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May 16, 2019

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

Re: Applications of T-Mobile US, Inc. and Sprint Corporation
WT Docket No. 18-197

Madam Secretary:

On behalf of Union Telephone Company, dba Union Wireless and Cellular Network Partnership, an Oklahoma Limited Partnership, dba Pioneer Cellular (collectively, "Petitioners"), we write to discuss T-Mobile's pledge that, "the New T-Mobile will maintain the existing T-Mobile and Sprint Lifeline program throughout the country indefinitely, barring fundamental changes to today's program,"¹ as well as T-Mobile's Lifeline commitments to the State of California.

In a recent hearing before the Antitrust, Commercial and Administrative Law Subcommittee of the House Committee on the Judiciary,² T-Mobile's Chief Executive Officer, John Legere, stated, "barring material changes to today's Lifeline program, New T-Mobile is

¹ See T-Mo News, *T-Mobile pledges to support Sprint's Lifeline Assistance program 'indefinitely' if merger is approved*, March 11, 2019, at <https://www.tmonews.com/2019/03/t-mobile-support-sprint-lifeline-assistant-program-indefinitely-merger-approved/>.

² The State of Competition in the Wireless Market: Examining the Impact of the Proposed a Merger of T-Mobile and Sprint on Consumers, Workers, and the Internet, March 12, 2019, at <https://judiciary.house.gov/legislation/hearings/state-competition-wireless-market-examining-impact-proposed-merger-t-mobile-0>.

committed to continuing to offer Lifeline service indefinitely.”³ In the parties’ application for FCC consent to the transaction, T-Mobile made a similar commitment.⁴

Petitioners have opposed the merger,⁵ based in part on the disconnect between T-Mobile’s statements in this proceeding and its record. For example, T-Mobile has claimed that it cannot compete with AT&T and Verizon on its own nearly as effectively as it can if the merger is approved.⁶ Yet, since the government blocked AT&T’s proposed takeover of T-Mobile, the company has used its “Un-carrier” strategy to consistently and dramatically surpass its two larger rivals in postpaid customer additions and several other key financial metrics.⁷

T-Mobile’s outreach to retail postpaid customers has been extraordinarily successful. As Petitioners explained in their Petition to Deny, T-Mobile has far outstripped its larger competitors in acquiring higher margin retail postpaid customers. For example, in 2017, T-Mobile added 3.6 million retail postpaid customers compared to 2.1 million for Verizon, 594,000 for AT&T, and 811,000 for Sprint.⁸ Throughout this merger proceeding, T-Mobile has repeatedly boasted about its success as an “Un-carrier” and its future ability to fight Verizon and AT&T head to head.

Here, Petitioners question T-Mobile’s commitment to Lifeline. Based on our review of Lifeline disbursements kept by the Universal Service Administrative Company (“USAC”), at its peak, T-Mobile was an ETC providing Lifeline services in 25 states, including Alabama, Connecticut, Delaware, New Hampshire, Tennessee, Hawaii, Indiana, Maryland, Michigan, Missouri, New Jersey, Ohio, Oregon, Georgia, Idaho, Louisiana, North Carolina, Massachusetts,

³ *Id.*, Testimony of John Legere, Chief Executive Officer, T-Mobile US, at p. 18, at <https://docs.house.gov/meetings/JU/JU05/20190312/109053/HHRG-116-JU05-Wstate-LegereJ-20190312.pdf>.

⁴ See, *Description of Transaction, Public Interest Statement, and Related Demonstrations* (June 18, 2018) at p. 10 (“*Public Interest Statement*”) (“New T-Mobile will also continue the Lifeline services currently provided by T-Mobile and Sprint”).

⁵ See, *Petition to Deny* (Aug. 27, 2018), at <https://ecfsapi.fcc.gov/file/10827058102798/2018%200827%20Petition%20to%20Deny%20AS%20FILED.pdf>; *Reply to Opposition to Petition to Deny* (Oct. 31, 2018), at <https://ecfsapi.fcc.gov/file/10310565911209/2018%201031%20Reply%20Brief%20FINAL.pdf>.

⁶ See *Public Interest Statement, supra*, at 98.

⁷ *Petition to Deny, supra*, at 15-18.

⁸ *Petition to Deny*, at 15-16.

Kentucky, Florida, Minnesota, Mississippi, Pennsylvania, Virginia, Washington, as well as the District of Columbia and Puerto Rico.

