

2014), and the revised Commission Handbook on E-filing, available from the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–17166 Filed 8–9–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1206 (Review)]

### Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan; Expedited Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** July 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Abu Kanu (202–205–2597), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On July 5, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 12282, April 1, 2019) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**Staff report.**—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 13, 2019, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 20, 2019 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

<sup>2</sup> The Commission has found the response submitted by Thomas Steel Strip Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

contain any new factual information) pertinent to the review by August 20, 2019. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–17165 Filed 8–9–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States et al. v. Deutsche Telekom AG et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America et al. v. Deutsche Telekom AG et al.*, Civil

Action No. 1:19-cv-02232-TJK. On July 26, 2019, the United States, together with the State of Kansas, State of Nebraska, State of Ohio, State of Oklahoma and the State of South Dakota, filed a Complaint alleging that the proposed acquisition of Sprint Corp. by T-Mobile US, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires T-Mobile and Sprint to divest to DISH Corporation certain retail wireless business and network assets and to provide to DISH certain transition and network services to facilitate DISH's building and operating of its own nationwide mobile wireless network.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, DC 20530 (telephone: 202-514-5621).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

*United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Washington, DC 20530, State of Kansas, 120 SW 10th Avenue, 2nd Floor, Topeka, Kansas 66612-1597, State of Nebraska, 2115 State Capitol, Lincoln, Nebraska 68509, State of Ohio, 150 East Gay Street, 22nd Floor, Columbus, Ohio 43215, State of Oklahoma, 313 NE, 21st Street, Oklahoma City, Oklahoma 73105-4894 and State of South Dakota, 1302 E Highway 14, Suite 1, Pierre, South Dakota 57501-8501 Plaintiffs, v. Deutsche Telekom AG, Friedrich-Ebert-Allee 140, Bonn, Germany 53113, T-Mobile US, Inc., 12920 SE 38th Street, Bellevue, Washington 98006, SoftBank Group Corp., 1-9-1 Higashi-shimbashi, Minato-ku, Tokyo, Japan 105-7303 and Sprint Corporation, 6200 Sprint Parkway, Overland Park, Kansas 66251-4300 Defendants.*

Case No. 1:19-cv-02232-TJK  
Filed: July 26, 2019

#### COMPLAINT

The United States of America and the States of Kansas, Nebraska, Ohio, Oklahoma, and South Dakota ("Plaintiff States") bring this civil antitrust action to prevent the merger of T-Mobile and Sprint, two of the four national facilities-based mobile wireless carriers in the United States. The United States and Plaintiff States allege as follows:

#### I. NATURE OF THE ACTION

1. Mobile wireless service is an integral part of modern American life. The average American household spends over \$1,000 a year on mobile wireless service, not including the additional costs of wireless devices, applications, media content, and accessories. Many Americans now rely on mobile wireless service to communicate, pay bills, apply for jobs, do schoolwork, get directions, shop, read the news, and otherwise stay informed and connected from nearly any location in the country.

2. Competition has kept mobile wireless service prices down and served as a catalyst for innovation. Preserving this competition is critical to ensuring that consumers will continue to have reasonable and affordable access to an essential service that, for many, serves as a gateway to the modern economy.

3. By combining two of the only four national mobile facilities-based wireless carriers, without appropriate remedies, the merger of T-Mobile and Sprint would extinguish substantial competition.

4. As the nation's third and fourth largest mobile wireless carriers, T-Mobile and Sprint have positioned themselves as challengers to Verizon and AT&T, their larger and more expensive rivals, targeting retail customers who particularly value affordability. Some of these customers purchase mobile wireless service on a postpaid basis and are billed monthly after receiving service. Others, including those who may lack ready access to credit, purchase prepaid mobile wireless service and pay for service in advance of using it.

