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October 10, 2019

Mr. Scott Scheele
Chief, Telecommunications and Broadband Section
Antitrust Division, U.S. Department of Justice
450 Fifth Street NW, Suite 7000
Washington, DC 20530

**Re: *U.S. v. Deutsche Telekom AG et al.*, No. 1:19-cv-02232, Comments of the
Advanced Communications Law & Policy Institute**

Dear Mr. Scheele,

The Advanced Communications Law & Policy Institute (“ACLP”) at New York Law School studies how law, regulation, and public policy can promote greater access to and informed use of next-generation infrastructure in the advanced communications space and beyond. As part of that work, the ACLP closely examined the proposed merger of T-Mobile and Sprint and respectfully submits that the merged entity – New T-Mobile – will be well positioned to deliver numerous benefits to consumers across the United States.

Previously, the ACLP thoroughly evaluated the transaction in comments to the New York Public Service Commission and the Federal Communications Commission.¹ Those comments highlighted the significant public interest benefits associated with the merger of T-Mobile and Sprint as it was initially structured. Pursuant to 15 U.S.C. § 16, the ACLP respectfully submits the following comments in an effort to (1) summarize those myriad

¹ See *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Comments of the ACLP, WT Docket No. 18-197, FCC (submitted Sept. 17, 2018), [https://ecfsapi.fcc.gov/file/10917026076059/ACLP%20-%20Comments%20-%20T-Mobile-Sprint%20\(WT%20Docket%20No.%2018-197\)%20-%20September%2017%202018.pdf](https://ecfsapi.fcc.gov/file/10917026076059/ACLP%20-%20Comments%20-%20T-Mobile-Sprint%20(WT%20Docket%20No.%2018-197)%20-%20September%2017%202018.pdf) (“ACLP FCC Comments”); *Case 18-C-0396 – Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. Concerning an Indirect Transfer of Control*, Comments of the ACLP, N.Y. Public Service Commission (submitted Nov. 16, 2018), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={304D64B4-2805-4431-8843-CDBABF10E7BB}>.

benefits and (2) highlight the additional public interest benefits stemming from the Proposed Final Judgment (PFJ) in the above-referenced matter.²

1. THE PUBLIC INTEREST BENEFITS OF THE MERGER OF T-MOBILE & SPRINT

The merger of T-Mobile and Sprint is poised to generate numerous public interest benefits.

First, the proposed merger of T-Mobile and Sprint will bolster the ability of the newly combined entity to maximize investment in and streamline the deployment of next-generation mobile broadband infrastructure. Such a focus is profoundly pro-competitive and pro-consumer, as so-called 5G and related networks are expected to serve as the foundation for enormous economic growth, engines for job creation, catalysts for innovation, and mediums for empowering users with access to a universe of new applications.³ Indeed, it is projected that the next-generation of wireless networks will create three million jobs, which in turn will “boost annual GDP by \$500 billion.”⁴ These economic and employment gains will stem largely from the use of 5G as an enabler of a range of “smart” applications – *e.g.*, smart city services that streamline government offerings and bolster civic engagement; the delivery of real-time telemedicine; autonomous vehicles; and numerous other cutting-edge innovations that will reduce the costs of and enhance access to key services for all consumers.⁵ New T-Mobile has committed to speedy deployment of a national 5G network, ensuring that these benefits will be widely available. This represents a major “win” for consumers across the country.

Second, the 5G network to be deployed by New T-Mobile will bolster broadband competition. New T-Mobile “intends to directly and aggressively compete against conventional in-home wired broadband products, providing consumers with an attractive high-speed broadband alternative to the wired incumbent.”⁶ This represents a rational

² The views expressed herein are those of the undersigned only and do not necessarily represent those of New York Law School.

³ See, *e.g.*, ACLP FCC Comments at p. 25-33.

⁴ See *Smart Cities: How 5G Can Help Municipalities Become Vibrant Cities*, Accenture Strategy (Jan. 2018), <https://api.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>.

⁵ See, *e.g.*, ACLP FCC Comments at p. 30-33. See also Roger Cheng, *The 5G Revolution is Upon Us. Here's Everything You Need to Know*, Nov. 13, 2018, CNET, <https://www.cnet.com/news/the-5g-revolution-is-upon-us-heres-everything-you-need-to-know/>.

