Akin Gump
STRAUSS HAUER & FELD LLP

May 20, 2019

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

Re: Notice of Ex Parte Presentation, *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

Dear Ms. Dortch:

On May 16, 2019, representatives of Altice USA, Inc. ("Altice"), including Lee Schroeder, Executive Vice President, Government & Community Affairs and her counsel from Akin Gump Strauss Hauer & Feld LLP, Shea Boyd, held separate meetings with Commissioner Starks and his wireless advisor, William Davenport, Aaron Goldberger, wireless advisor to Chairman Pai, and Will Adams, wireless advisor to Commissioner Carr.

Altice provided several of its prior filings made with the Federal Communications Commission (the "Commission"),[1] incorporated herein by reference, and discussed its continued concern regarding the impact on the wholesale market, and on wireless competition, if the proposed merger of Sprint and T-Mobile (collectively, the "Applicants") is approved.

Altice explained that partnerships between cable and wireless companies, such as the Sprint/Altice agreement, need Commission support because they will accelerate 5G deployment by addressing traditional roadblocks and delays to deployment (rights of way, workforce, supporting infrastructure, etc.) and enable new facilities-based wireless competition that will benefit all consumers.

Altice reiterated that the merger, as proposed, would eliminate incentives for the new T-Mobile to support the wholesale market, reducing the number of interested wholesale sellers from two (Sprint and T-Mobile) to effectively zero given T-Mobile's hostility towards cable operators. In addition to reducing nationwide wireless competition at the retail level from four to three, the merger would preclude new sustainable retail competition from three or more full infrastructure mobile virtual network operator ("iMVNO") competitors such as Altice. Altice explained that cable operators using iMVNOs to enter the wireless market are best positioned to

[1] Notice of Ex Parte Presentation of Altice USA, Inc., WT Docket No. 18-197 (filed Sep. 20, 2018); Supplemental Response to Information Request of Altice USA, Inc, WT Docket No. 18-197 (filed Jan. 28, 2019); Notice of Ex Parte Presentation of Altice USA, Inc., WT Docket No. 18-197 (filed April 12, 2019); Letter from Jennifer Richter, Counsel to Altice USA, Inc, to Marlene H. Dortch, WT Docket No. 18-197 (filed. Apr. 29, 2019).

provide true retail competition to nationwide wireless carriers and, as a result, are most in need of Commission support if the merger is approved.

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 long-term, and mitigate the anticompetitive impacts of the merger, rather than offering renewable, long-term agreements to iMVNOs that are necessary for sustainable competition. Given the broad consensus that Sprint is critical to the wholesale market today, the Commission must not rely on unsupported "incentives" to ensure the continued viability of the wholesale market. There is significant economic analysis, and negative statements from T-Mobile leadership, that demonstrate that the New T-Mobile will in fact have no incentive to support the wholesale market and particularly not iMVNOs.

Altice continues to believe that denial of the merger best preserves the public interest. However, if the Commission is to approve the merger, it must, at a minimum, preserve the pre-merger wholesale market by requiring the New T-Mobile to commit:

> (1) to honor and diligently implement existing MVNO agreements, including good faith finalization of any future requirements in those agreements,[2]
>
> (2) to offer existing MVNO partners, for the full term of existing agreements, or for ten (10) years post consummation, whichever occurs later,[3] the best wholesale terms

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[2] The Commission has often conditioned transactions on the applicant's commitment to honor existing agreements, including in the AT&T/Leap, Verizon/ALLTEL, AT&T/Verizon, and AT&T/Centennial transactions. In each of these transactions, the transaction removed an important roaming partner for smaller carriers, leaving larger carriers with greater market power in their places. In each of these instances, the Commission found it necessary to require commitments to honor existing agreement from the applicants to offset this transaction-specific harm. *See* AT&T/Leap Order at para. 180; *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, para. 178 (Nov. 10, 2008) ("Verizon/ALLTEL Order"); *In the Matter of Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, FCC 10-116, para. 96-97 (June 22, 2010) ("AT&T/Verizon Order"); *In the Matter of Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements,* WT Docket No. 08-246, Memorandum Opinion and Order, FCC 09-97, para. 129 (Nov. 5, 2009) ("AT&T/Centennial Order").

[3] *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, FCC 11-4, Appx. A. Sec. XX (January 20, 2011) ("Comcast/NBCU Order") (establishing a seven-year term for the Commission's conditions); Charter/Bright House Order at paras. 9, 11 (prohibiting New Charter from imposing data caps or use-based pricing for its residential broadband service or from entering or enforcing contractual terms that prevent or penalize programmers from distributing content online, for seven years); Verizon/ALLTEL Order at para. 178 (conditioning approval on Verizon's commitment not to raise rates on ALLTEL's existing roaming agreements for four years from closing); *See In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, paras. 120-21 (Aug. 23, 2102) ("Verizon/SpectrumCo Order") (conditioning approval on Verizon's commitment to offer commercial mobile data services on its spectrum in the areas where it is acquiring AWS spectrum for five years following the date of the Commission's order approving the license assignments); AT&T/Centennial Order at paras.

and conditions that are offered individually by each of the Applicants to their MVNO partners,[4] with a presumption of long term renewals and, if requested, offering the improved nationwide coverage and service offerings of the New T-Mobile[5] to all existing MVNO partners of the Applicants.

Each of these conditions, which Altice has indicated are necessary since last August, are supported by Commission precedent.

Sincerely,

/s/ Shea Boyd
Shea Boyd

134-138 ("AT&T commits to operate and maintain a CDMA network for the provision of roaming services in Puerto Rico and the U.S. Virgin Islands for 18 months after the transaction closing date").

[4] In the Verizon/ALLTEL transaction, the Commission allowed partners of Verizon and ALLTEL to choose the best agreement among their agreements with Verizon and ALLTEL to govern roaming post-transaction. *See* Verizon/ALLTEL Order at para. 178 ("We also condition our approval on each such regional, small, and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless having the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless."). Additionally, in the AT&T/Verizon transaction, the Commission required AT&T "for any period during which AT&T continues to provide any automatic CDMA roaming service to Verizon Wireless at a cell site acquired in this transaction" to commit "to provide the same type of automatic CDMA roaming service at that same cell site to other facilities-based CDMA carriers upon reasonable request on reasonable terms and conditions." *See* AT&T/Verizon Order at para. 96. In the Verizon/SpectrumCo transaction, the Commission conditioned its approval on Verizon's commitment to continue offering "roaming arrangements for commercial mobile data services on any of its spectrum in the areas where it is acquiring AWS-1 spectrum… on commercially reasonable terms and conditions" for five (5) years following the date of the Commission's order approving the license assignments. Verizon/SpectrumCo Order at para. 121.

[5] In Charter/Bright House, the Commission found it necessary to address the harmful impacts of the increased bargaining power created by the proposed transaction by limiting the contractual terms New Charter may extract from other parties. *In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorization*, MB Docket No. 15-149, Memorandum Opinion and Order, FCC-16-59, paras. 7, 11, 459 (May 10, 2016) ("Charter/Bright House Order") (recognizing that "New Charter will have an increased incentive to use its greater leverage over programmers to frustrate online video competition" by obtaining "from programmers additional restrictions against online distribution" and that "[i]n doing so New Charter will foreclose online video distributors from content that allows them to be more vibrant competitors to cable operators.") The same conclusion could be drawn here regarding the bargaining power of New T-Mobile limiting the offering of nationwide coverage and improved service offerings to wholesale partners.