

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of T-Mobile US, Inc.)	
)	
and)	WT Docket No. 18-197
)	
Sprint Corporation)	
)	
Consolidated Applications for Consent)	
to Transfer Control of Licenses)	
and Authorizations)	

PETITION TO CONDITION OR DENY

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Executive Summary

Altice USA, Inc. (“Altice”), a provider of broadband and video services in 21 states and a full infrastructure-based Mobile Virtual Network Operator (“MVNO”), is concerned about Commission approval of the transfer applications to create the New T-Mobile, because of the anticompetitive effects of further consolidation in the national wireless market, and the negative impacts of the New T-Mobile on MVNOs that are beginning to offer nationwide wireless competition.

Although Altice is confident in its ability to enter the wireless market in 2019 based on its current regional MVNO partnership with Sprint, a partnership that is strategically important for both Sprint and Altice, Altice has concerns about the opportunity to expand its wireless service nationwide, and over the long term, because T-Mobile and the New T-Mobile have made no tangible commitments regarding meaningful support for current MVNO partners, including offering such partners the full nationwide network that the New T-Mobile will enjoy. The concerns of Altice are magnified in view of T-Mobile’s hostile statements against MVNOs, including cable operators entering the wireless market.¹

As it reviews the instant transfer applications, the Commission must consider three transaction-specific harms related to the New T-Mobile: (1) The increase in market concentration from four to three nationwide wireless carriers is clear and substantial. The competitive harm from a heretofore unprecedented level of wireless concentration for all market participants and American consumers has been documented by the Department of Justice in the past; (2) Beyond

¹ Altice’s agreement with Sprint clearly accounts for the continuation of the relationship if Sprint is acquired. However, given the lack of firm commitments by TMO to support the MVNO market if the merger is consummated, Altice is concerned about TMO’s willingness to support Altice’s further expansion in the wireless market.

market-wide harms, reducing nationwide wireless carriers from four to three is particularly injurious for MVNOs in this case because it reduces the number of viable, and essential, nationwide MVNO partners. Two independent competitors, Sprint and T-Mobile had the most motivation to enter into competitive MVNO engagements to date and will be gone, leaving only the New T-Mobile; and (3) MVNOs, including MVNO partners such as Altice, have legitimate concerns about the future of partnering with the New T-Mobile because of T-Mobile's hostile statements toward MVNOs and its avoidance of tangible commitments to support MVNOs. The harms of the transaction are especially potent today as cable operators entering the wireless market using MVNOs are only beginning to offer consumers wireless choice.

To protect the ongoing viability of MVNOs as nationwide competitors to the big three wireless carriers, particularly full infrastructure-based MVNOs such as Altice that can compete on more than just price, the Commission must apply safeguards to any approvals. Although the loss of a roaming partner is eventually irreparable to the market, the conditions proposed herein will mitigate, in the near term, the competitive harm to the MVNO market from losing important, independent wholesale partners. At a minimum, therefore, if the Commission determines to approve the transfer applications, such approvals should be conditioned on the New T-Mobile:

(1) committing to honor and diligently implement existing MVNO agreements, including good faith finalization of any future requirements in those agreements,

(2) committing to 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, with a presumption of long term renewals and, if requested, offering the improved nationwide coverage and service offerings of the New T-Mobile to all existing MVNO partners of the Applicants;

(3) divesting spectrum that exceeds the spectrum screen, and associated network infrastructure, in order to make those assets available to MVNOs, and smaller wireless players that need spectrum to enable nationwide mobile deployments and wireless competition;

provided, however, that any divestiture partner(s) cannot be under common ownership or control with AT&T, Verizon or the New T-Mobile; and

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

Bearing in mind the T-Mobile dismissiveness toward MVNOs (and cable MVNOs, in particular), it is essential that the Commission receive firm commitments from T-Mobile, Sprint and the New T-Mobile that they will support long-term, nationwide MVNO competition through their partners, creating presumptions that the New T-Mobile must offer its MVNO partners long-term contract renewals, and the expanded nationwide coverage of the New T-Mobile, unless it can be proven that such offerings are not in the public interest.

Without imposition of the safeguards requested by Altice, the transfer applications must be denied. The New T-Mobile will not have every "incentive" to support its MVNO partners in expanding service nationwide, over the long term, but it will have every incentive to expand its own market power by refusing to afford its MVNO partners nationwide, long-term, wholesale agreements. T-Mobile's own comments to date, and its refusals to make commitments to the MVNO market, already have telegraphed this result.

TABLE OF CONTENTS

- I. ALTICE OFFERS A UNIQUE PERSPECTIVE ON THE SUBSTANTIAL HARMS THAT WILL BE SUFFERED BY MVNOS IF THE NEW T-MOBILE IS APPROVED WITHOUT CONDITIONS.5
- II. COMPETITIVE SAFEGUARDS ARE NECESSARY TO PREVENT THE TRANSACTION-SPECIFIC HARMS TO WIRELESS COMPETITION BY MVNOS.9
 - A. Wireless Concentration from Four to Three Nationwide Carriers Will Obviously Diminish Competition, Harming All Market Participants, including MVNOS and Consumers.10
 - B. The Negative Effects of Four to Three are Compounded Because the Proposed Transaction Results in the Loss of T-Mobile and Sprint, Essential Nationwide MVNO Partners That Had the Most to Gain from Supporting MVNOS.11
 - C. Concern from MVNOS Regarding Competitive Harms that Could Result from Creation of the New T-Mobile are Justified by T-Mobile’s Hostile Statements and Avoidance of Tangible Commitments.14
- III. IN THE ABSENCE OF TRANSACTION-SPECIFIC CONDITIONS THAT WILL PROMOTE AND ENSURE WIRELESS COMPETITION BY MVNO PARTNERS, AS SUGGESTED HEREIN, THE COMMISSION MUST DENY THE TRANSFER APPLICATIONS.19
- IV. CONCLUSION.24

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PETITION TO CONDITION OR DENY

Altice USA, Inc. (“Altice”) respectfully petitions the Federal Communications Commission (the “FCC” or “Commission”) either to impose competitive safeguards as conditions on, or deny, the proposed license transfers filed by Sprint Corporation (“Sprint”) and T-Mobile US, Inc. (“T-Mobile”) (collectively, the “Applicants”) to create the “New T-Mobile.”

