

⁹ United States of America, et. al., v. Deutsche Telekom AG, et al., Final Judgment, Civil Action No. 1:19-cv-02232-TJK, at Section VI.B.6 and IV.E (entered April 1, 2020) (“*Final Judgment*”).

¹⁰ *TMO 4/11 Letter* at 2.

¹¹ *Id.* at 6

¹² This includes an inability to access critical public safety services like 911: if a consumer has a device that cannot operate without the CDMA network, it similarly cannot utilize the public safety functions of the New T-Mobile network.

¹³ 3G CDMA Network Shut off date set for December 31, 2022, Mike Haberman, Verizon Blog (March 30, 2021), *available at* <https://www.verizon.com/about/news/3g-cdma-network-shut-date-setdecember-31-2022>.

industry from an old technology to a new technology is hardly an unprecedented endeavor.”¹⁴ We agree, but it is T-Mobile’s new timeline that makes this endeavor unprecedented. Even incumbents like Verizon understand the amount of time necessary to ensure consumers are not harmed in any technology migration, and we commend Verizon’s responsible decision. T-Mobile, in contrast, either does not know or does not care.

T-Mobile Cannot Ignore the Commitments it Made Under Oath to Regulators

When it was seeking approval for its merger, T-Mobile promised regulators it “will do all it can to make it possible for DISH to successfully and timely migrate the Sprint prepaid customers to the network.”¹⁵ The company repeatedly provided assurances that such a migration would take *at least* three years, but that it would have the option to utilize spectrum necessary for CDMA operations for *five years* to support such customers. For example, when questioned about the support of legacy Sprint customers during the migration at the California Public Utility Commission’s Evidentiary Hearing, Neville Ray of T-Mobile answered:

We would use the 800 megahertz. Why we want to use it for that three years is during the migration process of Sprint and Boost customers off of the legacy Sprint network and the Sprint services and onto the New T-Mobile network. So our intent is to -- that's why we put three years there. *If we determine we need longer, we have the right. We negotiated that through the PFJ with the DOJ and with DISH so that we could retain a portion of that 800 megahertz for up to five years.* And the spectrum is used today. I mean why that last four megahertz is important, *that's the service or the spectrum that supports primarily today that CDMA voice service, and that's the piece that we want to make sure is protected its needs as we move through the first three-year period.*¹⁶

Now that its merger has been approved, T-Mobile falsely recasts these prior statements as pronouncements that the company has “up to three years to fully sunset the *legacy Sprint CDMA network*[,]”¹⁷ highlighting that three years always represented the maximum period for operation of the network. Not only is this revisionist history contradicted by T-Mobile’s own statements, it is also inconsistent with the contractual terms agreed to by the parties. As Mr. Ray explained, T-Mobile requested a lease-back option for the 800 MHz spectrum *specifically* for the purpose of supporting CDMA operations for an additional two years after the 800 MHz divestiture to DISH. T-Mobile’s attempts to revise its own timeline are not credible.

T-Mobile also tries to rely on a supposed “plan of record” to justify its accelerated timeline. As a threshold matter, DISH is unaware of any plan available in the FCC’s public merger docket that indicates that T-Mobile will shut down its entire CDMA network by January 1, 2022 and was first

¹⁴ *TMO 4/11 Letter* at 4.

¹⁵ Supplemental Testimony of Neville R. Ray to the CPUC, at 13 (Nov. 7, 2019).

¹⁶ CPUC Additional Evidentiary Hearing Transcript; Cross Examination Testimony of Neville Ray, Transcript at 123: 27-28 124:1-17 (December 5, 2019) (emphasis added).

¹⁷ *TMO 4/11 Letter* at 5 (emphasis added).

made aware of this new timeline when it received T-Mobile's notice in October 2020, long after the merger was consummated. T-Mobile cites just two sentences in a September 2018 merger filing to support its assertions of a "plan of record." Not surprisingly, the language cited serves to reinforce DISH's concerns. Not only did T-Mobile assure that concerns about the "rapid termination" of the CDMA network were "misplaced," it acknowledged that termination of the CDMA network will "vary by geography."¹⁸ Consistent with this statement, the MNSA contemplated a market-by-market wind down over a prolonged period of time, rather than a flash cut of service. The MNSA requires T-Mobile to "provide DISH with reasonable advance notice of at least six months prior to the shutdown of the Legacy Network in any market."¹⁹ Importantly, this provision must be taken in the larger context of the totality of the merger proceeding, including the three to five year timeline laid out in the 800 MHz spectrum purchase agreement *and* T-Mobile's repeated statements under oath regarding a three year migration.

