

May 28, 2019

*BY ELECTRONIC FILING*

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

**Re: *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:

On May 23, 2019, representatives of Altice USA, Inc. (“Altice”) including Lee Schroeder, Executive Vice President, Government & Community Affairs, together with their counsel from Akin Gump Strauss Hauer & Feld LLP, Jennifer Richter and Shea Boyd, held separate meetings with the following: Aaron Goldberger, wireless advisor to Chairman Pai, Umair Javed, wireless advisor to Commissioner Rosenworcel, Erin McGrath, wireless advisor to Commissioner Starks, and the Sprint/T-Mobile Transaction Team.<sup>1</sup>

In these meetings, Altice discussed the proposed commitments made by T-Mobile and Sprint on May 20, 2019, including commitments specifically addressing Altice.<sup>2</sup> Altice was not aware of these proposed commitments prior to T-Mobile and Sprint filing them with the Federal Communications Commission (the “Commission”). Altice explained that the proposed commitments offer nothing new to Altice given the terms of the existing wholesale agreement between Sprint and Altice. Specifically, contrary to the suggestion by T-Mobile, Sprint does not have a contractual right to terminate its agreement with Altice as a result of a merger or acquisition. **\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*** [REDACTED]

**\*\*\*END HIGHLY CONFIDENTIAL\*\*\*** Sprint’s offer to give up a right it does not have is just misdirection. The second commitment offered by T-Mobile – to negotiate in good faith an amendment of the Altice/Sprint agreement to include the networks, including 5G network, operated by New T-Mobile – is also explicitly contemplated in the Altice/Sprint agreement.

---

<sup>1</sup> A list of members of the Sprint/T-Mobile transaction team in attendance is included at Attachment A. Michael Olsen, General Counsel of Altice, joined the meeting via teleconference.

<sup>2</sup> Letter from Regina M. Keeney, counsel to Sprint Corporation, and Nancy J. Victory, counsel to T-Mobile US, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 18-197 (filed May 20, 2019) (“New T-Mobile Commitments”).

**\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\***

**\*\*\*END**

**HIGHLY CONFIDENTIAL\*\*\*** While Altice welcomes T-Mobile reiterating its commitment to follow the terms of Sprint’s agreement with Altice, and including these commitments as conditions to merger approval enforceable by the Commission, neither of these commitments by T-Mobile address Altice’s concern about the anticompetitive impact of the merger on the wholesale market.

Further, T-Mobile’s commitment to negotiate what appears to Altice to be a full infrastructure Mobile Virtual Network Operator (“iMVNO”) agreement with the “to be identified” buyer of Boost Mobile within a specific time period is an important new development.<sup>3</sup> The fact that T-Mobile felt the need to make an explicit commitment to negotiate a competitive wholesale agreement confirms Altice’s concern that absent specific commitments to do so, New T-Mobile will not offer competitive wholesale agreements in a post-merger world.

Altice continues to believe that the merger, even with the newly proposed commitments by T-Mobile, should be denied given the harm to the wholesale market that will result from the merger. However, if the deal is going to be approved, Altice has identified in previous filings at the Commission certain conditions to ameliorate the harms to the wholesale market, as detailed in the attached documents.<sup>4</sup> At the request of Commission staff, and in view of the new commitments proposed by T-Mobile and Sprint, Altice is considering modification of the list of proposed commitments it previously submitted.

Sincerely,

/s/ Jennifer L. Richter

Jennifer L. Richter

Attachments

---

<sup>3</sup> See New T-Mobile Commitments, Attachment 2, Section III.A.3.a (“New Boost's agreements will permit it to deploy and utilize its own spectrum, systems, network infrastructure, and other facilities if it chooses, and enjoy reasonable cost benefits of doing so.”).

<sup>4</sup> See Attachment B.

**ATTACHMENT A**

David Lawrence

Charles Mathias

Kathy Harris

Pramesh Jobanputra

Joel Rabinovitz

Nicholas Copeland

Catherine Matraves

David Sieradzki

Katherine LoPiccalo

Garnet Hanly

Patrick DeGraba

Jim Bird

Sara Mechanic

Babette Boliek

Saurbh Chhabra

**ATTACHMENT B**

**Altice USA**

**Minimum Conditions Necessary  
to Preserve Wireless  
Competition**

May 23, 2019



# 1 The Proposed Merger Commitments by Sprint and T-Mobile Offer Nothing New to Altice and Do Nothing To Preserve the Pre-Merger Wholesale Market

- T-Mobile’s proposed merger commitments offer nothing new to Altice and do nothing to ameliorate the harm to the wholesale market from this merger eliminating the only true wholesale competitors in the market today – Sprint and T-Mobile.
- The merger is harmful and should be denied because of its impact to the wholesale market. But if the merger proceeds, the New T-Mobile must agree, at a minimum, to the conditions Altice has sought from the beginning. It must:
  - honor and diligently implement existing wholesale agreements with MVNOs, including good faith finalization of any future requirements in those agreements
  - offer existing MVNO partners, for the full term of existing agreements or for ten (10) years post consummation, whichever occurs later, the best wholesale terms and conditions that are offered individually by each of the Applicants to their MVNO partners (Boost terms),
  - offer agreements with long term renewals, and
  - offer the improved nationwide coverage and service offering of the New T-Mobile to existing MVNO partners.
- The wholesale terms T-Mobile proposes to offer to Boost recognizes the peril for Boost, Altice and other MVNOs post-merger. The Commission should require that those favorable terms also are offered to Altice, with the caveat that a longer-term agreement, with expectations of renewal, are needed because there will be no wholesale “market” post-merger.