Altice is concerned about Commission approval of the transfer applications to create the New T-Mobile because of the anticompetitive effects of further consolidation in the nationwide wireless market and the negative impacts the New T-Mobile will have on Mobile Virtual Network Operators (“MVNOs”). Although Altice is confident in its ability to enter the wireless market in 2019 based on its current regional partnership with Sprint, a partnership that is strategically important for both Sprint and Altice,¹ Altice has concerns about the opportunity to

¹ Sprint has described the agreement with Altice as follows: “In this first of its kind agreement, Sprint will provide Altice USA with access to its full MVNO model,” for customers within the Altice footprint. “In exchange, Altice USA will leverage its network to support Sprint’s network densification efforts and establish a differentiated network operating model going forward.” *Sprint, Altice USA Announce Strategic MVNO Agreement*, Press Release, SPRINT (November 5, 2017), available at <http://investors.sprint.com/news-and-events/press-releases/press-release->

expand its wireless service nationwide over the long term, due to the absence of tangible commitments from T-Mobile and the New T-Mobile regarding support for its MVNO partners.² The concerns of Altice are magnified by T-Mobile’s hostile statements against cable operators using MVNOs to provide wireless competition.

If Altice, a strategic partner of Sprint, has doubts about what the “New T-Mobile” will mean for wireless competition by MVNO partners because of public statements made by T-Mobile,³ then the Commission should similarly be concerned. Applicants discussed in their Public Interest Statement for the New T-Mobile,⁴ and John Legere, CEO of T-Mobile, discussed in his congressional testimony, that combining the Applicants’ respective spectrum holdings will create “significant additional capacity and lower costs of service.”⁵ Applicants also discuss the

[details/2017/Sprint-Altice-USA-Announce-Strategic-MVNO-Agreement](#). “We are incredibly excited to work with Altice USA on this innovative win-win solution that benefits both of our companies,” said Sprint President & CEO Marcelo Claure. “As content and connectivity continue to converge, we believe this approach will be a model for future strategic arrangements across multiple industries including cable, tech and others.” *Id.*

² Although Altice’s MVNO partnership with Sprint would continue post-merger, these partnerships evolve over time. As a partnership matures, continued negotiations are essential and, as described fully in this Petition, Altice has serious concerns about whether New T-Mobile, over time, would engage in the same collaborative partnership with Altice as Sprint.

³ See also *infra* at II(C) for hostile statements made by T-Mobile’s CEO regarding MVNO competition.

⁴ “This proposed merger is necessary to accomplish a goal critical to enhancing consumer welfare in this country: the rapid and widespread deployment of 5G networks in a market structure that spurs rivals to invest in a huge increase in capacity, and, correspondingly, to drop tremendously the price of data per gigabyte.” *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, Public Interest Statement, i (filed June 18, 2018) (“Public Interest Statement”). “As New T-Mobile expands its capacity, this will greatly reduce the cost of delivering each gigabyte of data to customers—capacity will double and the cost of delivering data will plummet.” *Id.* at Appx. C, para. 21. “New T-Mobile will use the increased capacity realized by the combination of T-Mobile and Sprint’s networks to deliver lower prices and allow for increased data usage.” *Id.* at 16. “New T-Mobile will use that [added] capacity and the resulting lower marginal costs per customer to deliver lower prices and to accommodate increased customer data usage at the same or lower prices. If New T-Mobile were to do otherwise—for example, raise prices or reduce customer value under its rate plans—it would damage the Un-carrier brand, alienate its customer base, and leave the company with idle capacity.” *Id.* at 51.

⁵ *Game of Phones: Examining the Competitive Impact of the T-Mobile – Sprint Transaction*, Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, 116th Cong. 6 (June 27, 2018) (T-Mobile’s response to questions for the record submitted by Senator Blumenthal), available at <https://www.judiciary.senate.gov/imo/media/doc/Legere%20Responses%20to%20QFRs.pdf>. (“T-Mobile Questions for the Record”).

improved nationwide coverage of the New T-Mobile.⁶ T-Mobile offers no assurances, however, that this additional capacity, improved nationwide coverage and lower pricing will be used to help increase mobile competition by MVNO partners. In fact, the opposite is true. When asked in a recent Senate hearing, “What *specific commitments* can you make towards offering a consistent and competitive price to lease necessary spectrum or platforms for MVNOs?”⁷ T-Mobile’s CEO only remarked that the New T-Mobile will have “*strong incentives* to continue offering MVNOs competitive prices.”⁸

“Incentives” are not assurances or commitments and are hardly enough for the Commission to approve the New T-Mobile without conditions that will ensure prioritization of commitments to MVNO partners – particularly because 68% of the MVNO market relies on T-Mobile and Sprint today.⁹ The “significant additional capacity and lower costs of service” discussed by T-Mobile’s CEO,¹⁰ and the improved nationwide coverage of the New T-Mobile,¹¹ all of which are only created if the Commission approves the transfer applications, must come with tangible commitments to make the capacity, nationwide coverage and lower costs of service

⁶ Public Interest Statement at i.

⁷ See T-Mobile Questions for the Record at 6.

⁸ *Id.* (emphasis added).

⁹ Of 93 MVNOs in operation, 64 partner with either the Sprint or T-Mobile, or both. See *List of United States Mobile Virtual Network Operators*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/List_of_United_States_mobile_virtual_network_operators.

¹⁰ T-Mobile Questions for the Record at 6.

¹¹ In the Public Interest Statement, Applicants note the improved 4G LTE coverage that Sprint will enjoy due to the merger – that improved coverage must be offered to existing MVNO partners in order to ensure nationwide competition: “New T-Mobile will invest nearly \$40 billion to combine the complementary spectrum, sites, and assets of T-Mobile and Sprint to deliver a robust, nationwide world-class 5G network and services sooner than otherwise possible. *Current Sprint customers will realize 4G LTE coverage benefits*; T-Mobile customers will realize improvements from the greater depth of spectrum; and, as the 5G network is built out, the speed and capacity gains will be significant. By 2024, the New T-Mobile network will have approximately double the total capacity and triple the total 5G capacity of T-Mobile and Sprint combined, with 5G speeds four to six times what they could achieve on their own.” Public Interest Statement at i (emphasis added).

available to MVNO partners that can support robust wireless competition, mitigate anti-competitive harms, and promote the public interest.

