Akin Gump
STRAUSS HAUER & FELD LLP

April 29, 2019

BY HAND DELIVERY

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

Re: Written Ex Parte, *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation, Consolidated Applications for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197

REDACTED - FOR PUBLIC INSPECTION

Dear Ms. Dortch:

In a recent filing with the Federal Communications Commission (the "Commission"),[1] Sprint attempts to persuade the Commission to disregard the irrefutable harm to the wholesale market caused by its proposed merger with T-Mobile. Sprint attempts to justify its position by falsely asserting, contrary to evidence presented in the record, that: (1) Sprint is not a significant wholesale player, (2) the merger will not harm wholesale competition, (3) Altice seeks only to improve its contract with Sprint, (4) cable wireless partnerships are not beneficial or replicable, and (5) control of core wireless infrastructure does not significantly enhance a providers ability to provide disruptive competition to the incumbent Mobile Network Operators ("MNOs"). These false claims by Sprint are an attempt to distract from the truth, which is that this merger will e<u>liminate</u> competition in the wholesale market, thereby effectively precluding sustainable entry by full infrastructure mobile virtual network operators ("iMVNOs") that present the most substantial retail competitive threat to the New T-Mobile in a post-merger world.

Contrary to Sprint's baseless assertions, the following facts reinforce that this merger will eliminate wholesale competition and therefore deny retail customers the benefits of new competitive entry.

- As one of two companies that 68% of MVNOs rely on for wholesale access, individually providing service for **[BEGIN CONFIDENTIAL]** [redacted] **[END**

[1] Letter from Regina M. Keeney, counsel to Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed Apr. 15, 2019) ("Sprint Response").

CONFIDENTIAL] of the non-TracFone MVNO market,[2] and the only company to provide a full infrastructure MVNO, Sprint is a major source of wholesale competition, and its existence is necessary to preserve a competitive wholesale and retail marketplace.

- Partnerships between cable and wireless companies will accelerate 5G deployment, provide significant wholesale revenues to Sprint, and enable new facilities-based wireless competition. Comcast and Charter recently filed a joint letter correcting the record after Sprint's mischaracterization of their negotiations for wholesale access to Sprint's radio access network ("RAN"). The testimony of Comcast and Charter and Altice's agreement with Sprint both evidence the potential for, and success of, these types of partnerships.[3] Contrary to Sprint's claim, there is no reason that Altice's agreement with Sprint could not be replicated, and modified, as appropriate, with other cable operators.

- "Core control" over the wireless service is essential to the competitiveness of iMVNOs; reseller MVNOs (light or white-label MVNOs) do not pose a true competitive threat to the major MNOs, cannot provide the same public interest benefits as iMVNOs, and their prospects are unsurprisingly less threatened by the merger.

- The merger's negative impact on the wholesale market is predictable and is supported by economic analysis, as well as the recent history of failed negotiations for wholesale RAN access by cable operators.

- Failure to maintain the pre-merger wholesale market will foreclose meaningful future wireless competition.

In light of the evidence that the merger will eliminate wholesale competition between T-Mobile and Sprint, the two major players in the wholesale market today, and thereby foreclose new retail competition, the Commission cannot rely on unsupported and self-described future "incentives" to safeguard the public interest or support grant of the merger applications.

Sprint's recent statements are a sharp departure from pre-merger Sprint's assessment of its partnership with Altice and the potential to partner with other cable operators in the future. As Sprint's then CEO Marcelo Claure put it in February of 2018, these partnerships are a "winning

[2] Sprint's own estimates show that if the merger is approved, the New T-Mobile would control [**BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of the non-TracFone MVNO market, highlighting the critical importance of Sprint and T-Mobile to new entrants and smaller providers without the large volume of traffic that TracFone is able to use to attract interest from AT&T and Verizon and for whom the only option is Sprint or T-Mobile. *See* SPR-FCC-01341514 at SPR-FCC-01341520.

