U.S. Department of Justice

Antitrust Division

Liberty Square Building

450 5th Street, N.W.
Washington, DC 20001

May 29, 2020

BY E-MAIL

Mark W. Nelson, Esq.
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Jeffrey Blum, Esq.
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Re: *United States v. Deutsche Telekom, et al.*, No. 19-cv-2232 (D.D.C. 2020)

Dear Mark and Jeff:

In a joint letter, you asked the Department of Justice for approval to modify the Prepaid Assets T-Mobile US, Inc. ("T-Mobile") is to divest to DISH Networks Corporation ("DISH") pursuant to the Final Judgment entered in the above-captioned matter, to permit T-Mobile to retain approximately 11,000 Boost customers that are participating in a California Lifeline Pilot Program. M. Nelson and J. Blum, Letter to F. Young, May 27, 2020 ("Joint Letter") at 2. Your request was prompted by a provision in the order of the California Public Utilities Commission ("CPUC") approving the merger of T-Mobile and Sprint Corporation ("Sprint") that directed T-Mobile to "make a good faith effort to secure any necessary approvals from the Federal Communications Commission and Department of Justice to maintain the Boost customer base currently receiving service under the California Lifeline Pilot Program and avoid their transfer to DISH under the terms of the divestiture." *Id.* at 1 (citing CPUC Decision 20-04-008 at 54 (rel. Apr. 27, 2020), *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M335/K378/335378035.PDF).

As explained in a letter to the Federal Communications Commission ("FCC") from Marybel Batjer, President of the CPUC, which the CPUC also provided to the Department, the CPUC partnered with Sprint Spectrum L.P. ("Sprint Spectrum"), through its prepaid brand, Boost, to develop the Boost Pilot Programs beginning in 2018. Letter from M. Batjer (CPUC) to M. Dortch (FCC), May 15, 2020 ("CPUC Letter") at 2. Through these pilot programs, the CPUC "sought to increase participation in the California Lifeline program and to improve customer choice and access to wireless services." *Id*. In the CPUC's view, "the continued success of the pilot programs also depends on their continued operation by a New T-Mobile entity and on the New T-Mobile network." *Id*.

The Final Judgment entered in this matter on April 1, 2020, provides that the "divestitures pursuant to this Final Judgment will include the entire Divestiture Assets" "[u]nless the United States otherwise consents in writing." Final Judgment at § IV.E. The Final Judgment also provides that the divestitures are to be "accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquiring Defendant as part of a viable, ongoing operation relating to the provision of retail mobile wireless service" and that "none of the terms of any agreement between Acquiring Defendant and Divesting Defendants gives the Divesting Defendants the ability unreasonably to raise the Acquiring Defendant's costs, to lower the Acquiring Defendant's efficiency, or otherwise to interfere with the ability of the Acquiring Defendant to compete." *Id*.

Applying the standards set forth in § IV.E of the Final Judgment, the United States consents to your request. T-Mobile is willing to retain these subscribers and DISH is willing to have T-Mobile retain them and continue the pilot program already in place. The impetus for this decision was the CPUC's order entered in April 2020, long after the proposed Final Judgment was filed with the Court on July 26, 2019. The Final Judgment agreed to at that time and later entered by the Court specifically exempted from the Prepaid Assets divestiture the prepaid wireless business conducted by Virgin Mobile under the Assurance Lifeline brand. Final Judgment at § II.A, II.K. As the Competitive Impact Statement filed in this matter explained, the Assurance Lifeline assets were not included in the divestiture "due to various contractual and regulatory obligations." CIS at 8 n.2. The same considerations that led the Department to agree to exclude the Assurance Lifeline subscribers from the divestiture assets support excluding these Boost Lifeline subscribers as well.

Moreover, the Department concludes that T-Mobile's retention of these subscribers will not undermine DISH's ability to operate a viable, ongoing retail mobile wireless service or give T-Mobile the ability unreasonably to raise DISH's costs, lower its efficiency, or interfere with its ability to compete. These 11,000 subscribers represent a de minimis fraction of Boost's overall subscribers. As noted by the CPUC, T-Mobile's agreement to retain these subscribers also relieves DISH of the obligations to provide service at "below market rates" and to invest the time and resources to work with the CPUC to modify the existing authorization and receive permission to continue operating the pilot programs. CPUC Letter at 2. Thus, T-Mobile's agreement has the effect of improving DISH's competitiveness as it enters the retail mobile wireless business.