At a minimum, therefore, if the Commission decides to approve the transfer applications, such approvals should be conditioned on the New T-Mobile:

(1) committing to honor and diligently implement existing MVNO agreements, including good faith finalization of any future requirements in those agreements,

(2) committing to 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, with a presumption of long term renewals and, if requested, offering the improved nationwide coverage and service offerings of the New T-Mobile to all existing MVNO partners of the Applicants;

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

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

Bearing in mind the T-Mobile dismissiveness toward MVNOs (and cable MVNOs, in particular) it is essential that the Commission receive firm commitments from T-Mobile, Sprint and the New T-Mobile that they will support long-term, nationwide MVNO competition through their partners, creating presumptions that the New T-Mobile must offer long-term contract renewals and offer the expanded nationwide coverage of the New T-Mobile to its MVNO partners, unless it can be proven that such offerings are not in the public interest.

Without imposition of the safeguards requested by Altice, the transfer applications must be denied. The New T-Mobile will not have every "incentive" to support its MVNO partners in expanding service nationwide, over the long term, but it will have every incentive to expand its own market power by refusing to afford its MVNO partners nationwide, long-term, wholesale

agreements. T-Mobile's own comments to date, and its refusals to make commitments to the MVNO market, already have telegraphed this result.

I. ALTICE OFFERS A UNIQUE PERSPECTIVE ON THE SUBSTANTIAL HARMS THAT WILL BE SUFFERED BY MVNOS IF THE NEW T-MOBILE IS APPROVED WITHOUT CONDITIONS.

As a regional MVNO partner to Sprint, and a new wireless entrant that seeks to establish a nationwide, full infrastructure-based MVNO, Altice offers a unique perspective on the substantial harms that will be suffered by MVNOS if the New T-Mobile is approved without conditions to mitigate the substantial, anticipated anti-competitive harms arising from the proposed transaction.

Altice is a provider of broadband and video services to approximately 4.9 million residential and business customers in 21 states through a fiber-rich broadband network that passes 8.6 million homes as of December 31, 2017. Altice serves customers through two brands based on geography: Optimum, acquired in 2016, which operates in four states in the New York metropolitan area, and Suddenlink, acquired in 2015, which operates in 17 states, principally from the south-central United States to the west coast.

Since acquisition of Optimum and Suddenlink, Altice has invested substantially in its network to improve its services and the quality of the customer experience, quadrupling the maximum available broadband speeds offered to many of its customers. Capacity for residential broadband for Optimum customers has increased from 101 Mbps to 400 Mbps. At Suddenlink, more than two thirds of households have access to 1 Gbps broadband service. Altice also commenced a plan to build a fiber-to-the-home ("FTTH") network, enabling up to 10 Gbps broadband speeds across the Optimum footprint and part of the Suddenlink footprint. To further enhance the customer experience, Altice introduced a new home communications hub, Altice

One, in its Optimum footprint. The home communications hub is an integrated platform with a dynamic user interface that combines a set-top box, Internet wireless router and cable modem in one device.

Recognizing that customers are seeking seamless wireline and wireless connectivity, Altice entered into an MVNO agreement with Sprint in the fourth quarter of 2017 to support its entry into the wireless market in 2019 as a full infrastructure-based MVNO. It is important for the Commission to understand the facilities-based competition that Altice will offer through its MVNO as opposed to MVNOs that simply “white label” wireless service from the big wireless carriers. As the Commission noted in the Sixteenth Wireless Competition Report, “facilities-based providers. . .engage in the full range of non-price rivalry such as creating capacity through network investments, network upgrades, or network coverage.”¹² This is precisely the type of unique facilities-based competition Altice will offer through its MVNO model.

Typically, “white label” MVNOs, or “light MVNOs,” are resellers of the offerings made by the big wireless carriers. Most, if not all, of the functionality, features, and even products (e.g., speeds, data caps, family plans) are created by the big carrier and “resold” by the MVNO to the public. This model offers “competition” only in marginal price and marketing because the big carrier sets the wholesale pricing. White label MVNOs wait for the big carriers to innovate on products, services and offerings and then pass along those innovations to their customers. White label MVNOs are dependent on the big wireless carriers for the design, features, and pricing of a product.

¹² *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Sixteenth Report on Wireless Competition, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, para. 36 (“Sixteenth Wireless Competition Report”).

A full infrastructure-based MVNO, such as Altice, is unique. It owns communications infrastructure, systems and networks and makes investments in the network to bring its own innovations to customers, including differentiated wireless products and services. A full infrastructure-based MVNO takes over almost all of the functionality of the network –billing, customer care, pricing (per/MB rate), upgrades and innovations in the network, how to treat overages, messaging (e.g., integrating messaging with different functions), etc. A full infrastructure-based MVNO also sources its own customer devices and is not limited to buying what the host carrier offers, allowing the MVNO to make its own, buy its own, and customize its own customer wireless devices. Finally, and ultimately most importantly, full infrastructure-based MVNOs with backend facilities can make use of the most advanced RAN functionality, making adjustments in real time to ensure customers get the best radio connectivity experience because it is all provisioned through the MVNO platform. Full infrastructure-based MVNOs offer the greatest potential to bring wireless competition to the big carriers and, because of that competitive threat, require the greatest protection from the Commission as it considers whether to allow further concentration of the dominant wireless carriers from four to three.

The full infrastructure-based MVNO agreement that Altice has with Sprint is a multi-year strategic agreement that provides substantial benefits for both Altice and Sprint. Pursuant to the agreement, Altice will utilize Sprint's network to provide mobile voice and data services to customers in its current footprint, and Sprint is benefitting from leveraging Altice's resources to densify its wireless network. Sprint's CTO confirmed that the MVNO deal with Altice has already resulted in Sprint deploying thousands of small cells.¹³ In answer to a question from Deutsche Bank about how the deal to create New T-Mobile will impact the Sprint MVNO

¹³ Mike Dano, *Altice: We Won't Lose Money on Mobile*, FIERCE WIRELESS (Aug. 6, 2018), available at <https://www.fiercewireless.com/wireless/altice-we-won-t-lose-money-mobile>.

relationships with Altice and Cox, Sprint CEO Raul Marcelo Claure remarked, “[a]s it relates to Sprint’s Altice and Cox agreements that we have [it’s] business as usual . . . we continue to deploy small cells across both Altice and Cox areas . . . we’ve gotten phenomenal results.”¹⁴