[3] *See* Letter from Elizabeth Andrion, Senior Vice President, Regulatory Affairs, Charter Communications, Inc. and Kathryn A. Zachem, Executive Vice President, Regulatory & State Legislative Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, 1 (filed Apr. 25, 2019) ("C&C Response to Sprint"). Sprint asserted that Comcast and Charter were not interested in Sprint as a wholesale partner because of Sprint's network quality. Sprint Response at 8.

combination."[4] Mr. Claure explained: "We've always been very bold [in] that we believe in fixed wireless convergence . . . we want to make sure that we can prove to ourselves and prove to the market that a combination of our wireless spectrum combined with cable infrastructure is a winning combination in the U.S. like it's a winning combination in the rest of the world."[5] Mr. Claure further described the Altice/Sprint partnership as a model that will demonstrate "that you can build an incredibly dense network by leveraging each other's assets" and explained that Sprint was "wide open" to the "same potential partnerships" with other cable companies in the future.[6]

These statements are a sharp contrast to those of the CEO of T-Mobile and, if the merger is approved, the future CEO of New T-Mobile:

> I think they're incompetent and [cable MVNOs] don't belong in wireless.[7]
>
> I predict Big Cable will have their asses handed to them and will be in full retreat from their MVNO strategy by end of year. After all, the last two letters in MVNO are "NO" . . . T-Mobile will say "NO" to MVNO deals with cable companies.[8]

Although, the merger announcement appears to have temporarily changed Sprint's narrative, the opportunity for mutually beneficial partnerships with cable companies/iMVNOs, as described in Mr. Claure's statements, remains. Altice believes that its densification of the Sprint network in the New York metro area, through deployment of 19,000 small cells on Altice infrastructure in less than a year, proves that the cable/wireless model works for the benefit of wireless competition and consumers in the United States. Sprint's billboards on Long Island laud the network improvements and speed increases created through the partnership with Altice.[9] Given the success to date of the partnership between Altice and Sprint, Altice has no doubt the model would be replicated by Sprint in the future with other cable companies, but for the merger.[10]

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[4] Transcript of Sprint Corp. Q3 2017 Earnings Call, 14 (Feb. 2, 2018) ("Sprint Q3 2017 Earnings Call") available at https://s21.q4cdn.com/487940486/files/doc_presentations/2018/Fiscal-3Q17-Earnings-Call.pdf.

[5] *Id.*

[6] *Id.*

[7] Chris Mills, *T-Mobile calls Comcast 'irrelevant' and 'incompetent,' but the results disagree*, BGR (Feb. 13, 2018) available at https://bgr.com/2018/02/13/best-wireless-internet-t-mobile-vs-comcast-charter-2018/.

[8] *See* John Legere, *What's Next: My 2017 Predictions*, T-MOBILE NEWSROOM (Jan. 4, 2017) available at https://www.t-mobile.com/news/legere-2017-predictions.

[9] Sprint billboards on Long Island announce that "Sprint is the most improved network in Long Island" with "135% increase in average download speeds." *See also Sprint is Most Improved Network in the Big Apple and Faster than AT&T*, SPRINT NEWSROOM (Aug. 16, 2018) available at https://newsroom.sprint.com/sprint-is-most-improved-network-in-big-apple-and-faster-than-att.html.

[10] Sprint Response at 12.

<u>Sprint Is a Major Source of Wholesale Competition, and Its Existence Is Necessary to Preserve a Competitive Wholesale and Retail Marketplace.</u>

The notion that Sprint is not important to the wholesale market is unsupportable.[11] Sprint tries to assert that their network only serves a small percentage of end users that receive wireless service from MVNOs. However, as described below, this figure is misleading and does not reflect the negative impact of the merger to new entrants. The salient fact, supported in many filings in this docket, is that Sprint and T-Mobile provide network services for 68% of MVNOs and for more than 60% of MVNOs subscribers today.[12] Moreover, there is widespread agreement in the record that Sprint is critical to the wholesale market[13] and particularly important as a provider of wholesale RAN access needed for iMVNOs.[14]

Indeed, a closer examination of Sprint's estimates of its wholesale subscriber share used to support its assertion that it accounts for only **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of total wholesale subscribers reveals that Sprint and T-Mobile are more important to nascent competition than Altice or other parties in this proceeding had previously estimated.[15] In the supporting document, Sprint's estimate of its wholesale subscriber share is driven largely by Sprint's capture of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of TracFone's traffic and **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** The same document notes that **[BEGIN CONFIDENTIAL]** [redacted]

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[11] Sprint Response at 15 ("Sprint is not a strong retail or wholesale player today, let alone a unique enabler of MVNO competition.").

[12] Petition to Condition or Deny of Altice USA, Inc, WT Docket No. 18-197, 11 (filed Aug. 27, 2018) ("Altice Petition"); Reply of DISH Network Corporation, WT Docket No. 18-197, 75 (filed Oct. 31, 2018) ("DISH Reply").

