

June 3, 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*

Dear Ms. Dortch:

On May 30, 2019, representatives of Altice USA, Inc. (“Altice”) including Lee Schroeder, Executive Vice President, Government & Community Affairs met with Will Adams, legal advisor to Commissioner Carr, William Davenport, Chief of Staff & wireless advisor to Commissioner Starks, and the Sprint/T-Mobile Transaction Team.¹ Altice’s outside counsel from Akin Gump Strauss Hauer & Feld LLP, Jennifer Richter and Shea Boyd, joined her for the meetings with Will Adams and William Davenport.

In these meetings, Altice discussed the proposed commitments made by T-Mobile and Sprint on May 20, 2019, including the commitments specifically addressing Altice.² Altice shared with staff the materials included in Altice’s ex parte filed with the Federal Communication Commission (“Commission”) on May 28, 2019,³ incorporated herein by reference.

Altice shared its view that T-Mobile’s inclusion of commitments related to Altice only occurred because the Commission has indicated that Altice and its imminent entry as a full infrastructure mobile virtual network operator (“iMVNO”) presents a new form of sustainable, facilities-based competition that will benefit retail consumers in the near and long term. T-Mobile’s commitment to the Commission to honor the existing Altice/Sprint agreement, including the opportunity to utilize the New T-Mobile’s 5G network, reduces Altice’s concerns about whether T-Mobile will act in good faith to fulfill the terms of the current contract through

¹ The Transaction Team meeting attendees included Lee Schroeder, David Lawrence, Charles Mathias, and Joel Rabinovitz.

² 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”).

³ Letter from Jennifer Richter, counsel to Altice USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 18-197 (filed May 28, 2019).

its current term.⁴ As Altice prepares to enter the wireless market in 3Q 2019, this commitment supports Altice's ability to bring benefits to retail consumers in the near term. However, T-Mobile needs to make firm commitments to provide wholesale access to Altice beyond the current contract term to ensure that consumers can benefit from Altice's competitive presence, and new facilities-based competition, in the long term.⁵

Altice's entry into the retail wireless market is focused on benefiting retail consumers with a high-quality, attractively priced wireless offering made possible by Altice's investment in core wireless infrastructure. This core infrastructure for wireless is critical to being able to integrate Altice's own spectrum into a service offering Altice will control through the SIM card, an attribute unique to iMVNOs. To ensure that Altice can continue to provide competitive benefits to retail consumers over the long term, Altice needs to access a wholesale Radio Access Network ("RAN") at reasonable rates beyond the current term of its agreement.⁶

Altice explained that it is critical for T-Mobile and Sprint to commit to extend Altice's current wholesale agreement with Sprint for 10 years from the end of its current term to ensure the retail market can benefit from Altice's long-term presence and preserve the benefits to consumers of increased facilities-based competition from Altice's iMVNO entry strategy, presently unique in the United States. T-Mobile has indicated it would have an incentive to continue to support MVNOs, and, given the infrastructure investments Altice has already made,⁷ it is essential that T-Mobile explicitly expand its commitments to Altice to include an extension of its agreement for 10 years.

⁴ Altice requested in its proposed conditions submitted last August that T-Mobile and Sprint must commit "to honor and diligently implement existing MVNO agreements." Petition to Condition or Deny of Altice USA, Inc., WT Docket No. 18-197, at 20 (filed Aug. 27, 2018).

⁵ This commitment is necessary because the merger will eliminate competition in the wholesale market, particularly for iMVNO providers like Altice.

⁶ The Commission has long understood the importance of "roaming" to incentivize new facilities-based competition. Roaming access, access to the RAN, is what iMVNOs like Altice need. *See, e.g., In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143, para. 3 (rel. Aug. 16, 2007) ("CMRS providers' obligations regarding roaming services serve the public interest and safeguard wireless consumers' reasonable expectations of receiving seamless nationwide commercial mobile telephony services through roaming."); *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 (rel. Apr. 21, 2010) ("[W]e find that [lack of access to roaming] 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. The Commission has previously recognized that this 'head-start' advantage can constitute a significant hurdle to new competition.").