Altice certainly is proud of the progress it has made to help Sprint densify its network under the MVNO agreement, and appreciates the recognition from Sprint’s CEO and CTO. Notably, however, neither Sprint nor T-Mobile has committed on behalf of New T-Mobile that they will make nationwide commitments to, as the Senate put it, “support the MVNO market by offering commercial terms, access to new technologies, and durable wholesale agreements to your MVNO partners” and make “specific commitments . . . towards offering a consistent and competitive price to lease necessary spectrum or platforms for MVNOs.”¹⁵

As nationwide wireless carriers consolidate from four to three, commitments to MVNO partners, particularly full infrastructure-based MVNOs, are essential in order to ensure durable, nationwide wireless competition. T-Mobile’s CEO has talked about “incentives” but has made no commitments. Altice needs access to the nationwide coverage that is created through the New T-Mobile to grow and compete as a nationwide wireless competitor outside its traditional wireline markets. Although the regional MVNO partnership between Sprint and Altice would continue post-merger, these partnerships must evolve over time and take advantage of the improved capacity, nationwide coverage and pricing that the New T-Mobile will be able to offer if the merger is approved. Continued improvements in the MVNO relationship between Altice and the New T-Mobile will be essential and, as described fully in this Petition, Altice has serious concerns about whether New T-Mobile will, over time, offer the same collaborative partnership

¹⁴ *Transcript of T-Mobile Us, Inc. and Sprint Corporation Merger Call*, Securities Exchange Commission File No. 001-04721, Doc. 425, 29 (April 29, 2018).

¹⁵ See T-Mobile Questions for the Record at 5-6.

with Altice as Sprint has offered. If a company such as Altice, which is critically important to Sprint's network build-out, is concerned about the ability to achieve competitive and long-term nationwide terms from the New T-Mobile, then the Commission should be concerned as well.

II. COMPETITIVE SAFEGUARDS ARE NECESSARY TO PREVENT THE TRANSACTION-SPECIFIC HARMS TO WIRELESS COMPETITION BY MVNOS.

The Commission's public interest analysis of a proposed transaction justifiably focuses on a "case-by-case review of the competitive effects of any increase in market concentration."¹⁶ In the case of the current proposed transaction to create the New T-Mobile, there are three transaction-specific harms for the Commission to consider: (A) The increase in market concentration from four to three nationwide wireless carriers is clear and substantial. The competitive harm from a heretofore unprecedented level of wireless concentration for all market participants and American consumers has been documented by the Department of Justice in the past; (B) Beyond market-wide harms, reducing nationwide wireless carriers from four to three is particularly injurious for MVNOS because it reduces the number of viable, and essential, nationwide MVNO partners, leaving only the New T-Mobile. Two independent competitors, Sprint and T-Mobile, that had the most motivation to enter into competitive MVNO engagements to date, will be gone; and (C) MVNOS, including MVNO partners such as Altice, have legitimate concerns about the future of partnering with the New T-Mobile because of T-Mobile's dismissive, and sometimes hostile, statements toward MVNOS and its avoidance of tangible commitments to support MVNOS.

¹⁶ *In the Matter of Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations*, WT Docket No. 13-193, Memorandum Opinion and Order, DA 14-349, para. 20 (WTB Mar. 13, 2014) ("AT&T/Leap Order").

A. Wireless Concentration from Four to Three Nationwide Carriers Will Obviously Diminish Competition, Harming All Market Participants, including MVNOs and Consumers.

As the FCC noted in its Twentieth Report on Wireless Competition, there are “four facilities-based mobile wireless service providers in the United States that industry observers typically describe as ‘nationwide’: AT&T, Sprint, T-Mobile, and Verizon Wireless,” accounting for over 98% of the nationwide total subscribers.¹⁷ Similar to the AT&T/T-Mobile merger that was challenged by the Department of Justice in 2011, approving the creation of the New T-Mobile will “remove one of the four national competitors, resulting in a significant loss of competition.”¹⁸ As the Department of Justice noted, “[t]he substantial increase in concentration that would result from this merger, and the reduction in the number of nationwide providers from four to three, likely will lead to lessened competition.”¹⁹ MVNOs such as Altice have substantial concerns about the transaction-specific harms that will impact wireless competition if power is concentrated in the New T-Mobile, eliminating two separate and competing nationwide partners for MVNO agreements, T-Mobile and Sprint, diminishing wireless competition for and from the MVNO market.

Small and regional mobile network operators are not a sufficient substitute for the loss of Sprint and T-Mobile individually because, as the Department of Justice indicated when it blocked the 2011 merger of AT&T and T-Mobile, “those smaller providers face significant competitive limitations, largely stemming from their lack of nationwide spectrum and

¹⁷ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Twentieth Report on Wireless Competition, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, FCC 17-126, para. 13 (Sep. 27, 2017).

¹⁸ Complaint, *United States v. AT&T Inc. et. al.*, No. 1:11-cv-01560, 2011 WL 13242960, para. 35 (D.D.C. 2011) (“AT&T/T-Mobile DOJ Complaint”).

¹⁹ *See id.* at para. 36.

networks.”²⁰ Passing along the improved nationwide coverage of Sprint and T-Mobile to their MVNO partners is necessary as a condition of this merger because it will enable MVNOs, particularly full infrastructure-based MVNOs such as Altice, to compete in the commercial wireless market at the national level.

B. The Negative Effects of Four to Three are Compounded Because the Proposed Transaction Results in the Loss of T-Mobile and Sprint, Essential Nationwide MVNO Partners That Had the Most to Gain from Supporting MVNOs.

Today, T-Mobile and Sprint serve as MVNO and roaming partners for a combined 68% of the market.²¹ Each carrier is known for providing reasonable voice and data roaming, as opposed to the other major carriers.²² The competition between T-Mobile and Sprint as MVNO and roaming partners has been good for smaller wireless players, the MVNO market and consumers. If the transfer applications are approved, that competition will be gone. Combining Sprint and T-Mobile into the New T-Mobile will not only remove a competitor from the larger wireless consumer market, it also will effectively eliminate two “maverick” MVNO and roaming partners. The Commission cannot approve the transfer applications, without conditions to protect wireless competition through MVNOs.