[13] *See* Altice Petition at i, 10; Comments of Charter Communications, Inc., WT Docket No. 18-197, at 5-6 (filed Aug. 27, 2018) ("Charter Comments"); Charter Communications, Inc. Response to Information Request, WT Docket No. 18-197, at 1 (filed Oct. 19, 2018) ("Charter Responses"); Comments of Tucows, Inc., WT Docket No. 18-197, at 4, 12 (filed Aug. 27, 2018) ("Tucows Comments"); Petition to Deny of Console Enterprises, WT Docket No. 18-197, at 2, 4 (filed Aug. 27, 2018) ("Console Enterprises Petition"); Petition to Deny of DISH Network Corporation, WT Docket No. 18-197, at 57 (filed Aug. 27, 2018) ("DISH Petition"); Petition to Deny of Free Press, WT Docket No. 18-197, at 3 (filed Aug. 27, 2018) ("Free Press Petition"); Comments of Communications Workers of America, WT Docket No. 18-197, at 10-12, 14-15 (filed Aug. 27, 2018) ("CWA Comments"); Petition to Deny of the American Antitrust Institute, WT Docket No. 18-197, at 3-4, 10 (filed Aug. 27, 2018) ("American Antitrust Institute Petition"); Petition to Deny of Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge & Writers Guild of America, West, Inc., WT Docket No. 18-197, at 13-14 (filed Aug. 27, 2018) ("Common Cause Petition"); Petition to Deny of Union Telephone Company Cellular Network Partnership, an Oklahoma Limited Partnership, Nex-Tech Wireless, L.L.C., SI Wireless, LLC, WT Docket No. 18-197, at 39 (filed Aug. 27, 2018) ("Union Telephone Petition"); Petition to Deny of the Rural Wireless Association, Inc., WT Docket No. 18-197, at 6, 13 (filed Aug. 27, 2018) ("RWA Petition"). **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**]

[14] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**] Charter Response at 1-2.

[15] *See* Sprint Response at 4; SPR-FCC-01341514 at SPR-FCC-01341520.

[16] SPR-FCC-01341514 at SPR-FCC-01341520.

[redacted] **[END CONFIDENTIAL]**.[17] Accordingly, Sprint's own estimates show that if the merger is approved, the New T-Mobile would control **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of the non-TracFone MVNO market. This figure underscore the importance of Sprint and T-Mobile to new entrants and smaller providers without the large volume of traffic that TracFone is able to use to attract interest from AT&T and Verizon and for whom the only option is Sprint or T-Mobile.

Sprint is unquestionably a key player in the wholesale market, essential to wholesale competition, and has demonstrated a greater propensity than T-Mobile for partnering with cable operators/iMVNOs, thereby supporting competitive new entrants with the most promise. Sprint's willingness to do wholesale deals also has sparked competition from **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for similar contracts. If the merger is denied, Altice expects that **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** interest in such wholesale deals would reemerge, driven by the economics of wholesale revenues for the use of its fallow spectrum.

<u>Partnerships Between Cable and Wireless Companies That Will Accelerate 5G Deployment, Can Provide Significant Wholesale Revenues for Sprint, Enable New Facilities-Based Wireless Competition, and Would Be Replicated But For the Merger.</u>

Sprint asserts in its latest filing that "the agreement Sprint has with Altice would not be replicated in a world without the proposed transaction with T-Mobile."[18] This statement is false. Both cable companies and Sprint have shown a desire to replicate the iMVNO model to become more competitive, as evidenced by Comcast and Charter's recent filing to "correct the record" after Sprint's mischaracterizations of their negotiations for wholesale RAN access.[19] The vastly accelerated cable/wireless infrastructure deployment strategy proven by the Altice/Sprint partnership can be replicated on Sprint's network in any other cable operator's footprint and provide a faster, more competitive path to 5G. Sprint's nationwide spectrum, combined with the collective nationwide infrastructure footprint of today's cable providers, and the significant wholesale revenues that Sprint could reap from the cable providers/iMVNOs, form the major ingredients necessary for a first-in-time, best-in-class 5G network for Sprint, without the harms to competition posed by the merger.

First, cable operators can, and have shown a desire to, replicate the Altice iMVNO model to become more competitive. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Moreover, Sprint's pre-merger internal documents demonstrate that standalone Sprint **[BEGIN CONFIDENTIAL]** [redacted]

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[17] *Id.*

[18] Sprint Response at 12-17.

