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July 30, 2018

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Notice: *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services* – AU Docket No. 18-85

Dear Ms. Dortch:

On July 26, 2018, Vonya McCann, Senior Vice President, Government Affairs, and James Goldstein, Senior Counsel – Spectrum, of Sprint Corporation (“Sprint”); Howard Symons of Jenner & Block, counsel to SoftBank; Richard Metzger of Lawler, Metzger, Keeney & Logan, LLC, and I, counsel to Sprint, met with Donald Stockdale, Chief, Dana Shaffer, Deputy Bureau Chief and Chief of Staff, Joel Taubenblatt, Deputy Bureau Chief, Jonathan Campbell, Legal Advisor, and Margaret Wiener, Chief of the Auctions & Spectrum Access Division, all of the Wireless Telecommunications Bureau; Ashley Boizelle, Deputy General Counsel, Bill Richardson, Deputy Associate General Counsel, and Anjali Singh, all of the Office of General Counsel; Thomas Siu of the Wireline Competition Bureau; and Michael Carowitz, Special Counsel to Federal Communications Commission (“FCC” or “Commission”) Chairman Ajit Pai.

During the meeting, Sprint emphasized its interest in being able to participate in the upcoming millimeter wave auctions (*i.e.*, Auctions 101 (28 GHz) and 102 (24 GHz)). Sprint and SoftBank representatives noted that Sprint’s Business Combination Agreement (“Agreement”) with T-Mobile is not a joint bidding arrangement. The Agreement explicitly preserves each party’s right to participate separately in the auctions and provides safeguards to ensure compliance with the Commission’s Prohibited Communications rules. More specifically, Section 6.20 of the Agreement states:

Sprint and T-Mobile hereby acknowledge that this Agreement is not intended to, and shall not be interpreted to, restrict the ability of either Sprint and its subsidiaries, or T-Mobile and its subsidiaries, from participating in any FCC auction that may occur after the date of this Agreement and prior to the Closing. In connection with the foregoing, (a) Sprint and T-Mobile shall not discuss or enter into any agreements related to bids, bidding strategies or post-auction market structure related to licenses being auctioned by the FCC and (b) not later than 30 days in advance of the applicable initial auction application deadline, the

parties shall (i) distribute guidelines for compliance with the FCC's Prohibited Communications rules to all individuals and consultants involved in the discussions with the other party regarding the transactions contemplated by this Agreement and (ii) implement safeguards mutually agreed upon by the parties, which may include assigning personnel or committees to monitor or evaluate proposed communications between the Parties regarding matters potentially falling under the FCC's Prohibited Communications rules, firewalls and third-party nondisclosure agreements, remedial steps to be followed in the event of any such Prohibited Communication, and other reasonable and appropriate procedures implemented in consultation with outside counsel and intended to prevent communications concerning any FCC licenses to be auctioned, bids or bidding strategy between such parties.¹

Further, Sprint representatives noted that the company will continue to advance its business plans as a stand-alone company while the proposed merger is pending, including exploring the option of bidding in the auctions. Sprint and SoftBank representatives also noted that the prohibition on major modifications to applications during the auction could inadvertently discourage Sprint from participating in Auctions 101 and 102, which would not serve the public interest in a competitive auction.

In response to questions about certain limitations contained in the Business Combination Agreement regarding the acquisition of additional debt during the governmental review of the transaction,² Sprint and SoftBank representatives pointed out that these are standard safeguards in a merger agreement to prevent material changes to a merger party's capital structure. The various debt restrictions do not limit Sprint's participation in the upcoming auctions and do not constitute a bidding cap. Rather, the debt restrictions place a maximum limit on the funding that may be obtained for that purpose from certain sources. Sprint and SoftBank representatives further noted that the dollar amount contained in the provision limiting the value of spectrum that could be acquired through "transactions"³ did not apply to spectrum acquired in auctions.⁴

¹ Business Combination Agreement, Section 6.20 ("FCC Auction Procedures"), available at https://www.sec.gov/Archives/edgar/data/101830/000110465918028087/a18-12444_1ex2d1.htm#Exhibit2_1_122313 (April 29, 2018).

² See *id.*, Sections 5.1(a)(viii)(D) and 5.1(b)(viii)(D).

³ See *id.*, Section 5.1(a)(v)(D) (permitting Sprint to acquire wireless spectrum through "one or more transactions," but noting that such transactions shall "not exceed \$1,000,000,000").

⁴ See *id.*, Section 5.1(a)(v)(C) (permitting Sprint to acquire wireless spectrum "pursuant to an auction of wireless spectrum by a Governmental Entity," with no dollar limit capping the amount of wireless spectrum acquired pursuant to the provision).

Moreover, the foregoing provisions could not plausibly be characterized as evidence of a bidding agreement or bidding strategy since the Agreement is publicly available.⁵

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceeding.⁶

Respectfully submitted,

/s/ Regina M. Keeney
Regina M. Keeney

cc: Donald Stockdale
Dana Shaffer
Joel Taubenblatt
Jonathan Campbell
Margaret Wiener
Ashley Boizelle
Bill Richardson
Anjali Singh
Thomas Siu
Michael Carowitz

⁵ See *supra* n.1 for URL to the Business Combination Agreement.

⁶ The Sprint and SoftBank representatives did not discuss the merits of the Public Notice under consideration at the Commission's August 2, 2018 Open Meeting.