⁶ See *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Description of Transaction, Public Interest Statement, and Related Demonstrations, at p. 58, WT Docket No. 18-197, FCC (submitted June 18, 2018), [https://ecfsapi.fcc.gov/file/10618281006240/Public%20Interest%20Statement%20and%20Appendices%20A-I%20\(Public%20Redacted\)%20.pdf](https://ecfsapi.fcc.gov/file/10618281006240/Public%20Interest%20Statement%20and%20Appendices%20A-I%20(Public%20Redacted)%20.pdf).

response to ongoing efforts to alter the “conventional” way in which broadband has long been delivered into homes (*i.e.*, via a wire). For example, in promoting its 5G Home product, Verizon has said that “customers should expect typical network speeds around 300 Mbps and, depending on location, peak speeds of nearly 1 Gig, with no data caps,” making it “*ideal for consumers looking to “cut the cord” or upgrade from their current cable service.*”⁷ Verizon is expected to deploy its Home product everywhere it offers mobile 5G.⁸ AT&T, which is also experimenting with a fixed 5G offering capable of speeds similar to those offered by Verizon,⁹ views these next-generation wireless offerings as a “viable fixed broadband replacement.”¹⁰ The competitive impact of these efforts on wireline broadband providers (*e.g.*, cable) is already evident: some see 5G “as [cable’s] biggest existential threat.”¹¹ The emergence of New T-Mobile will likely further disrupt the broadband market, accelerating consumer-focused innovation across every aspect of service.

Third, the benefits of having more choice for high-speed internet access post-merger will be felt in both urban and rural parts of the country, helping to close stubborn digital divides, drive economic growth, and spark innovation. In urban areas like New York City, 5G will serve as an important on-ramp in low-income and minority communities, where home broadband adoption rates have long lagged.¹² Members of these communities, however, have been in the vanguard of a societal shift toward mobile-only internet connectivity.¹³ Rapid deployment of 5G, sparked by New T-Mobile’s aggressive rollout plan, will assure that the benefits of next-generation wireless connectivity accrue most immediately to these users.

⁷ See Press Release, *5G is Here*, Sept. 11, 2018, Verizon, <https://www.verizon.com/about/news/5g-here> (emphasis added).

⁸ See, *e.g.*, Jon Brodtkin, *Verizon plans 5G Home Internet in every city where it deploys mobile 5G*, Sept. 13, 2019, Ars Technica, <https://arstechnica.com/information-technology/2019/09/verizon-plans-5g-home-internet-in-every-city-where-it-deploys-mobile-5g/>.

⁹ See, *e.g.*, Corinne Reichert, *AT&T Trials Fixed-Wireless 5G in Indiana*, June 29, 2018, ZDNet, <https://www.zdnet.com/article/at-t-trials-fixed-wireless-5g-in-indiana/>.

¹⁰ See Sean Kinney, *AT&T sees 5G as a viable fixed broadband replacement*, Jan. 30, 2019, RCR Wireless, <https://www.rcrwireless.com/20190130/carriers/att-5g-fixed-broadband>.

¹¹ See Daniel Frankel, *Comcast and Charter Brace for Fixed 5G AT&T-Verizon Showdown in Indy*, Aug. 31, 2018, Multichannel News, <https://www.multichannel.com/news/comcast-and-charter-brace-for-fixed-5g-at-t-verizon-showdown-in-indy> (quoting an analysis by Cowen).

¹² See *Internet/Broadband Fact Sheet*, June 12, 2019, Pew Research Center, <http://www.pewinternet.org/fact-sheet/internet-broadband/> (“Pew Fact Sheet”).

¹³ See *Mobile Fact Sheet*, June 12, 2019, Pew Research Center, <http://www.pewinternet.org/fact-sheet/mobile/> (finding that 17% of households rely on wireless broadband as their sole means of internet access).

A similar dynamic will be evident in rural areas, where broadband adoption rates have also historically lagged.¹⁴ A desire to close the persistent rural/urban broadband divide has become a primary focus of policymakers at every level. Post-merger, New T-Mobile has promised to quickly deliver a new broadband on-ramp across rural America, creating competitive forces that will help to ensure that rural consumers benefit from the lower prices and innovative offerings that result from head-to-head competition in the broadband space.