[19] C&C Response to Sprint.

[20] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

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Second, cable companies, collectively, have a nearly nationwide footprint of fixed infrastructure, and large fiber deployments that can support wireless infrastructure, at the speeds and latency necessary for 5G. Together, Sprint and cable partners can improve the Sprint network, transforming it from an inferior network to a best in-class network, particularly given the potential for 5G offered by Sprint's 2.5 GHz spectrum. All that is needed to unlock the potential of Sprint's spectrum for 5G is funding and deployment resources, both of which are readily provided through partnerships with cable operators. Sprint acknowledges as much in its response to Altice, where it explains that **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

Despite the recent assertion by Sprint,[25] concerns about network quality will not impede partnerships between Sprint and cable operators. As Comcast and Charter explain **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Improving Sprint's, or any MNO's network, is at the heart of the value provided through cable/wireless partnerships and as Sprint's then CEO Marcelo Claure stated just prior to the merger announcement, "you can build an incredibly dense network by leveraging each other's assets."[27] Sprint has nationwide spectrum sufficient for coverage, capacity, and 5G. Sprint's low-band spectrum at 850 MHz, while more limited than other MNOs, is sufficient to deliver a competitive service when combined with Sprint's unparalleled mid-band holdings. Sprint's mid-band holdings at 2.5 GHz, 160 to 194 MHz in the top 100 markets, and 137 MHz nationwide,[28] will be key to 5G and will provide significant benefits to Sprint that are not available to other carriers. As Mr. Claure put it, "Sprint is the only carrier that doesn't have to compromise what 5G can deliver because we can deliver super wide channels of more than 100 MHz while still delivering mid-band coverage characteristics."[29]

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[21] SPR-FCC-01341514.

[22] SPR-FCC-01341514.

[23] Sprint Response at 9.

[24] *See* C&C Response to Sprint at 2.

[25] *See* Sprint Response at 8.

[26] C&C Response to Sprint at 2.

[27] Sprint Q3 2017 Earnings Call at 14.

[28] Fred Campbell, *Spectrum Complicates T-Mobile / Sprint Merger Regulatory Approval*, FORBES (May 9, 2019) available at https://www.forbes.com/sites/fredcampbell/2018/05/09/spectrum-complicates-t-mobile-sprint-merger-regulatory-approval/#4d911f814641.

[29] Mike Dano, *Sprint promises to launch nationwide mobile 5G network in first half of 2019*, FIERCEWIRELESS (Feb. 2, 2018) available at https://www.fiercewireless.com/5g/sprint-promises-to-launch-nationwide-mobile-5g-network-first-half-2019-and-to-raise-unlimited.

As described in Altice's recent filing on the merger's negative impact to 5G deployment,[30] partnerships with cable providers are a more viable path to independent economic success for Sprint than the proposed merger. These partnerships will provide needed cash flow, and significantly accelerate 5G deployment, reducing Sprint's costs and limiting deployment delays because of the considerable assets cable companies bring to the table. These partnerships will make Sprint a more formidable retail competitor while facilitating entry of new wireless providers, benefiting consumers.

Finally, Sprint's assertion that Sprint's network could not handle the additional traffic drawn by cable iMVNOs is difficult to understand.[31] The point of the cable/wireless partnerships is to build additional capacity on the MNO network. Given that Sprint has large, and generally underutilized, spectrum holdings nationwide, and is particularly rich in mid-band capacity spectrum, it is unclear why Sprint's network, as improved, could not support iMVNO traffic from multiple iMVNOs. Moreover, iMVNOs will bring their own network core to the partnership and only rely on Sprint's RAN.

Given the clear appetite for these partnerships by both cable operators and standalone Sprint, the multitude of benefits for network quality brought by cable/wireless partnerships, and the technical capability of Sprint to host multiple iMVNOs, Sprint's latest assertion that if the merger is denied, cable/wireless partnerships are "implausible" and "the perceived lack of quality of Sprint's network, especially the lack of coverage – is likely to persist in the future," is simply not credible.[32]

"Core Control" Over the Wireless Service Is Essential to Increasing Competition; Reseller MVNOs Do Not Bring Meaningful Competition to the Market, or Provide the Same Public Interest Benefits as iMVNOs, and Are Unsurprisingly Less Threatened by the Merger.