5. The merger would eliminate Sprint as an independent competitor, reducing the number of national facilities-based mobile wireless carriers from four to three. The merger would cause the merged T-Mobile and Sprint ("New T-Mobile") to compete less aggressively. Additionally, the merger likely would make it easier for the three remaining national facilities-based mobile wireless carriers to coordinate their pricing,

and service offerings. The result would be increased prices and less attractive service offerings for American consumers, who collectively would pay billions of dollars more each year for mobile wireless service.

6. Because the merger of T-Mobile and Sprint likely would substantially lessen competition for retail mobile wireless service, the Court should permanently enjoin the proposed transaction.

#### II. THE PARTIES AND THE PROPOSED MERGER

7. Deutsche Telekom AG ("Deutsche Telekom") is a German corporation headquartered in Bonn, Germany, and is the controlling shareholder of T-Mobile US, Inc. ("T-Mobile"), with 63% of T-Mobile's shares. Deutsche Telekom is the largest telecommunications operator in Europe, with net revenues of €75.7 billion (approximately \$85 billion) in 2018.

8. T-Mobile is a Delaware corporation headquartered in Bellevue, Washington, and is the third largest mobile wireless carrier in the United States. In 2018, T-Mobile had nearly 80 million wireless subscribers, and approximately \$43.3 billion in total revenues. T-Mobile sells postpaid mobile wireless service under its T-Mobile brand, and prepaid mobile wireless service primarily under its Metro by T-Mobile brand. T-Mobile also sells mobile wireless service indirectly through mobile virtual network operators ("MVNOs"), such as TracFone and Google Fi, that lack wireless networks of their own. These MVNOs obtain network access from T-Mobile and resell mobile wireless service to consumers.

9. SoftBank Group Corp. ("SoftBank"), a Japanese corporation and the controlling shareholder of Sprint, owns 85% of Sprint's shares. SoftBank's operating income during its 2018 fiscal year was ¥2.3539 trillion (approximately \$21.25 billion).

10. Sprint Corporation ("Sprint") is a Delaware corporation headquartered in Overland Park, Kansas. It is the fourth largest mobile wireless carrier in the United States. At the end of its 2018 fiscal year, Sprint had over 54 million wireless subscribers, and its fiscal year 2018 operating revenues were approximately \$32.6 billion. Sprint sells postpaid mobile wireless service under its Sprint brand, and prepaid mobile wireless service primarily under its Boost Mobile and Virgin Mobile brands. Sprint also sells mobile wireless service indirectly through MVNOs, which resell the service to consumers.

11. On April 29, 2018, T-Mobile and Sprint agreed to combine their respective businesses in an all-stock

transaction, pursuant to a Business Combination Agreement. The merged firm would be owned 42% by Deutsche Telekom and 27% by SoftBank.

### III. INDUSTRY OVERVIEW AND RELEVANT MARKETS

#### A. Industry Overview

12. Mobile wireless service includes voice, text messaging, and data service used to access the internet from a mobile device. Consumers access these services through a variety of devices, including phones, tablets, and smart watches. Mobile wireless carriers compete for retail customers by offering a variety of service plans and devices at a variety of prices.

13. Mobile wireless carriers deliver service over certain frequencies of spectrum. To build a national wireless network and become a facilities-based wireless carrier, a firm must acquire licenses to a sufficient amount of spectrum across a sufficiently wide geographic footprint. The firm also must deploy network infrastructure—including cell sites, radio transmitters and receivers, and equipment to transmit (or “backhaul”) signals to a core network—to transmit and receive signals over its licensed spectrum. The firm also must invest in building a distribution network and marketing its services to retail customers. Facilities-based mobile wireless carriers like T-Mobile and Sprint promote their prices, plan features, device offerings, customer service, and network quality as they compete for retail customers. MVNOs typically do not operate their own mobile wireless networks. Instead, these providers buy capacity wholesale from facilities-based providers like T-Mobile and Sprint and then resell mobile wireless service to consumers under their own brand name.

