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REDACTED—FOR PUBLIC INSPECTION

April 16, 2019

By ECFS

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

Re: **Notice of Ex Parte Meetings, 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 April 12, 2019, representatives of DISH Network Corporation¹ (“DISH”) met with members of the FCC Transaction Team listed in Attachment A to discuss the above-captioned merger, consistent with the presentation enclosed as Attachment B.

During the meeting, DISH explained that *using the Applicants’ own estimated marginal cost savings and quality improvements*, prices will increase for all T-Mobile and Sprint customers in 2019-2020, and for all Sprint customers in 2021-2024. These consumer price increases are even greater if diversions are estimated based on porting data (which are focused on actual customer diversions from one carrier to another), rather than Cornerstone’s data set (which contains neither price nor diversion information).

¹ Participating for DISH were Jeffrey Blum, Senior Vice President, Public Policy & Government Affairs and Hadass Kogan, Corporate Counsel (for the public portion of the discussion only). Also present were Pantelis Michalopoulos and Andrew Golodny of Steptoe & Johnson, LLP, and William Zarakas, Jeremy Verlinda, and Coleman Bazelon of the Brattle Group.

DISH has denoted with **{{BEGIN HCI END HCI}}** information that is deemed to be Highly Confidential Information pursuant to the Protective Order, WT Docket No. 18-197, DA 18-624 (June 15, 2018). Supplemental Highly Confidential Information under the Supplemental Protective Order, WT Docket No. 18-197, DA 19-80 (Feb. 13, 2019) is designated as: **{{BEGIN SUPPLEMENTAL HCI END SUPPLEMENTAL HCI}}**. A public, redacted version of this filing is being filed with the Commission.

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In addition, DISH noted that the Applicants have never rebutted or responded to DISH's showing that the Applicants have dramatically exaggerated the marginal cost savings of this merger by not incorporating any additional spectrum into their model (for example millimeter wave spectrum) beyond what the Applicants held in 2018.² The Applicants did not engage on this issue until April 2, when they claimed that millimeter wave spectrum has "limited use."³ But, the Applicants use much of their existing licensed millimeter wave spectrum in their own network model. DISH's economic experts, the Brattle Group, have incorporated millimeter wave frequencies in the *same* manner as the Applicants do in their model. As one example, the addition of 200 MHz of millimeter wave spectrum to each standalone company would vastly increase capacity for the standalone companies, thus gutting the merger's claimed effect on marginal costs.

Nor have the Applicants rebutted DISH's showing that New T-Mobile would likely raise wholesale prices. Without input substitution, these price increases are expected to range from **{{BEGIN HCI END HCI}}** for resellers buying wholesale services from T-Mobile to an astounding **{{BEGIN HCI END HCI}}** for Sprint's wholesale customers.⁴

DISH also referred to a document produced by T-Mobile on March 29, 2019, where a high-ranking engineer discussed a request made of him by the company's leadership. In an email dated April 27, 2018, **{{BEGIN SUPPLEMENTAL HCI**

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SUPPLEMENTAL HCI}}⁵ Sure enough, in the merger announcement press release two days later, T-Mobile claimed: "[c]ompared to T-Mobile's network today, the combined company's network is expected to deliver 15x faster speeds on average nationwide by 2024, with many customers experiencing up to 100x faster speeds than early 4G."⁶ This document is important for

² See Letter from Pantelis Michalopoulos, DISH Counsel, to Marlene Dortch, FCC, WT Docket No. 18-197 (Feb. 4, 2019); Reply of DISH Network Corp. at 81-86, WT Docket No. 18-197 (Oct. 31, 2018).

³ Attachment B at slide 1, Letter from Nancy Victory, T-Mobile Counsel, to Marlene Dortch, FCC, WT Docket No. 18-197 (April 2, 2019).

⁴ See Reply Declaration of Joseph Harrington, Coleman Bazelon, Jeremy Verlinda, and William Zarakas at 18-20, 44-45, Exhibit 1 to DISH Reply, WT Docket No. 18-197 (Oct. 31, 2018). See also Reply of Altice USA Inc., at 12-15, WT Docket No. 18-197 (Oct. 31, 2018); Declaration of Michael Cragg and Eliana Garces at 17-24, Exhibit 1 to Letter from Jennifer Richter, Altice Counsel, to Marlene Dortch, WT Docket No. 18-197 (Jan. 28, 2019).

⁵ TMUS-FCC-08177140.