Sprint attempts to assert that the iMVNO model and core control are unimportant to competition,[33] but economic analysis refutes Sprint's position and supports the view that the iMVNO model is not just important to wireless competition, but essential.[34] The Commission recognizes that facilities-based wireless competition is the driver of competition on price,

[30] Letter from Jennifer Richter, Counsel to Altice USA, Inc, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197, 2 (filed Apr. 12, 2019).

[31] *See* Sprint Response at 3 ("Somehow, despite this enormous additional load on Sprint's network, Altice assumes that Sprint would not lose any retail customers, would not face increased network and other costs, and would be able to maintain its network quality. It is entirely implausible to think that Sprint could experience that impact with no response from Sprint or adverse effect on quality.").

[32] Sprint Response at 6, 9.

[33] *See* Sprint Response at 17-20.

[34] *See* Supplemental Response to Information Request of Altice USA, Inc, Declaration of Michael Cragg and Eliana Garcés, WT Docket No. 18-197, 46-49 (filed Jan. 28, 2019) ("Brattle Report").

products and services that will benefit consumers and the market.[35] For example, owing to Altice's "core control" over the wireless service offering, Altice's iMVNO will be able to offer the full range of competition to MNOs – competing on price, product value, quality, and product innovation. Altice will be able to innovate and provide new services, without waiting or relying on the MNOs, leading to greater innovation at a faster pace. Ultimately, this innovation will create differentiated products that provide consumers with greater choice and create pressure on the MNOs to innovate themselves to keep up. Additionally, Altice's iMVNO will be able to manage the costs of its mobile service more effectively than a reseller MVNO by using its own infrastructure for backhaul, routing traffic, and offloading traffic from the RAN of its MNO partners onto its own WiFi network, or potentially onto its own spectrum.[36]

Additionally, the record reflects that core control is important to MVNOs. **[BEGIN CONFIDENTIAL]** [redacted]

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[35] *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Sixteenth Report on Wireless Competition, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, para. 36 (Mar. 21, 2013) ("facilities-based providers. . .engage in the full range of non-price rivalry such as creating capacity through network investments, network upgrades, or network coverage."); *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Twentieth Report on Wireless Competition, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, FCC 17-126, para. 15 (Sep. 27, 2017) (referring to the reseller MVNO model, the Commission notes that "Resellers and mobile virtual network operators (MVNOs) do not own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based service providers and resell these services to consumers. Agreements between an MVNO and a facilities-based service provider may occur when the MVNO has better access to some market segments than the host facilities-based service provider and can better target specific market segments, such as low income consumers or consumers with lower data-usage needs.").

[36] Altice notes that the ability for customers to use both WiFi and cellular functions simultaneously depends on the capability of the end-user device, not whether the MVNO is an iMVNO. However, the ability to integrate owned and wholesale spectrum into a consumer product is unique to iMVNOs.

[redacted] **[END CONFIDENTIAL]**

This clear industry trend toward the iMVNO model belies Sprint's assertion that core control is irrelevant.

The iMVNO model, which allows the core infrastructure load and associated operational expenses to be borne by the iMVNO, is better, not only for the competitive potential of the MVNO, but also for the MNO wholesale provider, who can serve more customers at wholesale without the additional load on their own network core. An internal Sprint presentation **[BEGIN CONFIDENTIAL]** [redacted]

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[END CONFIDENTIAL]

Sprint attempts to further minimize the importance of core control of the wireless service by referencing its withholding of a standardized network interface, the S10, that allows inter-mobility management experience ("MME") handoff between two mobile networks.[39] Altice has explained the importance of the S10 to competition in its prior response to the Commission's information request.[40] Sprint argues that core control is unimportant because with or without core control, Altice, or another iMVNO, could not maintain session continuity during a transition between its own RAN and an MNO's RAN without MME access through the S10.[41]

However, this ignores the competitive entry enabled by the iMVNO model and core control with or without an iMVNO having its own RAN. As described above, even before an iMVNO deploys its own RAN, an iMVNO with core control can control its costs significantly better than a reseller MVNO and pass these cost savings on to customers with more aggressive pricing, product innovation, and additional features. Additionally, Altice believes that a competitive wholesale market would naturally solve inter-MME access and session continuity in the future. iMVNOs will incrementally invest in and deploy their own spectrum once their customer base is large enough to support these investments. At the same time, these large wholesale revenues will incent wireless providers and iMVNOs to reach an agreement on inter-MME access, and

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[37] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[38] SPR-FCC-01341514.