In previous evaluations of proposed license transfers and the effect on competition in the wireless marketplace, the Commission has considered the antitrust guidelines established by the

²⁰ See *id.* at para. 35.

²¹ Of 93 MVNOs in operation, 64 partner with either the Sprint or T-Mobile, or both. See *List of United States Mobile Virtual Network Operators*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/List_of_United_States_mobile_virtual_network_operators.

²² 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, para. 120 (Aug. 23, 2102) (“Verizon/SpectrumCo Order”); *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WTB Docket No. 13-193, Memorandum Opinion and Order, DA 14-349, para. 24 (WTB Mar. 13, 2014) (“Data Roaming Order”) (stating that providers have had difficulty obtaining roaming agreements with AT&T and Verizon).

Department of Justice and Federal Trade Commission (“DOJ Horizontal Merger Guidelines”).²³ These guidelines are designed around the understanding that “mergers should not be permitted to create, enhance, or entrench market power or to facilitate its exercise” and establish that “[a] merger can enhance market power simply by eliminating competition between the merging parties.”²⁴

One “type of evidence” the DOJ Horizontal Merger Guidelines incorporate is the disruptive role of a merging party. The Guidelines “consider whether a merger may lessen competition by eliminating a ‘maverick’ firm, i.e., a firm that plays a disruptive role in the market to the benefit of customers.”²⁵ As recognized by the Department of Justice,²⁶ and further supported by T-Mobile’s self-styled role of the “UnCarrier,”²⁷ T-Mobile has been a maverick carrier, but T-Mobile is not alone. Both T-Mobile and Sprint have been “disruptive” competitors in the MVNO market, known for providing reasonable MVNO agreements. The Commission must consider the impact of the loss of these two individual mavericks, which compete today for MVNO business, on the ability of MVNO partners to obtain nationwide, long-term, reasonable MVNO agreements. Indeed, “the Commission has noted previously that providers have experienced difficulty in the past negotiating broadband data roaming arrangements with providers offering the broadest coverage,” specifically citing difficulties obtaining such agreements with AT&T and Verizon.²⁸

²³ DOJ Horizontal Merger Guidelines, available at <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>.

²⁴ *Id.* at § 1.

²⁵ *Id.* at § 2.1.5.

²⁶ AT&T/T-Mobile DOJ Complaint at paras. 3-5.

²⁷ Public Interest Statement at 2.

²⁸ Verizon/SpectrumCo Order at para. 120; Data Roaming Order at para. 24 (“We reject arguments by AT&T and Verizon Wireless that a data roaming rule is unnecessary because data roaming agreements are occurring

Both Sprint and T-Mobile individually have over 40% more MVNO partners than either AT&T or Verizon.²⁹ Creating the New T-Mobile would result in significant consolidation of the nationwide wholesale market and, as the Department of Justice opined with respect to the AT&T and T-Mobile transaction, will result in higher wholesale and resale rates, and ultimately higher prices for the American consumer.³⁰ The merger would unquestionably impact the current 68% of the MVNO market that partners with either T-Mobile or Sprint today,³¹ as well as future MVNO competition by companies such as Altice by eliminating competition for reasonable and competitive long-term, nationwide MVNO terms.³²

The Commission should consider that competition between Sprint and T-Mobile for the wholesale MVNO market has been due to the differences in market power between Sprint and T-Mobile as compared to the largest carriers. “Underdog” national carriers Sprint and T-Mobile, have incentives today to offer attractive MVNO and wholesale wireless agreements to increase their market share – they cannot afford to spurn reasonable MVNO agreements if they want to compete with AT&T and Verizon.³³ As the Commission has noted, dominant carriers show less

without regulation. We find that providers have encountered significant difficulties obtaining data roaming arrangements on advanced ‘3G’ data networks, particularly from the major nationwide providers.”)

²⁹ See *List of United States Mobile Virtual Network Operators*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/List_of_United_States_mobile_virtual_network_operators. T-Mobile has 39 MVNO partners, Sprint has 40 MVNO partners, AT&T has 27 MVNO partners, and Verizon has 28 MVNO partners.

³⁰ See AT&T/T-Mobile DOJ Complaint at para. 40 (noting concentration would result in higher prices).

³¹ Of 93 MVNOs in operation, 64 partner with either the Sprint or T-Mobile, or both. See *List of United States Mobile Virtual Network Operators*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/List_of_United_States_mobile_virtual_network_operators.

³² Verizon/SpectrumCo Order at para. 120; Data Roaming Order at para. 24 (“We reject arguments by AT&T and Verizon Wireless that a data roaming rule is unnecessary because data roaming agreements are occurring without regulation. We find that providers have encountered significant difficulties obtaining data roaming arrangements on advanced ‘3G’ data networks, particularly from the major nationwide providers.”).

³³ The Commission recognized this dynamic in the Verizon/SpectrumCo transaction where it noted that “the transfer of AWS-1 spectrum to Verizon Wireless necessarily means that the spectrum will not be developed by other providers that might have greater incentives to provide voluntary roaming arrangements.” See Verizon/SpectrumCo Order at para. 120.

interest in entering into MVNO arrangements with potential new entrants, and the same can be expected of New T-Mobile.³⁴

Significantly, to the extent Applicants proffer Comcast and Charter as examples of MVNOs reaching national partnerships with a dominant carrier, it is important to note that those MVNO agreements with Verizon were made as part of a deal when Verizon acquired AWS spectrum from Comcast, Time Warner Cable, Bright House Networks, and Cox Communications in 2012.³⁵ Comcast and Charter had enhanced bargaining power because Verizon was trying to complete a \$3.6 billion transaction. They used their temporary bargaining power to extract favorable MVNO terms. History suggests that obtaining favorable MVNO, roaming, collocation, and backhaul deals from big carriers is often attached to significant transactions that are undertaken by the big carriers, and not achieved in the normal course of business. The Commission must question the likelihood of MVNO partners achieving acceptable long-duration, nationwide terms with any of the three big carriers, if the New T-Mobile is approved without conditions that require these commitments into the future.³⁶

C. Concern from MVNOs Regarding Competitive Harms that Could Result from Creation of the New T-Mobile are Justified by T-Mobile's Hostile Statements and Avoidance of Tangible Commitments.