For all of these reasons, and subject to T-Mobile and DISH reaching agreement on appropriate modifications to the Asset Purchase Agreement, Reverse Transition Services Agreement, or other business documents to reflect this change in the assets being divested, the Department consents to T-Mobile retaining these Boost Lifeline subscribers.

Sincerely,

/s/

Frederick S. Young
Trial Attorney

May 27, 2020

VIA EMAIL

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Re: T-Mobile/Sprint

Dear Fred:

As you are aware, the California Public Utilities Commission ("CPUC"), as part of its order approving the merger of T-Mobile US, Inc. ("T-Mobile") and Sprint Corporation ("Sprint"), directed T-Mobile to "make a good faith effort to secure any necessary approvals from the Federal Communications Commission and Department of Justice to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture."[1] Toward that end, on May 21, 2020, T-Mobile sent a letter requesting that the Department of Justice authorize T-Mobile to limit the assets to be divested to DISH Networks Corporation ("DISH") pursuant to the Final Judgment by allowing T-Mobile to retain the approximately 11,000 Boost customers that are participating in a California LifeLine Pilot Program.

In furtherance of securing the Department of Justice's approval for T-Mobile to retain these Boost customers, and subject to T-Mobile and DISH (collectively, the "Parties") agreeing to appropriate modifications to the Asset Purchase Agreement and Reverse Transition Services Agreement to give effect to these changes, the Parties hereby confirm that:

- as part of the freely agreed to commercial terms of the sale of Boost, the Parties are defining the Boost "active" accounts being sold to DISH to exclude the approximately 11,000 prepaid wireless customers ("Boost Pilot Customers") of the Company under the Boost Mobile brand activated pursuant to either (1) the California Alternative Rates for Energy program ("CARE") or (2) the iFoster program ("iFoster" and together with CARE, the "Boost Pilot Program");

- the Boost Pilot Customers shall only include those individual customers activated pursuant to and participating in the Boost Pilot Program and shall not include any other

[1] CPUC Decision 20-04-008 at 54 (rel. Apr. 27, 2020), *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M335/K378/335378035.PDF.

customers who are not participating in the Boost Pilot Program but are in the same group as or on the same plan as a Boost Pilot Customer; and

- the transfer of these customers is not necessary for and will not affect DISH's ability to compete against T-Mobile or other wireless carriers.

The Parties seek a prompt response from the Department of Justice that it approves T-Mobile's retention of the Boost Pilot Customers, subject to the Parties reaching agreement on appropriate modifications to the Asset Purchase Agreement and Reverse Transition Services Agreement and DOJ approving such modifications.

Respectfully submitted,

T-MOBILE US, INC.

By:______________________________
Mark W. Nelson
Counsel to T-Mobile

DISH NETWORK CORPORATION

By:______________________________
Jeffrey H. Blum
Senior Vice President, Public Policy & Government Affairs

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 15, 2020

Via ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: 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 behalf of my fellow Commissioners of the California Public Utilities Commission ("CPUC"), I submit this *ex parte* letter (pursuant to 47 C.F.R. § 1.1206(b)(2)) to support the May 1, 2020 request for clarification by T-Mobile US, Inc. ("T-Mobile"). T-Mobile seeks to clarify that retention of approximately 11,000 customers in the existing Boost Mobile ("Boost) customer base, who are participants in two California LifeLine pilot programs ("Boost Pilot Programs"), does not violate the terms of the Federal Communications Commission's ("Commission") order approving the merger of T-Mobile and Sprint Corporation ("Sprint").

The CPUC conditioned its approval of the merger of T-Mobile and Sprint's California operations on T-Mobile's "mak[ing] a good faith effort to secure any necessary approvals from the Federal Communications Commission and Department of Justice to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture."[1] The CPUC Commissioners unanimously approved the CPUC's merger approval decision. Thus, I represent all five commissioners in this effort to advance the terms of the decision. The CPUC also concurs with T-Mobile that the retention of approximately 11,000 customers, out of a Boost customer base in the millions, will not hamper DISH's ability to compete in the marketplace.