# Sprint and T-Mobile 5/20 Commitments Compared to Pre-Existing Contractual Terms

## 2 T-Mobile's Proposed Commitments Offer Nothing to Altice That is not in the Sprint Agreement Already – Sprint Has No Termination Right

### Sprint/T-Mobile 5/20 Commitment

Sprint Spectrum L.P. (“Sprint”) will not exercise any termination rights set forth in the Master Wireless Wholesale Agreement by and between Sprint and Altice USA, Inc. (“Altice”) dated November 5, 2017 (the “Altice MVNO Agreement”), or in any other existing agreement between Sprint and Altice, that arises from consummation of the merger between T-Mobile and Sprint Corporation.

### Altice/Sprint Wholesale Agreement – Sections 11, 12 and 3.1.9

**Sections 11 and 12, concerning changes of control and termination, do not contain a Sprint right to terminate the agreement as a result of the proposed merger of Sprint and T-Mobile.**

**Section 3.1.9 explicitly acknowledges that if Sprint is acquired, Altice's wholesale agreement survives:**

[Begin HCI]

[End HCI]



### 3 Similarly, the Altice/Sprint Agreement Already Ensures Access to New T-Mobile's Network and 5G Services, the Proposed Commitment is Illusory

#### Sprint/T-Mobile 5/20 Commitment

New T-Mobile commits to engage in good faith negotiations to expand the existing Sprint/Altice agreement to the New T-Mobile 5G network.

#### Altice/Sprint Wholesale Agreement – Section 3.1.9

**The Altice/Sprint agreement provides for Altice access to 5G and the New T-Mobile network on the same timeline as Sprint customers:**

[Begin HCI]

[End HCI]

# Minimum Conditions Necessary to Preserve Wireless Competition

## 4 T-Mobile's 5/20 Commitments Do Not Address Altice's Concerns or the Transaction-Specific Harms

- **T-Mobile has made no new commitment to Altice or the wholesale market** in its proposed merger commitments. T-Mobile is still trying to get the FCC to trust that it will have incentives to support the wholesale market.
- **If these incentives exist, why is it necessary for T-Mobile to include a specific commitment to negotiate in good faith with Boost for an iMVNO agreement and to include specific terms that will enable Boost to compete?** What T-Mobile is demonstrating is that unless it is required to support the wholesale market, those protections will not exist. Altice's economic study demonstrates that the New T-Mobile will not have incentives to support the wholesale market, and T-Mobile's proposed commitments prove it.
- **As confirmed by the Boost commitments, Altice's long-term competitive potential is compromised if the merger is approved because of the elimination of Sprint and T-Mobile as wholesale competitors,** the increased bargaining power of New T-Mobile, T-Mobile's explicit opposition to supporting cable-based wireless competitors, and New T-Mobile's changed incentives to preserve its own retail share rather than support competition through the wholesale market.
- **The only way to preserve the sustainable competitiveness of iMVNOs, and competition in the retail market generally, is to extend existing wholesale agreements for a minimum of 10 years** to preserve the necessary on-ramp to facilities-based competition eliminated by the merger. In other Commission proceedings, when considering the expense of building a wireless network, the Commission has supported lease commitments of 30 years in order not to strand investment. The lack of spectrum divestiture, and further concentration and unavailability of spectrum, compounds the need for longer-term wholesale agreements.

## 5 The Terms Offered by T-Mobile Related to the Boost Divestiture Underscore the Importance of Long-Term Wholesale Agreements Post-Merger

- **The wholesale terms offered by T-Mobile to Boost demonstrates their understanding of the impact of the merger on the ability to obtain a competitive wholesale agreement post-merger** and to offer a competitive retail wireless product as an MVNO. The commitment is an acknowledgement that Boost would otherwise be unable to obtain a wholesale agreement that enables robust competition in the post-merger marketplace.
- **Altice is more susceptible than Boost to the harmful impacts of the loss of competition in the wholesale market and must be similarly protected.** If Boost, with 9 million subscribers, requires a long-term competitive agreement to weather the harmful effects of the merger, Altice, who is preparing to enter the market without a mobile customer base, requires even greater protection.
- **Altice requires, at a minimum, a 10-year extension.** The 6-years T-Mobile proposes offering to Boost is not sufficient for Altice given the time required to build a customer base, acquire spectrum, and build-out a wireless network. As Altice gains customers there will be more interest from the MNOs to provide wholesale service, but it will take time to get there. Altice needs a longer time horizon than Boost to offer its facilities-based competition.
- **The Commission has previously recognized that a 30-year term is necessary** to prevent stranding significant investment in wireless infrastructure.<sup>1</sup>

<sup>1</sup> In establishing leasing terms for access to the 2.5 GHz band, a band with which Sprint is very familiar, the Commission recognized that terms below 30-years would prevent investment in the band. *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Memorandum Opinion and Order, FCC 06-46, para. 268 (Apr. 27, 2006).