#### B. Retail Mobile Wireless Service Is a Relevant Product Market

14. Retail mobile wireless customers include consumers and small and medium businesses who use mobile wireless service for voice communications, text messaging, and internet access. These customers purchase mobile wireless service at retail stores or online, and choose from pricing and service plans made available to the general public. Retail customers are distinct from large business and government customers, who purchase mobile wireless service through a bid process and receive different pricing than that available to the general public. A hypothetical monopolist of retail mobile wireless service profitably could raise prices by

at least a small but significant, non-transitory amount. Accordingly, retail mobile wireless service is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

#### C. The United States Is a Relevant Geographic Market

15. Mobile wireless carriers generally price, advertise, and market their services on a nationwide basis. Consumers who seek mobile wireless service in the United States cannot turn to carriers who do not provide service in the United States. A hypothetical monopolist of retail mobile wireless service in the United States profitably could raise prices by at least a small but significant, non-transitory amount. Thus, the United States is a relevant geographic market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

### IV. ANTICOMPETITIVE EFFECTS

16. The proposed merger would substantially lessen competition and harm consumers in the relevant market. Post-merger, the combined share of T-Mobile and Sprint would account for roughly one-third of the national retail mobile wireless service market, leaving only two other national wireless carriers of roughly equal size (AT&T and Verizon).

17. American consumers, including those who are customers of Verizon and AT&T, have benefitted from the competition T-Mobile and Sprint have brought to the mobile wireless industry. For instance, it was not until after T-Mobile and Sprint introduced unlimited data plans to retail customers in 2016 that Verizon and AT&T followed with their own standalone unlimited data offerings to retail customers in 2017.

18. T-Mobile and Sprint have been particularly intense competitors for the roughly 30% of retail subscribers who purchase prepaid mobile wireless service. These customers tend to be even more value conscious, on average, than postpaid subscribers.

19. The head-to-head competition between T-Mobile’s Metro brand and Sprint’s Boost Mobile brand has exerted significant downward pressure on prices. When Boost introduced a family plan of four lines for \$100 in February 2017, Metro countered with an aggressive promotion that a Sprint executive described this way: “We gave them a jab and they punched back with a left hook.” In the fall of 2017, when Metro responded to a Boost four lines for \$100 promotion with a three lines for \$90 promotion of its own, Boost executives countered with a “Metro attack plan.” Boost’s “Combat Metro” strategy upped the ante further by

offering five lines for \$100. Observing in March 2018 that Sprint postpaid and prepaid plans were priced 50% lower than the competition, the senior leadership at T-Mobile’s Metro reduced prices to \$40 per month and then to \$30 per month for entry level plans.

20. The competition between T-Mobile and Sprint also has led to improvements in the quality of devices and the plan features available to prepaid subscribers. As one Sprint senior executive observed in 2015, “The prepaid space is experiencing a severe price war. We now have two competitors (Cricket and Metro) spending at postpaid-like advertising levels with strong, best in class nationwide networks. We need to find ways to differentiate our service beyond device and rate plan price.” To “one up Metro” in May 2017, for example, Boost offered unlimited calling to Mexico and unlimited voice roaming to customers traveling in Mexico. That same year, Boost introduced its “BoostUp!” program, which allowed prepaid customers with a solid payment history to purchase a phone for \$1 down and pay for it over 18 months with no interest. And in February 2018, Boost offered an iPhone 6 for \$49 to customers who switched to Boost and kept their phone number.

21. If the merger were allowed to proceed, this competition would be lost. After the elimination of Sprint, the industry’s low-price leader, New T-Mobile would have the incentive and the ability to raise prices. In a post-merger world, the other remaining national facilities-based mobile wireless carriers, Verizon and AT&T, also would have the incentive and the ability to raise prices. Additionally, the merger would leave the market vulnerable to increased coordination among these three competitors. Increased coordination harms consumers through a combination of higher prices, reduced quality, reduced innovation, and fewer choices.