⁶ T-Mobile Press Release, T-Mobile and Sprint to Combine, Accelerating 5G Innovation & Increasing Competition (April 29, 2018) <https://investor.t-mobile.com/news-and-events/t->

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two reasons. First, it shows the apparent pressure that T-Mobile executives were under to make claims that could facilitate merger approval even if they are at odds with the reality of **{{BEGIN SUPPLEMENTAL HCI** **END SUPPLEMENTAL HCI}}** Second, the document was produced just recently under the Supplemental Protective Order, meaning that the Applicants previously withheld it as privileged, and are still claiming the protection of privilege for it.⁷ The document is an email exchange among three senior T-Mobile engineers. Despite its subject line, there is no conceivable basis for an assertion of protection under the attorney-client privilege or work product doctrines. Since the Applicants are still withholding (or redacting) thousands of documents on such grounds, it is important for the Commission to ensure that such claims of privilege are in fact justified.

DISH also discussed its recent ex parte submission showing that Sprint's communications to investors continue to contradict the Applicants' claims to the Commission about Sprint's supposedly dismal financial state and precarious 5G plans.⁸ DISH further notes the April 12 launch of Sprint's new marketing campaign, which provides additional proof of the company's health and ongoing investment. In announcing its new "100% Total Satisfaction Guarantee," Sprint's Chief Marketing Officer touted the fact that the company "recently invested billions in our network" and was "confident" that "once people switch to Sprint, they'll love it."⁹ Sprint's press release also described the company's efforts to improve "coverage, reliability and speed nationwide through its massive Next-Gen Network plan. This has resulted in a 36.4% increase in national average download speeds year over year."¹⁰ Such statements—made as

[mobile-us-press-releases/press-release-details/2018/T-Mobile-and-Sprint-to-Combine-Accelerating-5G-Innovation--Increasing-Competition/default.aspx](https://www.fcc.gov/media-library/mobile-us-press-releases/press-release-details/2018/T-Mobile-and-Sprint-to-Combine-Accelerating-5G-Innovation--Increasing-Competition/default.aspx).

⁷ See Supplemental Highly Confidential Information under the Supplemental Protective Order, WT Docket No. 18-197, DA 19-80 ¶ 2 (Feb. 13, 2019) ("Supplemental Highly Confidential Information means Highly Confidential Information that the Applicants claim is privileged or protected by the attorney work product doctrine."). T-Mobile also produced a version of this document at TMUS-FCC-08154219 as "Highly Confidential." But T-Mobile has previously taken the position that, in cases where it has treated the same information inconsistently (e.g., public disclosure and highly confidential treatment), the less restrictive treatment was due to oversight and should be ignored.

⁸ See Letter from Pantelis Michalopoulos, DISH Counsel, to Marlene Dortch, FCC, WT Docket No. 18-197 (Apr. 8, 2019).

⁹ Sprint Launches 100% Total Satisfaction Guarantee; Customers Switching to Sprint Can Get up to \$900 to Cover Switching Fees and New Phone, Sprint Newsroom (Apr. 12, 2019), <https://newsroom.sprint.com/sprint-launches-100-total-satisfaction-guarantee-customers-switching-to-sprint-can-get-up-to-900-to-cover-switching-fees-and-new-phone.htm>.

¹⁰ *Id.*

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recently as last week—further confirm Sprint’s strength as a standalone company and competitive presence in the market.

Please contact me with any questions.

Respectfully submitted,

/s

Pantelis Michalopoulos

Counsel to DISH Network Corporation

Attachment A

Patrick Sun
John Healy
Charles Mathias
Matt Collins
Pramesh Jobanputra
David Lawrence
Jim Bird
Joel Rabinovitz
Nicholas Copeland
Kate Matraves
Weiren Wang
David Sieradzki
Katherine LoPiccalo
Aleks Yankelevich
Ronald Repasi

Attachment B

Further Economic Analysis of the Proposed Sprint/T-Mobile Merger

PRESENTED TO
Federal Communications Commission

PRESENTED BY
Coleman Bazelon
Jeremy Verlinda
William Zarakas

April 12, 2019

THE **Brattle** GROUP

“Integration Period” 2019-2020

Efficiencies Alone Are Insufficient To Prevent Price Increases In Compass Lexecon's 2019-2020 Model

**Merger Price Effects in the Integration Period
Results w/ Compass Lexecon's Claimed Efficiencies, Wholesale Price Restrictions, and
Adjusted Nevo WTP by Diversion Ratio Source***

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Source: Compass Lexecon Revised Model Backup Materials. Notes: Revised Model under Sprint 41212 congestion threshold assumptions. Adjusted Nevo WTP using site-specific quality scenario. "Combined" values in porting diversion approximation scenario calculated using pre-merger shares to weight each respective brand for both pre- and post-merger price effects. *Porting diversion scenario uses Jaffe and Weyl (2013) approximation of price effect.