[39] *See* Sprint Response at 9-10 ("Without MME access any MVNO – with or without 'core control' – would be unable to provide its customers with seamless handoffs between its MVNO partner's network and its own cellular network elements (or those of another MNO pursuant to a roaming arrangement").

[40] Supplemental Response to Information Request of Altice USA, WT Docket No. 18-197, 4-5 (filed Jan. 28, 2019).

[41] *See* Sprint Response at 9-10.

because inter-MME access is standardized as part of the 3GPP standard, there is no technical barrier to session continuity between mobile networks. However, only in a competitive wholesale market will one wholesale provider be incented by the prospect of significant wholesale revenue to provide inter-MME access in order to draw customers away from its wholesale competitor, further highlighting the harms to the future of robust wireless competition posed by the merger.

In the event that there is a delay in reaching an agreement on inter-MME access, [**BEGIN CONFIDENTIAL]** [redacted] [**END CONFIDENTIAL]**

The Commission must further recognize that reseller MVNOs are not a substitute for iMVNOs as Sprint claims.[42] [**BEGIN CONFIDENTIAL]** [redacted] [**END CONFIDENTIAL]** Reseller MVNOs cannot offer price or product competition – reseller MVNOs are completely dependent on the host wireless carriers for the design, features, and pricing of a product. Most, if not all, of the functionality, features, and even products (e.g., speeds, data caps, family plans) of a resale MVNO, "light" MVNO or "white label" MVNO are created by the host carrier and "resold" by the MVNO to the public. Reseller MVNOs wait for the big carriers to innovate on products, services, and offerings and then pass along those innovations to their customers. This model offers "competition" only in marginal price and marketing because the reseller MVNO is limited in controlling its costs, which are almost entirely determined by MNO's wholesale pricing.

The Commission need not speculate on the absence of competitive potential when MVNOs are limited to resale. [**BEGIN CONFIDENTIAL]** [redacted]

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[42] Sprint Response at 20-21.

[43] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[44] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[45] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

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Sprint asks the Commission to make much of TracFone's support for the merger.[47] However, as **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** and Altice have explained,[48] the resale MVNO model is not a path to facilities-based competition and does not exert significant competitive pressure on the MNOs. Even T-Mobile and Sprint's Public Interest Statement references the relative weakness of resale MVNO competitors: "T-Mobile has historically been supportive of its MVNO partners, because, among other reasons, 'MVNOs have marketing and distribution advantages in attracting and reaching customers from particular segments.'"[49] These reseller MVNOs are advantageous for T-Mobile in reaching "particular segments" of the market while not threatening T-Mobile's core customers and providing the appearance of competition without any of the actual risk, and associated public interest benefits, created by a potent competitor.

It is therefore not surprising that this entrenched reseller MVNO, which does not provide a competitive threat to the core segment of T-Mobile's customers, and has little hope to transition to the iMVNO model, is less concerned about the impact of the merger than iMVNOs that seek to provide facilities-based competition to T-Mobile directly. For the reasons described above, Sprint and T-Mobile's support for reseller MVNOs will not address the competitive harms of the merger.

<u>The Merger's Negative Impact on the Wholesale Market Is Predictable and Is Supported by Economic Analysis, as Well as the Recent History of Failed Negotiations for Wholesale RAN Access by Cable Operators.</u>

The harm to the wholesale market created by the merger and the elimination of Sprint as an independent competitor is not hypothetical.[50] There is no doubt that if the merger is approved, without conditions to preserve the pre-merger wholesale market, competition in the wholesale market will be eliminated, and sustainable wireless competition from new entrants, such as cable companies, will be foreclosed. Notably, the New T-Mobile's potential wholesale customers, the new entrants with the greatest potential to provide real competition, all share the same concern about the merger's impact on the wholesale market.

Altice, **[BEGIN CONFIDENTIAL]** [redacted]

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[46] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[47] *See, e.g.,* Sprint Response at 10-11.

[48] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Reply of Altice USA, Inc., WT Docket No. 18-197, 6-8 (filed Oct. 31, 2018) ("Altice Reply").

[49] *See Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations,* WT Docket No. 18-197, Description of Transaction, Public Interest Statement, and Related Demonstrations, 124 (filed June 18, 2018) ("Public Interest Statement").