22. Competition between Sprint and T-Mobile to sell mobile wireless service wholesale to MVNOs has benefited consumers by furthering innovation, including the introduction of MVNOs with some facilities-based infrastructure. The merger’s elimination of this competition likely would reduce future innovation.

### V. ABSENCE OF COUNTERVAILING FACTORS

23. Given the high barriers to entry in the retail mobile wireless service market, entry or expansion of other firms is unlikely to occur in a timely manner or on a scale sufficient to

replace the competitive influence now exerted on the market by Sprint.

24. Any efficiencies generated by this merger are unlikely to be sufficient to offset the likely anticompetitive effects on American consumers in the retail mobile wireless service market, particularly in the short term, unless additional relief is granted.

## VI. JURISDICTION AND VENUE

25. The United States brings this action, and the Court has subject matter jurisdiction over this action, under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants Deutsche Telekom, Softbank, T-Mobile, and Sprint (“Defendants”) from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

26. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as *parens patriae* on behalf of and to protect the health and welfare of their citizens and the general economy of each of their states.

27. T-Mobile and Sprint are engaged in, and their activities substantially affect, interstate commerce. T-Mobile and Sprint sell mobile wireless service throughout the United States. As parties to the Business Combination Agreement, which will have effects throughout the United States, Deutsche Telekom and Softbank have submitted to the jurisdiction of the United States. All four of the Defendants have consented to venue and personal jurisdiction in this District.

28. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c)(2), for Defendants T-Mobile and Sprint, and venue is proper for Defendants Deutsche Telekom, a German corporation, and SoftBank, a Japanese corporation, under 28 U.S.C. § 1391(c)(3).

## VII. VIOLATION ALLEGED

29. The merger of T-Mobile and Sprint likely would lessen competition substantially in interstate trade and commerce in the relevant geographic market for retail mobile wireless service, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

30. Unless enjoined, the transaction likely would have the following effects in the national retail mobile wireless market described above:

a. competition would be lessened substantially; and

b. prices likely would be higher, quality of service likely would be lower, innovation likely would be lessened, and consumer choice likely would be more restricted than in the absence of the merger.

## VIII. REQUEST FOR RELIEF

31. Plaintiffs request that this Court do the following:

a. adjudge the combination of T-Mobile and Sprint’s mobile wireless businesses to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. permanently enjoin T-Mobile and Sprint from carrying out the Business Combination Agreement dated April 29, 2018, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the mobile wireless businesses of T-Mobile and Sprint under common ownership or control;

c. award Plaintiffs costs of this action; and

d. award Plaintiffs other relief as the Court may deem just and proper.

Dated this 26th day of July, 2019.

Respectfully submitted,  
**FOR PLAINTIFF UNITED STATES OF AMERICA:**

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## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

*United States of America et al., Plaintiffs, v. Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., Sprint Corporation, and Dish Network Corporation, Defendants.*

Case No. 1:19-cv-02232-TJK

Filed: July 26, 2019

### [PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the States of Kansas, Nebraska, Ohio, Oklahoma, and South Dakota (“Plaintiff States”), filed their Complaint on July 26, 2019, the Plaintiffs and Defendants Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., and Sprint Corp., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, pursuant to a Stipulation and Order among Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., Sprint Corp., and DISH Network Corp. (collectively, “Defendants”) and the United States, the Court has joined DISH Network Corp. as a defendant to this action for the purposes of settlement and for the entry of this Final Judgment;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the purpose of this Final Judgment is to preserve

competition by enabling the entry of another national facilities-based mobile wireless network operator;

AND WHEREAS, Plaintiffs require Divesting Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures and other relief required by this Final Judgment can and will be made and carried out, and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

## **JURISDICTION**

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Divesting Defendants and Parent Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18. Pursuant to the Stipulation and Order filed simultaneously with this Final Judgment joining DISH as a defendant to this action, DISH has consented to this Court's exercise of specific personal jurisdiction over DISH in this matter solely for the purposes of settlement and for the entry and enforcement of the Final Judgment.

