

August 23, 2019

BY ECFS

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

RE: Ex Parte Notice. Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-197

Dear Ms. Dortch:

On August 22, Debbie Goldman and Hooman Hedayati of the Communications Workers of America (“CWA”), Phillip Berenbroick of Public Knowledge, Amir Nasr of New America's Open Technology Institute, and George Slover of Consumer Reports (collectively “public interest and labor representatives”) held a meeting with Commissioner Michael O’Rielly and Erin McGrath, legal advisor to Commissioner O’Rielly, to discuss the above-captioned proceeding.

The public interest and labor representatives reiterated their prior statement that the DISH Network Corporation’s (“DISH”) waiver request, deployment commitments, Department of Justice (“DOJ”) Consent Decree, and related developments should be put out for Public Comment.¹

The DOJ Consent Decree and the DISH waiver and extension requests represent significant changes to the original transaction and raise new and important public interest and competition issues related to execution risk; operational, technical, managerial, and financial capability of the divested party; enforcement provisions; economic incentives; and jobs. The MVNO and related commercial agreements between DISH and T-Mobile are central to the analysis of the transaction, yet the MVNO Agreements have not been submitted into the record and have not been subject to public comment.² In two prior instances, the Commission ensured compliance with the Administrative Procedures Act (APA) by seeking Public Comment when new developments and evidence were introduced into the record.³

¹See Letter from Debbie Goldman to Marlene H. Dortch, Secretary, Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, Aug 13, 2019.

²DISH has acknowledged that the economic studies that it submitted into the record in this proceeding have changed as a result of the DOJ Consent Decree. See Letter from Jeffrey H. Blum, DISH Senior Vice-President to Marlene H. Dortch, Secretary, WT Docket No. 18-197, Aug. 1, 2019 (noting that “these studies do not apply to the recently entered into set or arrangements...”).

³Public Notice, *Commission Announces Receipt of Supplemental Analysis from T-Mobile; Establishes Comment Deadline*, DA 18-1155, WT Docket No. 18-197 (November 13, 2018) (seeking public comment on the Applicants’ Cornerstone economic study); Public Notice, *Commission Announces Receipt of Additional Analysis and Information from T-Mobile and Sprint; Establishes Comment Deadline*, DA 19-161, WT Docket No. 18-197 (March 7, 2019) (seeking comment on new economic simulations, engineering, and home broadband commitments).

Given the extraordinary nature of these developments, failure to seek public comment on these inextricably interrelated developments would be a violation of the APA. Decisions of federal agencies, including the FCC, are governed by the APA, which establishes the scope of review and directs courts to set aside decisions which are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁴ This is fully applicable to adjudications, including license application proceedings, as well as rulemakings.⁵ To ignore the fundamental changes to this proceeding that have resulted from the consent decree and DISH’s request to the Commission would be the epitome of arbitrary and capricious decision making.

To ensure a full record with adequate opportunity to comment on fundamental changes in this transaction, the Commission should seek Public Comment on the DISH waiver request and related developments.

Sincerely,



Debbie Goldman
Telecommunications Policy and Research Director
Communications Workers of America

cc: Erin McGrath
Kathy Harris
Jim Bird
Linda Ray
David Krech
Catherine Matraves

⁴ 5 U.S.C. §706(2)(A).

⁵ See, e.g, *Press Communications v. FCC*, 875 F.3d 1117, 1121 (D.C. Cir. 2017)(quoting Section 706(2)(A)).