In filing applications across the country to achieve ETC status and Lifeline eligibility, T-Mobile made multiple commitments to state public utility commissions. For example, in its ETC application in Massachusetts, T-Mobile stated:

T-Mobile intends to advertise through various media outlets to include an appropriate mix of radio, television, billboards, print, internet, and targeted mailings among other efforts. T-Mobile will also distribute literature describing its Lifeline services to locations where those likely to be eligible for the program(s) would encounter the information, such as hospitals, clinics, hospices, senior centers, welfare offices, and other locations.⁹

Yet, T-Mobile's Lifeline draws in Massachusetts have been paltry. Set forth below is the entirety of its Lifeline efforts in Massachusetts, where it appears it never had more than 66 Lifeline customers:¹⁰

MA	143026181	119004	T-MOBILE USA INC.	\$1,202.00	Feb/2015
MA	143026181	119004	T-MOBILE USA INC.	\$2,350.00	Nov/2014
MA	143026181	119004	T-MOBILE USA INC.	\$1,461.00	Aug/2014
MA	143026181	119004	T-MOBILE USA INC.	\$759.00	May/2014
MA	143026181	119004	T-MOBILE USA INC.	\$1,184.00	Feb/2014
MA	143026181	119004	T-MOBILE USA INC.	\$473.00	Nov/2013
MA	143026181	119004	T-MOBILE USA INC.	\$120.00	Aug/2013
MA	143026181	119004	T-MOBILE USA INC.	\$288.00	Jul/2013
MA	143026181	119004	T-MOBILE USA INC.	\$222.00	Apr/2013
MA	143026181	119004	T-MOBILE USA INC.	\$37.00	Feb/2013

T-Mobile's performance in other states is similar. For example, for the year 2013, its largest number of Lifeline customers was 58 (\$2,971) in New York, 89 (\$3,173) in Ohio, 93

⁹ Post-Hearing Brief of T-Mobile Northeast, LLC, Docket, DTC 12-4 (June 1, 2012) at p. 9, at <https://www.mass.gov/files/documents/2016/07/qu/respto1thru14.pdf>

¹⁰ Source: USAC Lifeline Disbursement Tool, <https://www.usac.org/li/tools/disbursements/default.aspx>. On Dec. 18, 2014, by Order, the Massachusetts Department of Telecommunications and Cable granted T-Mobile's requested relinquishment of its Lifeline-only ETC designation, effective Dec. 31, 2014. See https://www.mass.gov/files/documents/2016/07/xk/finalorder_20.pdf.

(\$4,653) in Pennsylvania, and 20 (\$825) in Mississippi.¹¹ Only in Puerto Rico (\$700,374) and Florida (\$176,657) do there appear to be any significant monthly Lifeline draws by T-Mobile in 2013.¹² In Puerto Rico, T-Mobile's large Lifeline draw appears to originate as a result of its 2008 acquisition of SunCom Wireless Holdings, Inc.

In recent years, T-Mobile has voluntarily exited the program by relinquishing its authority to be an ETC in 18 states. According to its web site, T-Mobile remains a Lifeline provider in only nine states and Puerto Rico.¹³ T-Mobile has primarily retained ETC status in states where it has been awarded federal universal service support in the Mobility Fund Phase I ("MF-I") auction, and thus is required to continue offering Lifeline to qualified households within its MF-I service areas in exchange for millions in federal subsidies. Yet, its Lifeline draws in many of these states for the full year 2018 are nominal. For example, approximately one customer (\$144) in Mississippi, 319 (\$27,882) in Pennsylvania, 13 (\$1,440) in Kentucky, 68 (\$7,494) in Minnesota, and 18 (\$1,780) in Virginia.¹⁴

As T-Mobile's Chief Financial Officer Braxton Carter explained in 2017, T-Mobile's business selling service to low-income users whose costs are paid, at least in part, through the Universal Service Fund (USF) Lifeline program is non-sustainable and the company decided to remove Lifeline customers from its customer base, stating, "[w]e don't think Lifeline is a valuable or sustainable product for our base."¹⁵

Over the past several years T-Mobile's rapid exit from the Lifeline program in 18 states confirms that statement. Mr. Carter's admission that the company had capitulated in the

¹¹ Source: USAC Lifeline Disbursement Tool, <https://www.usac.org/li/tools/disbursements/default.aspx> (funds disbursed for January-December 2013). Disbursements were calculated by expanding each payment to reveal the disbursement amount corresponding to each month. Because reimbursement claims may be made either on a monthly or quarterly basis, a single monthly disbursement may cover funds claimed for several prior months. Customer numbers were obtained by adding voice, bundled and broadband customer counts, as applicable, for each month and identifying the largest sum among all the months of 2013.

¹² *Id.*

¹³ See <https://www.t-mobile.com/offers/lifeline-program> (April 4, 2019).

¹⁴ See <https://www.usac.org/li/tools/disbursements/default.aspx>. In some cases, T-Mobile made revisions in 2019 to its reimbursement reports for months in 2018. For example, in Pennsylvania, T-Mobile's February 2019 payment includes true-ups reflecting revisions to its reimbursement reports for February-September 2018. These true-ups are reflected in the above totals for 2018.

¹⁵ John Engebretson, CFO: 'Non-sustainable' T-Mobile Lifeline Business to be Phased Out, Telecompetitor, June 8, 2017, at <https://www.telecompetitor.com/cfo-non-sustainable-t-mobile-lifeline-business-to-be-phased-out/>.