## **II. DEFINITIONS**

As used in this Final Judgment:

A. "Acquiring Defendant" or "Acquirer" or "DISH" mean Defendant DISH Network Corporation, a Nevada corporation with its headquarters in Englewood, Colorado; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Assurance Wireless" means the prepaid wireless business conducted by Virgin Mobile under the Assurance Lifeline brand.

C. "Cell Site" or "Tower Site" mean any wireless communications towers, rooftops, water towers, or other wireless communications facilities owned or leased by Divesting Defendants and the physical location and wireless equipment thereto.

D. "Decommissioned" or "Decommissioning" means, with respect to a Cell Site, when the Cell Site is no longer transmitting on Divesting Defendants' networks. With respect to

Retail Locations, Decommissioned or Decommissioning means when Divesting Defendants cease customer service operations.

E. "Deutsche Telekom" means Deutsche Telekom AG, a German corporation headquartered in Bonn, Germany, that is the controlling shareholder of T-Mobile; its successors and assigns; and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Divesting Defendants" means T-Mobile and Sprint.

G. "Divestiture Assets" means the Prepaid Assets, the 800 MHz Spectrum Licenses, the Decommissioned Retail Locations, and the Decommissioned Cell Sites.

H. "Fifth Generation Broadband Services" or "5G Services" means at least 3GPP Release 15, capable of providing enhanced mobile broadband (eMBB) functionality.

I. "Full MVNO Agreement" means an agreement that (1) provides the Acquiring Defendant the ability to sell retail mobile wireless services as an MVNO using the Divesting Defendants' wireless networks, (2) provides Acquiring Defendant the option to deploy its own core network with all associated service platforms to be offered in combination with services provided by Divesting Defendants' wireless networks, and (3) requires Divesting Defendants to provide network connectivity between Divesting Defendants and Acquiring Defendant's network for all traffic.

J. "MVNO" means a mobile virtual network operator, such as TracFone and Google Fi, that obtains network access from facilities-based providers like T-Mobile and Sprint and resells that mobile wireless service to consumers under its own brand name.

K. "Parent Defendants" means Deutsche Telekom and SoftBank.

L. "Prepaid Assets" means all tangible and intangible assets primarily used by the Boost Mobile, Sprint-branded prepaid, and Virgin Mobile businesses today, including but not limited to Boost and Virgin Mobile Retail Locations, licenses, personnel, facilities, data, and intellectual property, as well as all relationships and/or contracts with prepaid customers served by Sprint, Boost Mobile, and Virgin Mobile. Prepaid Assets do not include the Assurance Wireless business and the prepaid wireless customers of Shenandoah Telecommunications Company and Swiftel Communications, Inc.

M. "Prepaid Assets Personnel" means all employees whose jobs currently focus on the support of the Prepaid Assets, or whose jobs have previously focused on supporting the Prepaid Assets at any time between January 1, 2016 and the date on which the Prepaid Assets are divested to the Acquirer. Prepaid Assets Personnel shall include no fewer than 400 current employees of the Divesting Defendants, which shall include employees involved in sales management, marketing management, distribution support, sales support, and finance.

N. "Retail Locations" means any retail locations owned or operated by Divesting Defendants and from which either T-Mobile or Sprint sells mobile wireless service under any of their affiliated brands, including Sprint, Boost Mobile, Virgin Mobile, T-Mobile, Metro by T-Mobile, and MetroPCS.

O. "800 MHz Spectrum Licenses" means all of Sprint's 800 MHz spectrum holdings as listed and described in Attachment A to this Final Judgment.

P. "600 MHz Spectrum Licenses" means all of DISH's 600 MHz spectrum holdings as listed and described in Attachment B to this Final Judgment.