[50] *See* Brattle Report at 31-64.

[redacted] **END CONFIDENTIAL]** Additionally, the Commission has before it an analysis of the economic incentives of the combined company to block new sources of competition[52] and several reports of Sprint and T-Mobile **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

[redacted] **[END CONFIDENTIAL]**

[51] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[52] Brattle Report at 31-64.

[53] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[54] SPR-FCC-06735306.

[55] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[56] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[57] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

<u>Failure to Maintain the Pre-Merger Wholesale Market Will Foreclose Meaningful Future Wireless Competition.</u>

Contrary to the assertions made by Sprint in its latest filing responding to Altice, [58] Altice's involvement in this proceeding is not about extracting more favorable contract terms, it is about the future of wireless competition. Altice, and other stakeholders such as DISH, Comcast, Charter, RWA, and Tucows have well-founded concern and seek to ensure that a vibrant wholesale market remains if the Commission approves the merger and allows consolidation of nationwide carriers from four to three.[59] Although Altice seeks to improve its agreement with Sprint over time, it is pleased with its partnership with Sprint and believes it provides for competitive entry into today's wireless market. However, the transaction jeopardizes wireless competition by eliminating competition in the wholesale market.

As Altice has explained, wholesale RAN access – technically very similar to roaming – offers a necessary on-ramp for new sources of wireless competition.[60] Without a disruptive wholesale competitor, the role played by Sprint before the merger was announced, the three remaining nationwide carriers will yield to their individual commercial interests and simply refuse to offer wholesale agreements that support competition, choosing to protect retail market share over wholesale revenues to the detriment of consumers.

Past behavior is the best predictor of future conduct, and T-Mobile's **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** provides a reliable glimpse into the future of the wholesale market, and wireless competition, if the Commission approves the merger as proposed.

Altice's experience in particular demonstrates the importance of competition in the wholesale market. Without Sprint as an active wholesale competitor to supply iMVNOs and Altice, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Taken to its logical conclusion, this competition would have reduced wholesale prices and Altice could have passed on the benefits of its lower wholesale price to customers by offering an even more attractive wireless product. This is a perfect example of

[58] Sprint Response at 17.

[59] *See, e.g.*, DISH Petition; Comcast Response; Charter Comments; Charter Response; RWA Petition; Tucows Comments.

[60] In 2010, the Commission noted that a lack of available roaming agreements "can in effect require carriers entering new markets to build out their networks extensively throughout the newly obtained license area before they can provide a competitive service to consumers, all without the benefit of financing the construction of new networks over time with revenues from existing services and reliance on roaming to fill in gaps during build out . . . In such circumstances, we find that the exclusion can delay or deter entry into a market because a carrier seeking to provide service in a new geographic area, without the ability to supplement its networks with roaming and whose initial facilities would necessarily be limited, would be required to compete with incumbents that had been developing and expanding their networks for many years. *In the matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 10-59, para. 21 (Apr. 21, 2010). The Commission has previously recognized that this "'head-start' advantage can constitute a significant hurdle to new competition. *Id.*

how a competitive market should work for the benefit of consumers, but this competition will be lost as a result if the merger applications are approved.

The economic analysis,[61] the negotiations with competitors,[62] and even the explicit statements of T-Mobile's CEO[63] all similarly predict how the New T-Mobile will address nascent wireless competitors, particularly cable companies – by withholding the necessary wholesale inputs entirely, or at least withholding wholesale RAN access for iMVNOs with core control on reasonable terms. At best, New T-Mobile can be expected to only support reseller MVNOs, as Verizon, and to an even more limited degree, AT&T, does today. As noted above, reseller MVNOs will not exert significant competitive pressures on MNOs or provide benefits to consumers through new facilities-based competition.[64] As time goes by and incumbents exercise their market power to block new entry, the barriers to competitive wireless entry, and the already nearly insurmountable "head-start" competitive advantage of the incumbent wireless carriers will grow.[65] Even today, building a network from scratch in this mature mobile market is neither timely nor economically feasible, and thus future competition depends on new entrants having the on-ramp that wholesale access and an iMVNO arrangement provides. With the big three wireless carriers fortified against competition, consumers will have no choice but to accept the prices, products, and services they offer, clearly not a result that is consistent with the public interest.