In its Public Interest Statement, T-Mobile touts the advantages of the merger to MVNOs:

³⁴ See Verizon/SpectrumCo Order at para. 120 (finding AT&T and Verizon less interested in entering into roaming agreement); *List of United States Mobile Virtual Network Operators*, WIKIPEDIA, available at https://en.wikipedia.org/wiki/List_of_United_States_mobile_virtual_network_operators (T-Mobile has 39 MVNO partners, Sprint has 40 MVNO partners, AT&T has 27 MVNO partners, and Verizon has 28 MVNO partners.)

³⁵ Ben Munson, *Charter CEO: Now That We Own TWC, We Can Use Verizon MVNO Deal to Offer Nationwide Wireless*, FIERCE WIRELESS (May 19, 2016), available at <https://www.fiercewireless.com/wireless/charter-ceo-now-we-own-twc-we-can-use-verizon-mvno-deal-to-offer-nationwide-wireless>; Tim McElgunn, *Verizon Wireless and CableCos Agree to \$3.6B Spectrum Swap*, BLOOMBERG (December 7, 2011), available at <https://www.bna.com/verizon-wireless-cablecos-n12884904947/>.

³⁶ See Anton Troianovski et. al., *Verizon Snaps Up Spectrum*, WALL STREET JOURNAL (Dec. 3, 2011), available at <https://www.wsj.com/articles/SB10001424052970204826704577074103860244794>.

New T-Mobile will encourage the launch of new MVNOs that can offer unique value propositions or better reach unique customer segments. Moreover, the Applicants believe the transaction will allow New T-Mobile to enhance the value proposition of MVNOs that use its network—the benefits that accrue from the new, advanced network to New T-Mobile’s subscribers are advantages that New T-Mobile’s MVNO partners can also use to compete more effectively.³⁷

The Public Interest Statement goes on to discuss new wireless competitors that are entering the market and changing the landscape, including cable companies that serve as MVNOs.³⁸ They urge the Commission to “assess[] the competitive effect of Mobile Virtual Networks,”³⁹ and consider MVNOs in the competition analysis. In fact, T-Mobile’s CEO publically argued that the combination with Sprint will not reduce nationwide carriers from four to three because of the competition from MVNOs:

Wireless, broadband, and video markets are rapidly converging. AT&T is now the largest TV provider in the country. Comcast added more wireless phone customers last year than AT&T and Verizon combined, and Charter is launching wireless this year. And, more than 1 in 10 Americans (12%) use wireless as their only Internet or broadband connection, freeing themselves from the grip of the traditional, uncompetitive in-home broadband providers. This isn’t a case of going from 4 to 3 wireless companies – there are now at least 7 or 8 big competitors in this converging market.⁴⁰

Applicants cite Comcast and Charter in the Public Interest Statement as two cable operator MVNOs that are potential strong competitors in the mobile marketplace.⁴¹ They note that Comcast’s and Charter’s viability as an MVNO is tied to “*favorable* MVNO agreements with Verizon that give them access to Verizon’s spectrum, and licensed 600 MHz spectrum *across the country*” and that “[b]oth companies have negotiated arrangements enabling them to

³⁷ Public Interest Statement at 124.

³⁸ *Id.* at 102-116.

³⁹ *Id.* at 12.

⁴⁰ *T-Mobile and Sprint to Combine, Accelerating 5G Innovation & Increasing Competition*, T-Mobile Newsroom (April 29, 2018), available at <https://www.t-mobile.com/news/5gforall>.

⁴¹ Public Interest Statement at 106. To be clear, Altice is not opining on whether the entry of cable operators relying on MVNOs into the wireless market is sufficient competition to justify this merger. However, it is clear that to the extent the Applicants attempt to point to providers using MVNOs as competition, the importance of tangible commitments in the form of reasonable MVNO agreements and divestitures is essential.

resell Verizon's network capacity on *very favorable terms*.”⁴² As discussed above, Verizon agreed to those MVNO deals, on favorable terms, only in connection with a \$3.6 billion transaction it was trying to accomplish, and not during normal course negotiations.

Applicants also note the success of Tracfone as an MVNO and cite the Sixteenth Wireless Competition Report for the proposition that “[t]he strategic partnerships between MVNOs and facilities-based providers increase competition and consumer welfare by providing service to various market segments using the capacity of the hosting facilities-based provider and the marketing strategy and distribution network of the MVNO.”⁴³

Based on the above, it clearly is not lost on Applicants that MVNOs such as Tracfone, Altice, Charter, and Comcast need nationwide, long-term, MVNO agreements in order to provide nationwide wireless service and, without these arrangements, MVNOs cannot compete. However, without actual commitments from the New T-Mobile to provide its MVNO partners with access to the expanded nationwide footprint of the New T-Mobile, and durable wholesale terms, including long-term renewals, the competitive impact of these MVNO partners will not exist and cannot be considered by the Commission.

Applicants are now faced with an interesting dichotomy – T-Mobile and the New T-Mobile want to use MVNOs as potential competitors for purposes of the Commission's analysis of competition in order to get their transaction approved, but they will not commit to providing MVNO partners with the terms that will create sustainable, nationwide competition. T-Mobile speaks of “competitive incentives” that will drive New T-Mobile to “bring the same network benefits to[] its relationships with MVNOs” and references “long term contracts that will allow

⁴² Public Interest Statement at 106-107 (emphasis added).

⁴³ *Id.* at 115-16.

them to continue to flourish post-merger, because the contracts are generally at wholesale rates and provide for added capacity that will allow MVNOs to compete and expand their subscriber bases.”⁴⁴ T-Mobile further notes that, “New T-Mobile will have significant added network capacity, and therefore will have *no incentive to impair* MVNOs’ ability to put subscribers on New T-Mobile’s network.”⁴⁵

Having “*no incentive to impair*” the business opportunities of its MVNO partners is, however, not the same as affirmatively committing to provide the terms MVNO partners need to compete. Without access to the nationwide spectrum coverage that the New T-Mobile will create, with favorable long-duration terms and conditions, sustainable competition on a nationwide basis by MVNOs is effectively impossible. The doubts Altice has about the New T-Mobile are further flamed by T-Mobile’s CEO specifically avoiding any commitments to the MVNO market when pointedly asked by Congress in June.⁴⁶

MVNOs and the Commission also must consider the prior negative statements made by T-Mobile about the competitiveness of MVNOs and T-Mobile’s unwillingness to enter into agreements with MVNOs and cable operators, described more fully below. In January of 2017, T-Mobile’s CEO made a number of predictions for the wireless market,⁴⁷ stating:

I’ve already said we’ll see a pack of new players move into wireless. In 2017, Big Cable will unleash their assault on wireless through their MVNO deals, and big surprise – customers won’t be satisfied. I predict Big Cable will have their asses handed to them and will be in full retreat from their MVNO strategy by end of year. After all, the last two letters in MVNO are ‘NO – as in customers will say ‘NO, an MVNO strategy is just not

⁴⁴ *Id.* at 123.