**ATTACHMENT C**

**Altice USA, Inc.**  
**Proposed Conditions and Supporting Precedent**

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,<sup>1</sup>

(2) to offer existing MVNO partners, for the full term of existing agreements, or for ten (10) years post consummation, whichever occurs later,<sup>2</sup> the best wholesale terms and conditions that are offered individually by each of the Applicants to their MVNO partners,<sup>3</sup> with a presumption of long term renewals and, if requested, offering the

---

<sup>1</sup> 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").

<sup>2</sup> 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. 129-30 (requiring AT&T to extend roaming agreements with smaller carriers for up to four years at acquired sites to "prevent competitive harm" and "ensure[] sufficient time, if necessary, for small carriers to resolve any roaming-related issues created specifically by the transaction.").

<sup>3</sup> 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

improved nationwide coverage and service offerings of the New T-Mobile<sup>4</sup> to all existing MVNO partners of the Applicants.

(3) divesting spectrum that exceeds the spectrum screen, and associated network infrastructure,<sup>5</sup> in order to make those assets available to MVNOs, and smaller wireless players that need spectrum to enable nationwide mobile deployments and wireless competition;<sup>6</sup> provided, however, that any divestiture partner(s) cannot be under common ownership or control with AT&T, Verizon or the New T-Mobile;<sup>7</sup> and

---

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.

<sup>4</sup> 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 its offering of nationwide coverage and improved service offerings to wholesale partners.

<sup>5</sup> *See* Verizon/ALLTEL Order at para. 24 (“Specifically, under the terms of the settlement between the Applicants and DOJ, Verizon Wireless and ALLTEL have agreed to divest certain cellular licenses *and related operational and network assets* . . . in 100 markets.”) (emphasis added).

<sup>6</sup> *See* AT&T/Leap Order at paras. 161-62 (finding “that the proposed transaction would be likely to cause significant competitive harm as a result of spectrum aggregation in a number of geographic markets” and concluding that “spectrum divestitures will adequately prevent AT&T from foreclosing competing service providers in those markets based on undue spectrum aggregation”); Verizon/SpectrumCo Order at para. 118 (finding that the required divestitures where Verizon would hold over 40 MHz of AWS-1 spectrum “would significantly reduce the likelihood that the Verizon Wireless-SpectrumCo-Cox-Leap transactions would result in potential foreclosure of rivals and/or raise rivals’ costs individually or collectively, such that Verizon Wireless would have the incentive and ability to unilaterally adversely affect national pricing or local quality of service and coverage); AT&T/Centennial Order at para. 2 (“However, with regard to seven local areas – six in Louisiana and one in Mississippi – our analysis indicates that, absent a remedy, competitive harms would likely result. Accordingly, we require divestiture of Centennial’s wireless operations in these areas, which also are markets where the U.S. Department of Justice required divestitures in its review of the transaction.”); Verizon/ALLTEL Order at paras. 24, 99 (noting that pursuant to “the terms of the settlement between the Applicants and DOJ, Verizon Wireless and ALLTEL have agreed to divest certain cellular licenses and related operational and network assets . . . in 100 markets” and requiring divestitures in five additional markets); AT&T/Verizon Order at para. 64 (noting AT&T’s commitment to divest 15 megahertz of spectrum in one Michigan CMA as a factor in approving the transaction).

<sup>7</sup> *See In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities through Incentive Auctions*, WT Docket Nos. 12-269, 12-268, Report and Order, FCC 14-63, paras. 1, 5, 146 (June 2, 2014) (establishing a spectrum reserve in the Incentive Auction, effectively limiting the amount of spectrum AT&T and Verizon may bid on, to guard “against excessive concentration in holdings” and “ensure that all Americans, regardless of whether they live in an urban, suburban, or rural area, can enjoy the benefits that competition provides” and to “furnish opportunities for additional access to spectrum to all providers,

(4) filing detailed quarterly reports with the Commission describing New T-Mobile's status in implementing these commitments for ten (10) years post-consummation.<sup>8</sup>

---

while adopting measures to protect against the risk that further concentration of spectrum . . . would have . . . effects on competition in the marketplace in the foreseeable future.”).

<sup>8</sup> See AT&T/Leap Order at paras. 186-87 (“For two years following the date of merger close, AT&T will file with the Commission a quarterly detailed report on the status of the implementation of these commitments and the migration of Leap’s customers . . . We will condition consent to the proposed transaction on AT&T complying with this quarterly reporting obligation. AT&T’s submission of these reports will allow Commission staff to monitor the progress of AT&T’s efforts.”); Comcast/NBCU Order at para. 201, Appx. A Sec. X, Sec. XIX (establishing quarterly reporting requirements for local and diversity programming conditions as well as an annual report on compliance with all transaction conditions); Charter/Bright House Order at Appx. B Sec. III para. 3 (requiring quarterly reports on interconnection-related conditions.).