Fourth, that T-Mobile is the entity spearheading this transaction augurs well for the successful deployment of its promised 5G network and the delivery of continued consumer welfare gains. A close examination of the parties involved in the proposed transaction makes clear that the resulting combination will position New T-Mobile for long-term success as a strong competitor and disruptive innovator in the digital ecosystem.¹⁵ T-Mobile has been able to keep pace with much larger competitors in the wireless market and beyond because of its long history of innovation and focus on upending the mobile space. Its “maverick” spirit and “Un-Carrier” approach have driven unceasing business model experimentation, which in turn has delivered to consumers a consistent series of innovative new service plans, payment options, streaming services, pricing models, and other popular options. Sprint, on the other hand, has struggled mightily despite possessing valuable spectrum assets and demonstrating, on occasion, an ability to be disruptive. But for the merger, Sprint would in all likelihood fail to keep pace with the growing array of competitors in the rapidly converging broadband space.¹⁶ As such, the two companies are stronger together rather than apart – and the public will be better off with New T-Mobile as a more robust competitor in broadband market.

2. THE ADDITIONAL PUBLIC INTEREST BENEFITS STEMMING FROM THE PFJ

The public interest benefits detailed above are substantial. The PFJ, if accepted by the court, will deliver additional benefits to consumers. In particular, the PFJ will ensure that valuable spectrum resources will finally be put to productive use by Dish Network, an entity that has long lingered on the periphery of the U.S. wireless space. Once the transaction is finalized, Dish will join the growing array of entities – established carriers and new entrants alike – seeking to disrupt the U.S. wireless space as part of the race to deploy 5G networks.

¹⁴ *Pew Fact Sheet*.

¹⁵ For an extended examination of both T-Mobile and Sprint, see *ACLP FCC Comments* at p. 21-25.

¹⁶ See, e.g., Lily Lieberman, *Sprint Tells FCC: Bad Situation “is Only Getting Worse,”* April 17, 2019, Kansas City Business Journal, <https://www.bizjournals.com/kansascity/news/2019/04/17/sprint-fcc-filing-t-mobile-merger.html>.

The U.S. market for mobile broadband services is already in flux as new competitors seek to lure away subscribers by offering innovative service plans. The following offers a snapshot of current and emerging market dynamics – essential context for evaluating the PFJ’s likely public interest impacts:

- ***AT&T and Verizon Remain Formidable Competitors.*** Post-merger, New T-Mobile will remain the third-largest national wireless carrier in the U.S.; Verizon will still be the largest, followed by AT&T.¹⁷ Both Verizon and AT&T have aggressively touted their plans for 5G deployment since the proposed merger was announced, with each trying to one-up the other in announcing the markets where its next-generation services are being made available. The introduction of New T-Mobile will only hasten and expand these developments across the board.
- ***MVNOs Remain an Important Source of Competition.*** Although MVNOs rely on the spectrum and wireless networks of other carriers, these entities represent an increasingly important source of competition in the mobile market, as they provide consumers with a range of additional choices for quality mobile service. Indeed, according to a recent survey conducted by the American Customer Satisfaction Index (ACSI), “[c]ustomer satisfaction with full-service [MVNOs] is...significantly higher than the rating for mobile network operators.”¹⁸ To that end, the ACSI found that Consumer Cellular, which focuses primarily on consumers over the age of 50, had the highest customer satisfaction rating of all service providers.¹⁹ T-Mobile had the top customer satisfaction score among the national carriers; Sprint had the lowest.²⁰
- ***Cable is Emerging as a Major Competitor.*** Among the most significant developments in the wireless market in recent years is the offering of mobile services by cable companies. In 2017 and 2018, Comcast and Charter, the two largest cable companies in the country, launched mobile broadband offerings by leveraging their expansive Wi-Fi hot-spot networks and a reseller agreement with Verizon.²¹ In September 2019, Altice launched a similar offering in partnership with

¹⁷ See, e.g., Klint Finley, *The \$26.5B T-Mobile/Sprint Merger Moves a Big Step Forward*, July 26, 2019, Wired, <https://www.wired.com/story/dollar265b-tmobilesprint-merger-moves-step-forward/>.

¹⁸ See ACSI *Wireless Service and Cellular Telephone Report 2018-2019*, at p. 5, ACSI (June 2019), <https://www.theacsi.org/news-and-resources/customer-satisfaction-reports/reports-2019/acsi-wireless-service-and-cellular-telephone-report-2018-2019/acsi-wireless-service-and-cellular-telephone-report-2018-2019-download> (“ACSI Report”).