⁴⁵ *Id.* at 124 (emphasis added).

⁴⁶ *See supra* pp. 2-3.

⁴⁷ John Legere, *What’s Next: My 2017 Predictions*, T-MOBILE NEWSROOM (Jan. 4, 2017), available at <https://www.t-mobile.com/news/legere-2017-predictions>.

good enough, Big Cable.’ And for that reason, T-Mobile will say ‘NO’ to MVNO deals with cable companies.⁴⁸

More recently, negative comments against cable operators using MVNOs to enter the wireless market continued on T-Mobile’s fourth quarter earning call:

Comcast’s Xfinity Mobile is “very irrelevant, and I assume that [Charter’s soon-to-launch mobile service] will be irrelevant squared . . . The furthest thing from my mind is any concern about the impact of cable.”⁴⁹

These hostile statements toward MVNOs, combined with refusal by T-Mobile’s CEO to make any commitments regarding MVNOs in his congressional testimony, leave no doubt about the transaction-specific harms that will befall MVNO partners, such as Altice, if the New T-Mobile is approved, reinforcing the necessity of imposing conditions on approval of the transfer applications that will protect the competition offered by MVNO partners.

The only types of MVNOs T-Mobile’s CEO appears to support are “white label,” limited – niche players that have no facilities of their own and rely entirely on T-Mobile or Sprint to provide wireless service, products and offerings, the types of MVNOs that only offer “marketing and distribution advantages in attracting and reaching customers from particular segments.”⁵⁰ Although these types of MVNOs have a role to play, they do not offer the kind of facilities-based competition that Altice will provide, and that the public needs, in order to assure wireless competition and reasonable rates.⁵¹ If New T-Mobile is truly dedicated to supporting its MVNO

⁴⁸ *Id.*

⁴⁹ Daniel Frankel, *T-Mobile’s Legere: Charter’s wireless service will be ‘irrelevant squared’*, FIERCE VIDEO (Feb. 8, 2018), available at <https://www.fiercevideo.com/cable/t-mobile-s-legere-charter-s-wireless-service-will-be-irrelevant-squared>.

⁵⁰ Public Interest Statement at 124.

⁵¹ *See, e.g.*, AT&T/Leap Order at para. 87 (“there is the potential of harm from the loss of a strong facilities-based provider.”); Sixteenth Wireless Competition Report at para. 36 (“facilities-based providers. . .engage in the full range of non-price rivalry such as creating capacity through network investments, network upgrades, or network coverage.”).

partners, as portrayed in its Public Interest Statement,⁵² it should have no issue with making tangible commitments to terms that will enable robust nationwide MVNO competition by its partners, such as Altice.

III. IN THE ABSENCE OF TRANSACTION-SPECIFIC CONDITIONS THAT WILL PROMOTE AND ENSURE WIRELESS COMPETITION BY MVNO PARTNERS, AS SUGGESTED HEREIN, THE COMMISSION MUST DENY THE TRANSFER APPLICATIONS.

The Commission has broad authority under Section 303(r) of the Communications Act to “impose[] conditions to remedy specific harms likely to arise from the transaction.”⁵³ The Commission should impose the following appropriate, transaction-specific conditions to further protect MVNO partners of T-Mobile and Sprint, protect wireless competition, mitigate anti-competitive harms, and promote the public interest.

The “significant additional capacity and lower costs of service” of which T-Mobile’s CEO speaks,⁵⁴ and the improved nationwide coverage,⁵⁵ which can only be created if the Commission approves the proposed transfer applications, must come with tangible commitments to offer better, more competitive, long-term, nationwide MVNO terms, at attractive rates to the MVNO partners of T-Mobile and Sprint, that will support robust wireless competition.

⁵² Public Interest Statement at 119-123.

⁵³ Verizon/SpectrumCo Order at para. 30.

⁵⁴ T-Mobile Questions for the Record at 6.

⁵⁵ In the Public Interest Statement, Applicants note the improved 4G LTE coverage that Sprint will enjoy due to the merger – that improved coverage must be offered to existing MVNO partners in order to ensure nationwide competition: “New T-Mobile will invest nearly \$40 billion to combine the complementary spectrum, sites, and assets of T-Mobile and Sprint to deliver a robust, nationwide world-class 5G network and services sooner than otherwise possible. *Current Sprint customers will realize 4G LTE coverage benefits*; T-Mobile customers will realize improvements from the greater depth of spectrum; and, as the 5G network is built out, the speed and capacity gains will be significant. By 2024, the New T-Mobile network will have approximately double the total capacity and triple the total 5G capacity of T-Mobile and Sprint combined, with 5G speeds four to six times what they could achieve on their own.” Public Interest Statement at i (emphasis added).

At a minimum, therefore, if the Commission decides to approve the transfer applications, such approvals should be conditioned on the New T-Mobile:

(1) committing to honor and diligently implement existing MVNO agreements, including good faith finalization of any future requirements in those agreements,⁵⁶

(2) committing to offer existing MVNO partners, for the full term of existing agreements, or for ten (10) years post consummation, whichever occurs later,⁵⁷ the best wholesale terms and conditions that are offered individually by each of the Applicants to their MVNO partners,⁵⁸ with

⁵⁶ 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").

⁵⁷ 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); Verizon/SpectrumCo Order at para. 121 (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. 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").

⁵⁸ 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.

a presumption of long term renewals and, if requested, offering the improved nationwide coverage and service offerings of the New T-Mobile⁵⁹ to all existing MVNO partners of the Applicants;

(3) divesting spectrum that exceeds the spectrum screen, and associated network infrastructure,⁶⁰ in order to make those assets available to MVNOs, and smaller wireless players that need spectrum to enable nationwide mobile deployments and wireless competition;⁶¹ provided, however, that any divestiture partner(s) cannot be under common ownership or control with AT&T, Verizon or the New T-Mobile;⁶² and

(4) filing detailed quarterly reports with the Commission describing New T-Mobile's status in implementing these commitments for ten (10) years post-consummation.⁶³

⁵⁹ 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.”).