T-Mobile's Decision to Shut Down the CDMA Network is Anticompetitive

T-Mobile decries any suggestion that its actions are anticompetitive by explaining that T-Mobile will be migrating its own legacy Sprint CDMA customers on the very same timeline it has forced DISH into, arguing that its ability to do so "belies any suggestion that it can't be done on a timely basis."²⁰ Far from absolving T-Mobile, these statements confirm the anticompetitive nature of the company's actions. It is DISH's Boost customers alone that will disproportionately suffer the impact of a premature CDMA network shutdown.

Setting aside the fact that T-Mobile has had significantly longer than DISH to plan for such a shutdown (T-Mobile closed on its purchase of Sprint on April 1, 2020, while DISH purchased Boost on July 1, 2020 and did not receive notice of T-Mobile's accelerated shutdown date until October 2020), these statements ignore that Boost prepaid customers are often the hardest wireless consumers to reach. Prepaid customers often do not provide a street address or email address when purchasing service. Even if DISH has such data, it is not unusual for prepaid customers to be transient, especially as they have had to move to new locations due to economic pressures from COVID-19. DISH's only means of contacting a customer may be the phone itself, but if the customer is temporarily unable to afford topping up usage time on the phone, DISH has no reliable way to contact that customer.

These harms are directly relevant to the pro-competitive goals of the remedy imposed by the DOJ, as they threaten DISH's ability to utilize the MNSA and to compete, implicating Sections IV and VI of the Final Judgment.²¹ Indeed, the success of DISH as a wireless competitor is a central part of

¹⁸ *Id.* at 5, FN10.

¹⁹ Master Network Services Agreement between T-Mobile USA, Inc., DISH Purchasing Corporation at Annex 1 Section 2.2 (c).

²⁰ *TMO 4/11 Letter* at 1.

²¹ *See Final Judgment* at Section VI.B.6 (T-Mobile "shall not otherwise unreasonably delay, impede, or frustrate [DISH's] ability to use any Full MVNO Agreement and the [T-Mobile] networks to become a nationwide facilities-based retail mobile wireless services provider") and Section IV.E ("The divestitures will be accomplished so as to satisfy the United States, in its sole discretion, that none of

remedying the harms that would otherwise have resulted from the Sprint/T-Mobile merger. These provisions are important and carefully crafted elements of the DOJ’s remedy to ensure DISH’s success.

Rather than focus on the anticompetitive effects of its decision, T-Mobile extols its offer to implement a VoLTE/MOCN solution to “extend the life of an estimated 800,000 handsets” for approximately six months, which it notes that DISH declined.²² But, T-Mobile conveniently fails to mention that it was T-Mobile itself that urged DISH *not* to utilize this option. Among other reasons, T-Mobile explained that any development work to implement this solution: 1) would take T-Mobile seven months to develop and divert T-Mobile resources away from other DISH initiatives; 2) would impact only a small subset of customers; and 3) would provide relief only until T-Mobile’s legacy Sprint LTE network is decommissioned, which the company has already said would occur shortly after the current CDMA shutdown date.

Further, T-Mobile erroneously claims that “DISH actually has been adding a substantial number of new customers onto the CDMA network each month and has extended the end date for new legacy Sprint network activations.”²³ But, less than 10 percent of new Boost activations last month were on the CDMA network. And, these activations are limited to geographic areas in which T-Mobile network coverage has been poor or non-existent.

* * *

T-Mobile’s decision to deprive Boost customers of service on January 1, 2022 raises serious competition and public interest concerns. In order to safeguard the public interest, T-Mobile should maintain the operation and performance of the CDMA network until at least July 2023, consistent with its prior commitments. We continue to urge T-Mobile to reconsider its current timeline so Boost subscribers are not harmed.

/s/ Jeffrey H. Blum

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the terms of any agreement between [DISH] and [T-Mobile] gives [T-Mobile] the ability unreasonably to raise the [DISH’s] costs, to lower the [DISH’s] efficiency, or otherwise to interfere with the ability of [DISH] to compete.”).

²² *TMO 4/11 Letter* at 4.

²³ *Id.*