[1] *See* CPUC Decision (D.)20-04-008, Ordering Paragraph 20 (rel. Apr. 27, 2020), available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M335/K378/335378035.PDF

Beginning in 2018, the CPUC partnered with Sprint Spectrum L.P. ("Sprint Spectrum"), through its prepaid brand, Boost, to develop the Boost Pilot Programs. Through these pilot programs, the CPUC sought to increase participation in the California LifeLine program and to improve customer choice and access to wireless services. The CPUC authorized the pilot programs, called the CARE and iFoster Pilots, in Decision (D.)19-04-021.[2] Among the CPUC's goals in D.19-04-021 was partnering with a facilities-based provider with a strong wireless brand and retail presence.

The CPUC requests that the Commission clarify that the Boost Pilot Programs may be retained by Sprint Spectrum, whose personnel have developed the pilot programs since their inception. In testimony before the CPUC and in its request for clarification, T-Mobile has expressed a willingness to retain these pilot programs, and to continue successfully operating them. In contrast, if these customers are divested to DISH, the continued operation of the Boost Pilot Programs would be very much in question. DISH has no obligation to operate the pilots and may not agree to the same arrangements to which T-Mobile committed, including providing service to foster youth at below market rates. Thus, the continued success of the pilot programs also depends on their continued operation by a New T-Mobile entity and on the New T-Mobile network.

A transfer to DISH upon the Boost brand divestiture would mean removing the programs from experienced personnel, to an entity with no institutional knowledge or investment in the programs. Although DISH intends to develop into a facilities-based provider with a strong brand and retail presence in the long-run, in the short-run, it will be operating as an MVNO on Sprint's network, undermining several goals of the pilots. Given that the pilots are only authorized into 2021, the CPUC highly values the immediate benefits of remaining with Sprint Spectrum. Even if it were willing to undertake operation of the pilots, DISH may take some time to be able to provide service to the program participants and would need to work with the CPUC to modify D.19-04-021 to receive authorization to operate the pilots. Thus, a transfer to DISH would necessarily mean an interruption in service to program participants, even if DISH opts to continue the programs.

The Boost Pilot Programs are currently operating, and over 11,000 Californians are relying on their discounted or free service to function in society. The CARE participants are low-income, and the iFoster pilot serves foster youth. The need for service is made more vital with Californians sheltering in place in response to the COVID-19 pandemic. iFoster's work has proven essential to keeping foster youth connected to social workers, educators, family, and other support networks during this crisis, and is being scaled up by the California Department of Social Services. Thus, a service interruption resulting from a transfer to DISH would be extremely detrimental to the program participants and

[2] D.19-04-021 (rel. May 3, 2019), available at
http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M288/K040/288040806.pdf

frustrate the delivery of important state services. Moreover, service interruption would undercut the goals of the program to study ways to increase LifeLine enrollment and to provide access to wireless services to underserved residents.

For the foregoing reasons, the CPUC urges the Commission to find that T-Mobile's retention of the LifeLine pilot program's customer base is clearly in the public interest and consistent with the terms of the FCC merger order.

If you have any questions about this letter, please do not hesitate to contact Enrique Gallardo, the CPUC attorney assigned to this matter, at enrique.gallardo@cpuc.ca.gov or (415)703-1420.

Sincerely,

By: /s/ Marybel Batjer

President
California Public Utilities Commission

cc: Charles Mathias
Catherine Matraves
Kathy Harris
Linda Ray
Jim Bird
David Krech

FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

May 29, 2020

VIA E-MAIL

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Re: California Public Utilities Commission LifeLine Pilot Program

Dear Ms. Hamm and Mr. Blum:

We received your letter dated May 28, 2020 regarding the California Public Utilities Commission ("CPUC") direction to T-Mobile to make a "good faith effort to secure any necessary approvals from the Federal Communications Commission and the Department of Justice to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture." We do not believe that your proceeding in the manner you have described in your letter would constitute a violation of the Commission's conditions on the grant of your applications.

Sincerely,

/s/ Charles Mathias
Charles Mathias
Co-Director T-Mobile/Sprint Taskforce
Associate Bureau Chief
Wireless Telecommunications Bureau

/s/ Catherine Matraves
Catherine Matraves
Co-Director T-Mobile/Sprint Taskforce
Deputy Division Chief
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cc: Matthew Berry
Donald Stockdale
Joel Rabinowitz
Frederick S. Young
Nancy Victory, Esq.