<u>In Light of the Evidence That the Merger Will Eliminate Wholesale Competition and Foreclose New Retail Competition, the Commission Cannot Rely on Unsupported and Self-Described "Incentives" to Safeguard the Public Interest or Support Approval of the Merger Applications.</u>

Nearly a full year after the merger was announced, Sprint and T-Mobile still ask the Commission and the public to rely on self-described future "incentives" they may have to support the wholesale market, and mitigate the anticompetitive impacts of the merger, rather than offering tangible commitments. Given the broad consensus of the critical importance of Sprint as an independent competitor in the wholesale market today,[66] the Commission must not rely on unsupported "incentives" to support the wholesale market, particularly when there is significant

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[61] Brattle Report.

[62] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[63] *See* Chris Mills, *T-Mobile calls Comcast 'irrelevant' and 'incompetent,' but the results disagree*, BGR (Feb. 13, 2018) available at https://bgr.com/2018/02/13/best-wireless-internet-t-mobile-vs-comcast-charter-2018/ ("I think they're incompetent and [cable MVNOs] don't belong in wireless without having owner economics."); John Legere, *What's Next: My 2017 Predictions*, T-MOBILE NEWSROOM (Jan. 4, 2017), available at https://www.t-mobile.com/news/legere-2017-predictions ("I predict Big Cable will have their asses handed to them and will be in full retreat from their MVNO strategy by end of year. After all, the last two letters in MVNO are 'NO' . . . T-Mobile will say 'NO' to MVNO deals with cable companies.").

[64] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[65] *Id.*

[66] *See* Supra note 13.

economic analysis,[67] and negative statements from T-Mobile leadership,[68] that the New T-Mobile will have *no incentives* to support the wholesale market and cable operators/iMVNOs.

In view of all the foregoing, including the merger's predicted negative impact on the pre-merger wholesale market and the related foreclosure of future facilities-based wireless competition by cable companies/iMVNOs, which will inure to the detriment of consumers and the public interest, it is clear that the merger applications should be denied.

However, if the Commission determines to approve the merger, tangible, durable commitments from the New T-Mobile are necessary to partially mitigate some harms of the merger. At a minimum, the New T-Mobile must commit to extending existing wholesale agreements on the best terms offered individually by either company today, for the full term of existing agreements, or for ten years post consummation, whichever occurs later, with presumptions of renewal and access to the same nationwide network and improved service offerings available to retail customers of the New T-Mobile to enable wireless competition on a national scale.

Sprint's latest filing on the wholesale market is merely another attempt by Sprint and T-Mobile to downplay the significance of Sprint, particularly in the wireless wholesale market, and thereby artificially reduce the harms to competition, and consumers, posed by the merger to gain regulatory approval. The competitive harms to the wholesale and retail markets posed by the merger are not hypothetical. These harms are supported by empirical analysis, and a broad consensus of customers-competitors.

This filing contains information that is "Highly Confidential" pursuant to the Protective Order in WT Docket No. 18-197. Pursuant to the procedures established in the Protective Order, a copy of the "Highly Confidential" filing is being provided to the Secretary's Office. An additional copy is being provided to Kathy Harris of the Wireless Telecommunications Bureau. A redacted copy of this "Highly Confidential" filing labeled "Redacted – For Public Inspection" will be filed electronically in the above-captioned docket.

Sincerely,

/s/ Jennifer L. Richter
Jennifer L. Richter

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[67] Brattle Report at 31-64; DISH Petition; DISH Reply; Comments in Response to Public Notice of DISH Network Corporation, WT Docket No. 18-197 (filed Dec. 4, 2018); Comments in Response to Public Notice of DISH Network Corporation, WT Docket No. 18-197 (filed Mar. 28, 2019).

[68] *See* Chris Mills, *T-Mobile calls Comcast 'irrelevant' and 'incompetent,' but the results disagree*, BGR (Feb. 13, 2018) available at https://bgr.com/2018/02/13/best-wireless-internet-t-mobile-vs-comcast-charter-2018/ ("I think they're incompetent and [cable MVNOs] don't belong in wireless without having owner economics."); John Legere, *What's Next: My 2017 Predictions*, T-MOBILE NEWSROOM (Jan. 4, 2017), available at https://www.t-mobile.com/news/legere-2017-predictions ("I predict Big Cable will have their asses handed to them and will be in full retreat from their MVNO strategy by end of year. After all, the last two letters in MVNO are 'NO' . . . T-Mobile will say 'NO' to MVNO deals with cable companies.").