⁶⁰ 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).

⁶¹ 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).

⁶² 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, 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.”).

⁶³ 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

Bearing in mind the T-Mobile dismissiveness, and perhaps hostility, toward MVNOs (and cable MVNOs, in particular) it is essential that the Commission receive firm commitments from T-Mobile, Sprint and the New T-Mobile that they will support long-term, nationwide MVNO competition through their partners, creating presumptions that the New T-Mobile must offer long-term contract renewals and the expanded nationwide coverage of the New T-Mobile to its MVNO partners, unless it can be proven that such offerings are not in the public interest.

To protect the ongoing viability of MVNOs as nationwide competitors to the would-be big three wireless carriers, particularly full infrastructure-based MVNOs, such as Altice, that can offer competition across multiple dimensions, the Commission must apply the aforementioned safeguards. Without imposition of these safeguards, the transfer applications must be denied. The New T-Mobile will not have every “incentive” to support its MVNO partners in expanding service nationwide, over the long term, but it will have every incentive to expand its own market power by refusing to afford its MVNO partners nationwide, long-term, wholesale agreements. T-Mobile’s own comments to date, and its refusals to make commitments to the MVNO market, already have telegraphed this result.

Altice also urges the Commission to conduct a full review of the spectrum holdings for New T-Mobile in each market across the nation. As the Commission has noted, the Applicants far exceed the spectrum screen with a maximum of 361.7 MHz in markets in which they overlap,⁶⁴ which are extremely numerous due to the nationwide footprint of both Applicants.

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.).

⁶⁴ *FCC Establishes Pleading Cycle for T-Mobile/Sprint Transaction*, WT Docket No. 18-197, Public Notice, DA 18-70, 2 (July 18, 2018).

Additionally, the Applicants will exceed the spectrum screen below 1 GHz in 22 CMAs.⁶⁵ An initial review suggests that New T-Mobile might exceed the Commission's spectrum screen in nearly every major market, including 97 of the top 100 CMAs. If New T-Mobile is permitted to consolidate these substantial spectrum holdings, its substantial spectrum concentration will foreclose the possibility of other nationwide operators entering the market, solidifying the market power of the three dominant wireless carriers and leading to the anticompetitive effects discussed above.

As described in this Petition, the instant transaction presents a potentially dire consequence for the nationwide wireless market. Not only will the transaction cause consolidation of nationwide wireless carriers from four to three but, as described in Section II, it will merge and eliminate the last two remaining nationwide carriers, T-Mobile and Sprint, that independently support the majority of MVNOs and roaming partners today, replacing them with the New T-Mobile, a player that will enjoy significantly more market power, has expressed dismissiveness toward the MVNO market, and has refused to make commitments to Congress or the Commission to offer durable nationwide MVNO terms. This harm is especially potent today as facilities-based MVNOs⁶⁶ such as Altice⁶⁷ are expanding their own networks to gain a foothold in the nationwide wireless market and offer choice to wireless consumers nationwide.

⁶⁵ See Public Interest Statement at Appx. J.

⁶⁶ The Commission has long based its competitive analysis of proposed transactions on the availability of facilities-based competition. See, e.g., AT&T/Leap Order at para. 35.

⁶⁷ See Mike Dano, *Altice: We Won't Lose Money on Mobile*, FIERCE WIRELESS (Aug. 6, 2018), available at <https://www.fiercewireless.com/wireless/altice-we-won-t-lose-money-mobile>. ("Recall we have a full infrastructure-based MVNO, which has attractive economics and flexibility features for us. We have a dedicated and experienced mobile management team which will lead the development, launch and ongoing mobile strategy. In terms of network development, the densification of Sprint's network . . . is comfortably ahead of schedule as are the upgrades and expansion of our Wi-Fi network. We are also testing CBRS spectrum with equipment in a 3.5 gigahertz band as this may be good complementary capacity for us.").

The Commission must condition the transaction on the Applicants living up to their promises that the transaction will “enhance the value proposition” for MVNOs. The Commission must “ensure the realization of any promised potential benefits” of the transaction from T-Mobile and Sprint.⁶⁸ As described above, Applicants cite alleged benefits to MVNOs as a positive outcome of the transaction.⁶⁹

New T-Mobile will encourage the launch of new MVNOs that can offer unique value propositions or better reach unique customer segments. Moreover, the Applicants believe the transaction will allow New T-Mobile to enhance the value proposition of MVNOs that use its network—the benefits that accrue from the new, advanced network to New T-Mobile’s subscribers are advantages that New T-Mobile’s MVNO partners can also use to compete more effectively.⁷⁰

Without actual commitments to its MVNO partners, as urged by Altice, these benefits will not be realized, causing substantial harm to wireless competition and the public interest.

IV. CONCLUSION.

The New T-Mobile does not appear to have, at this moment, every “incentive” to support the MVNO market, but it will have every incentive to expand its own market power by refusing to offer reasonable, nationwide, wholesale wireless terms to its MVNO partners. T-Mobile’s own comments to date, and its refusals to make commitments to the MVNO market, already have telegraphed this result. Accordingly, if the Commission determines to approve the transfer applications, such approvals must be conditioned on the New T-Mobile:

(1) committing to honor and diligently implement existing MVNO agreements, including good faith finalization of any future requirements in those agreements,

(2) committing to offer existing MVNO partners, for the full term of existing agreements or for ten (10) years post consummation, whoever occurs later, the best wholesale terms and

⁶⁸ See, e.g., *In the Matter of Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, FCC 15-94, para. 392 (July 28, 2015) (“ATT/DirecTV Order”); Charter/Bright House Order at para. 454.

⁶⁹ Public Interest Statement at 123.

⁷⁰ Public Interest Statement at 124.

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

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

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

Without imposition of the safeguards requested by Altice, the transfer applications must be denied.

Respectfully submitted,

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August 27, 2018

CERTIFICATE OF SERVICE

I, Shea Boyd, hereby certify under penalty of perjury that I have caused to be served true and correct copies of the foregoing Petition to Condition or Deny on this 27th day of August, 2018, upon the following persons via overnight mail.

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