Lifeline business may be the result of T-Mobile never making any serious effort to make Lifeline a priority by committing the outreach and advertising resources needed to serve low-income communities. That decision may be driven by the fact that Lifeline is understood to be a low-margin line of business.

On February 13, 2019, T-Mobile's CEO John Legere testified to the House Commerce Committee:

We will also continue to offer Lifeline services, which is a program that helps low-income consumers afford phone and broadband service. We are committed to offering preexisting Lifeline services that are offered through Sprint's Assurance brand. But it gets even better: New T-Mobile's expansive 5G network will allow Lifeline services to be offered in many places where Sprint had no coverage. And all Lifeline subscribers will be able to take advantage of the same incredible New T-Mobile network as other subscribers.¹⁶

At the hearing, Mr. Legere testified that the company exited the Lifeline program because it decided to offer Lifeline only as a wholesale provider. Mr. Legere also stated that T-Mobile would honor Sprint's agreements with Lifeline resellers.¹⁷

As we understand his clarification, after the closing T-Mobile plans to be a Lifeline wholesaler, primarily relying upon resellers to provide Lifeline. As Mr. Carter indicated, the company has exited the Lifeline program because low-income households don't fit within T-Mobile's business plans. If the transaction is approved, T-Mobile has disclosed no plans to open new stores in low-income areas to provide Lifeline.

When a carrier avails itself of high-cost, CAF, or Mobility Fund support, it is required to "make available Lifeline service," and "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service," 47 C.F.R. Section 54.405(a), (b). Participating in Lifeline requires an investment in low-income communities.

¹⁶ *Testimony of John Legere, Chief Executive Officer, T-Mobile US*, House Energy and Commerce Subcommittee on Communications and Technology (Feb. 13, 2019) at 17. https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/LegereJ_Testimony2.pdf.

¹⁷ *Protecting Consumers and Competition: An Examination of the T-Mobile and Sprint Merger*, House Committee on Energy and Commerce (Feb. 13, 2019) at: <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-protecting-consumers-and-competition-an-examination-of-the-t>.

Once Lifeline is offered and publicized, a carrier can expect customers to appear at places of enrollment, requesting service and information about Lifeline benefits—in short, to be welcomed as are all other retail customers.

By choosing to primarily operate only on the wholesale side of the business, T-Mobile avoids almost all responsibility to the Lifeline program. Understood properly, T-Mobile is not “committed” to the Lifeline program, but rather it is committed to selling minutes and megabytes to its Mobile Virtual Network Enablers (“MVNE”) for resale to Mobile Virtual Network Operators (“MVNO”), placing almost all Lifeline responsibility squarely on its downstream partners, some of whom have been a significant source of program waste to date. By operating primarily as a Lifeline wholesaler, T-Mobile has conceded that it has no intention of investing resources into the communities it serves, to assist low-income citizens in obtaining connectivity at reduced rates.

Even though T-Mobile intends to only provide Lifeline as a wholesaler, it still caveats its commitment to offer Lifeline by stating that it will do so as long as the FCC doesn’t make “material changes” to the program. In fact, Lifeline has seen multiple changes in the past several years, with perhaps more to come. On April 2, 2019, Commissioner Michael O’Rielly published a blog post concerning an item on circulation to begin a rulemaking to cap the universal service fund, including Lifeline.¹⁸ Given that the Commission has previously considered reducing Lifeline support in a capped environment, it is appropriate to examine whether the upcoming item constitutes a “material change” for T-Mobile that would cause it to completely exit the Lifeline program.¹⁹

It is axiomatic that when the Commission adjudicates whether the grant of any application to transfer control of a license would serve the public interest, an applicant’s credibility is at issue.²⁰ In cases where the gap between an applicant’s statements and its actions is wide, every other material fact asserted by the applicant must be called into question. Here, T-Mobile has committed under oath to participate in Lifeline post-merger, soon after it also publicly announced its exit from the Lifeline program for financial reasons, and following its relinquishing ETC status for Lifeline in 18 states. At the same time, T-Mobile has demonstrated substantial and continuing success acquiring postpaid retail customers over the past eight years.

¹⁸ Michael O’Rielly, FCC Blog, *A Needed USF Budgetary Cap* (April 2, 2019) at <https://www.fcc.gov/news-events/blog/2019/04/02/needed-usf-budgetary-cap>.

¹⁹ *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of inquiry, FCC 17-155, 32 FCC Rcd 10,475, 10,510, para. 104 *et seq.* (2017).

²⁰ See 47 U.S.C. Sections 310 and 308.

In sum, comparing T-Mobile's actions to its recent statements raises a question whether selling minutes and megabytes as a wholesaler qualifies as "participating" in Lifeline. For now, it is far from clear that T-Mobile is accurately representing to Congress or the Commission that it is credibly committed to the Lifeline program now, or post-merger, without qualification.

Respectfully submitted,

Union Telephone Company, dba Union Wireless
Cellular Network Partnership, an Oklahoma Limited
Partnership, dba Pioneer Cellular



By: _____

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