¹⁹ *Id.* at p. 7.

²⁰ *Id.* at p. 2.

²¹ See, e.g., Jeff Baumgartner, *Comcast, Charter Form Mobile Platform Partnership*, April 20, 2018, Multichannel News, <https://www.multichannel.com/news/comcast-charter-form-mobile-platform-partnership>.

Sprint.²² The impact of cable’s entrance into the mobile market is already evident: ACSI has noted that “competition from new alternatives like Comcast’s Xfinity Mobile and Charter’s Spectrum Mobile is putting pressure on traditional carriers to improve service.”²³

- ***Alternative Wireless Models are Increasingly Popular and Compete Fiercely on Price.*** The Wi-Fi/MVNO model used by Altice, Charter, and Comcast was pioneered by firms like Republic Wireless and Google’s Project Fi, both of which remain popular low-cost alternatives for consumers. Each offers unlimited talk and text (Fi for \$20/month,²⁴ Republic for \$15/month²⁵), and each sells mobile broadband by the gig.

Via the PFJ, Dish will be well positioned to become a viable player in this thriving market. Dish already holds substantial spectrum assets – a veritable “treasure trove” of licenses.²⁶ As part of the PFJ, Dish will be able to leverage numerous resources either divested by or leased from the merging parties to support deployment of a standalone mobile service.²⁷ This development – *i.e.*, Dish finally leveraging its stockpile of spectrum licenses – is a major win for consumers and the public interest writ large. Spectrum is a finite – and therefore scarce – resource. For many years, Dish was accused by some of hoarding spectrum in the hopes of precipitating a buyout.²⁸ Once finalized, the PFJ will ensure that Dish finally puts those resources to welfare-enhancing uses – a huge public interest win.

Consumers will also benefit because Dish will have to compete aggressively with the range of firms mentioned above if it hopes to acquire enough subscribers to remain afloat. This means that consumers will likely see additional price and service offerings over the next few years as Dish rolls out its service and seeks to respond to and one-up its competitors. Early reports indicate that Dish might pursue innovative models for building

²² See Bevin Fletcher, *Altice Mobile Launches its Wireless Service at \$20/month*, Sept. 5, 2019, Fierce Wireless, <https://www.fiercewireless.com/operators/altice-mobile-launches-wireless-service-at-20-month>.

²³ ACSI Report at p. 5.

²⁴ See Google, Project Fi – About, <https://fi.google.com/about/plan/>.

²⁵ See Republic Wireless, Plan, <https://republicwireless.com/cell-phone-plans/>.

²⁶ See Kendra Chamberlain, *Dish ‘Undervalued’ Spectrum Assets Worth \$30.2B*, March 27, 2018, Fierce Wireless, <https://www.fiercewireless.com/wireless/dish-s-undervalued-spectrum-assets-worth-30-2b-analyst>.

²⁷ See, *e.g.*, Monica Allevan, *In Wake of DOJ Deal, Where is Dish’s Spectrum, and How Much Does it Have?*, Aug. 7, 2019, Fierce Wireless, <https://www.fiercewireless.com/wireless/wake-doj-deal-where-dish-s-spectrum-and-how-much-does-it-have>.

²⁸ See, *e.g.*, Drew FitzGerald, *A TV Maverick is Going All-In on a New Wireless Bet*, July 27, 2019, Wall St. Journal, <https://www.wsj.com/articles/a-tv-maverick-is-going-all-in-on-a-new-wireless-bet-11564200000>.

out its 5G network and offering service to end-users, approaches that could very well yield novel offerings for consumers.²⁹

3. CONCLUSION

Once combined, New T-Mobile will be able to deploy a more robust and widespread 5G network than either of the merging parties standing alone would be able to construct. Guided by T-Mobile’s “Un-Carrier” ethos and its commitment to serving as the sector’s wily disrupter, New T-Mobile will be well positioned to deliver public interest benefits that far outweigh any harms that might arise. These benefits will only be bolstered by the terms of the PFJ, which will facilitate the emergence of Dish as a new competitor in the wireless marketplace.

Respectfully submitted,

/s/ Michael J. Santorelli

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²⁹ See, e.g., *id.* See also Mike Dano, *This is Dish’s 6-Step Plan for 5G*, July 31, 2019, Light Reading, <https://www.lightreading.com/mobile/5g/this-is-dishs-6-step-plan-for-5g/a/d-id/753124>.