⁷ In establishing leasing terms for the 2.5 GHz band, the Commission recognized that long-term commercial agreements of 30 years were necessary to prevent stranded wireless infrastructure investments. *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).

With respect to T-Mobile's commitment relating to Boost Mobile, Altice noted that the commitments appear to contemplate that T-Mobile would negotiate a wholesale agreement that has attributes unique to an iMVNO arrangement.⁸ Altice has previously called for existing MVNO partners of T-Mobile and Sprint to have access to long-term wholesale arrangements on the best terms available from either T-Mobile or Sprint if the merger proceeded. Given T-Mobile's commitments relating to the wholesale agreement with Boost Mobile, Altice proposes to modify and narrow its previous proposal by recommending that Altice, as an iMVNO, be able to review the finalized New T-Mobile/Boost Mobile wholesale agreement and have an option to "opt-in" to that deal, with an appropriate 10-year term, within a specified time period.

Lastly, as currently proposed the commitments from T-Mobile do not include divestiture of spectrum and associated assets, which would likely accelerate the ability of new entrants like Altice to acquire and build out its own spectrum assets and lessen the reliance on the nationwide carrier's networks over time. Given the maturity of the wireless market as well as both the cost and time to build a national wireless network, it is necessary to have both a reasonable iMVNO agreement as well as access to spectrum. The lack of spectrum divestiture only increases the importance for Altice to have access to reasonable wholesale terms as it evaluates other spectrum possibilities in a post-merger spectrum market that is substantially consolidated.

To preserve the long-term benefits for consumers and retail competition from Altice's entry and ameliorate the merger harms from Altice's perspective, Altice proposes that T-Mobile make the following commitments:

1. Extend the term of the existing Master Wireless Wholesale Agreement between Sprint Spectrum L.P. ("Sprint") and Altice USA, Inc. ("Altice") dated November 5, 2017 (the "Master Wholesale Agreement") for a minimum of ten (10) years from the end of the current term of the agreement and negotiate in good faith to finalize any future requirements contained in the Master Wholesale Agreement within ninety (90) days post consummation of the merger.
2. Provide Altice access to the wholesale agreement between New T-Mobile and Boost Mobile contemplated in connection with the divestiture of Boost Mobile (the "Boost Wholesale Agreement") upon submission of such document to the Wireless Bureau for review, and permit Altice a 60-day option to opt-in to the material terms of the Boost Wholesale Agreement,⁹ except that Altice must preserve a minimum term of ten-years.¹⁰

⁸ New T-Mobile Commitments, Attachment 2, Section III.3 ("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.").

⁹ New T-Mobile Commitments, Attachment 2, Section III.

¹⁰ Altice is more susceptible than Boost Mobile to the harmful impacts of the loss of competition in the wholesale market and must be similarly protected. If Boost Mobile, with approximately 8 million subscribers, requires a long-term competitive agreement to build its business sufficiently to become formidable competitor, Altice, who is preparing to enter the market without a mobile customer base, requires a longer term to get to the same place Boost would be in six years. As Altice gains customers there will be more interest from the nationwide

3. Submit to the enforcement mechanisms, including voluntary contributions to the U.S. Treasury, proposed by T-Mobile and Sprint regarding the Boost Wholesale Agreement,¹¹ should the New T-Mobile fail to meet commitments 1 and 2.

Altice appreciates the Commission's continued interest in its views as an iMVNO entrant and proposes the conditions above in the interest of preserving the long-term benefit to retail competition of Altice's entry into the wireless market. Please direct any questions to the undersigned.

Sincerely,

/s/ Jennifer L. Richter

Jennifer L. Richter

carriers to provide wholesale service, but it will take time to get there. Altice requires a longer time horizon than Boost to offer its facilities-based competition.

¹¹ New T-Mobile Commitments, Attachment 2, Section V.