Efficiencies Alone Are Insufficient To Prevent Welfare Losses In Compass Lexecon's 2019-2020 Model

Merger "Consumer Welfare" Effects in the Integration Period Results w/ Compass Lexecon's Claimed Efficiencies, Wholesale Price Restrictions, and Adjusted Nevo WTP by Diversion Ratio Source

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Source: Compass Lexecon Revised Model Backup Materials. Notes: Results are for the Adjusted Nevo Model in the Maintain Case

Compass Lexecon's 2019-2020 Network Modeling Is Unrealistic

Despite the Applicants' assertions that the standalone networks as currently built will be able to meet demand through 2020, Compass Lexecon calculates integration period costs ranging from {{BEGIN HCI
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Monthly Levelized Costs to Accommodate Expected Traffic (\$M/Month)

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“5G Transition Period” 2021- 2024

Compass Lexecon's Model Still Predicts Harm to Wireless Subscribers

Compass Lexecon fails to address the Applicants' acquisitions of millimeter wave spectrum:

- Adjusting for potential mmWave acquisitions reduces claimed marginal cost savings for existing T-Mobile subscribers by over **{{BEGIN HCI END HCI}}** in 2021
- Including adjusted efficiencies, prices are estimated to increase in the Compass Lexecon model by (under porting diversion): **{{BEGIN HCI**

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Compass Lexecon fails to address other ways the Applicants overstate marginal cost savings, including understating spectral efficiency, New T-Mobile 5G upgrade costs, and the ability of Sprint to refarm existing 2.5GHz spectrum

Compass Lexecon's revisions to the model further overstate the merger's marginal cost savings:

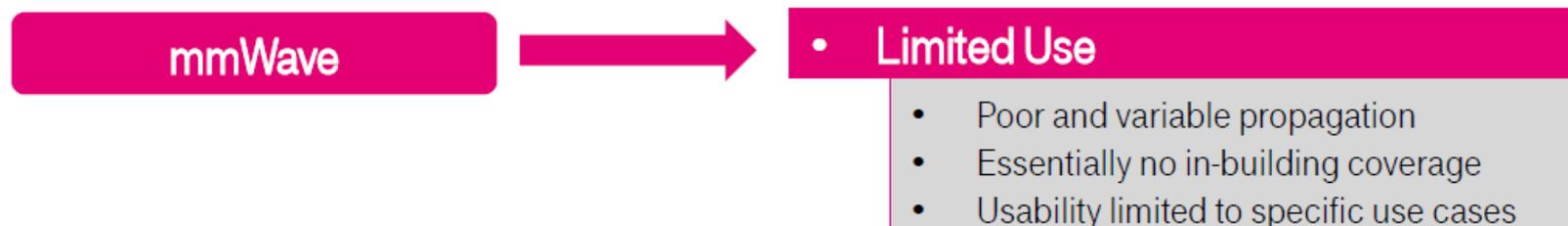
- Increase to the demand forecast requires additional incremental solutions, causing higher marginal cost savings relative to standalone T-Mobile.
- Removing the effect of this increased demand reverses the revised model's increases in marginal cost savings.

The Applicants Fail to Address Omission of Millimeter Wave Acquisitions in Network Model

No millimeter wave acquisitions are included in Compass Lexecon’s updated 5G network model

- Compass has recognized that failure as a vulnerability

The Applicants did not engage on this issue until April 2, when they claimed tersely that millimeter wave has “limited use”:



Applicants’ April 2, 2019 Filing at slide 1

But in the Applicants’ own network model, at sites where existing licensed millimeter wave spectrum is deployed, mmWave is used to provide incremental throughput/capacity in the same manner as other spectrum bands in the model

The Compass Lexecon Model Continues to Ignore Anticipated mmWave Acquisitions

Correcting the model to reflect millimeter wave acquisitions removes a majority of claimed network marginal cost savings

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The Compass Lexecon Model Continues to Ignore Anticipated mmWave Acquisitions

The overstatement of claimed network marginal cost savings is larger still for higher levels of millimeter wave spectrum acquisitions

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Prices increase across all diversion scenarios under adjusted mmWave cost savings and claimed quality improvements

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Changes in Compass Lexecon's 5G Model

Demand levels are revised upward, particularly for T-Mobile

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Changes in Compass Lexecon's 5G Model

**Incremental solutions costs are revised downward for lowband overlays for
New T-Mobile**

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Effect of Changes in Compass Lexecon's 5G Model on Network Marginal Cost Savings

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Changes to Network Modeling lower network marginal cost savings are overwhelmed by changes to 5G user demand assumptions

Sources: Brattle Calculations; Compass Lexecon Backup Materials.

Note: Revised Model under Sprint 41212 congestion threshold assumptions.

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Fixed / In-Home Broadband

Appendix

Merger announcement press release (April 29, 2018):

“Compared to T-Mobile’s network today, the combined company’s network is expected to deliver 15x faster speeds on average nationwide by 2024, with many customers experiencing up to 100x faster speeds than early 4G.”

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Source: TMUS-FCC-07849832 at 07849853

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Compass Lexecon considered **{{BEGIN HCI**
as one of the vulnerabilities of its analysis:

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Source: TMUS-FCC-08089886 at 08089906

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