Q. "SoftBank" means SoftBank Group Corp., a Japanese corporation and controlling shareholder of Sprint; its successors and assigns; and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

R. "Sprint" means Defendant Sprint Corporation, a Delaware corporation with its headquarters in Overland Park, Kansas; its successors and assigns; and its subsidiaries, divisions, groups, affiliates (other than SoftBank), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

S. "T-Mobile" means Defendant T-Mobile US, Inc., a Delaware corporation with its headquarters in Bellevue, Washington; its successors and assigns; and its subsidiaries, divisions, groups, affiliates (other than Deutsche Telekom), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

## **III. APPLICABILITY**

A. This Final Judgment applies to the Divesting Defendants, Parent Defendants, and Acquiring Defendant, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If any of the terms of an agreement between (i) Divesting Defendants and

the Acquiring Defendant to effectuate the divestitures required by the Final Judgment or (ii) Defendants and the Federal Communications Commission (FCC) to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms due to a conflict between the terms, this Final Judgment will determine Defendants' obligations. Provided, however, that if there is an inconsistency between this Final Judgment and any commitment any of the Defendants have made to the FCC, the more stringent obligations will control.

#### **IV. DIVESTITURES**

##### **A. Prepaid Assets**

1. The Divesting Defendants shall take all actions required to enable Acquiring Defendant to have, within ninety (90) days after notice of the entry of this Final Judgment by the Court, the ability to provision any new or existing customer of the Prepaid Assets holding a compatible handset device onto the T-Mobile network pursuant to the terms of any Full MVNO Agreement. Divesting Defendants are ordered and directed, not more than fifteen (15) days after Divesting Defendants can provide Acquiring Defendant the ability to provision any new or existing customer of the Prepaid Assets holding a compatible handset device onto the T-Mobile network pursuant to the terms of any Full MVNO Agreement, or the first business day of the month following the later of the consummation of the merger of T-Mobile and Sprint and the receipt of any approvals required for the divestiture of the Prepaid Assets from the FCC and any material state public utility commission, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Prepaid Assets to Acquiring Defendant in a manner acceptable to the United States, in its sole discretion.

##### **2. Employees**

a. Within ten (10) business days following the filing of the Complaint in this matter, Divesting Defendants shall provide to Acquiring Defendant, the United States, the Plaintiff States, and the Monitoring Trustee, organization charts covering all Prepaid Assets Personnel for each year from January 1, 2016 to present. Within ten (10) business days of receiving a request from Acquiring Defendant, Divesting Defendants shall provide to Acquiring Defendant, the United States, the

Plaintiff States, and the Monitoring Trustee, additional information related to identified Prepaid Assets Personnel, including name, job title, reporting relationships, past experience, responsibilities from January 1, 2016 through the date on which the Prepaid Assets are transferred to Acquirer, training and educational history, relevant certifications, job performance evaluations, and current salary and benefits information to enable Acquiring Defendant to make offers of employment. If Divesting Defendants are barred by any applicable laws from providing any of this information to Acquiring Defendant, within ten (10) business days of receiving Acquiring Defendant's request, Divesting Defendants will provide the requested information to the greatest extent possible under applicable laws and also provide a written explanation of their inability to comply fully with Acquiring Defendant's request for information regarding Prepaid Assets Personnel.

b. Upon request, Divesting Defendants shall make Prepaid Assets Personnel available for interviews with Acquiring Defendant during normal business hours at a mutually agreeable location. Divesting Defendants will not interfere with any negotiations by Acquiring Defendant to employ any Prepaid Assets Personnel. Interference includes but is not limited to offering to increase the salary or benefits of or offering bonuses to Prepaid Assets Personnel other than as part of a company-wide increase in salary or benefits or company-wide provision of bonuses granted in the ordinary course of business. If Divesting Defendants have offered Prepaid Assets Personnel incentives to remain employed with Divesting Defendants until a certain date (e.g., retention bonuses), Divesting Defendants must warrant to those Prepaid Assets Personnel and the Acquiring Defendant that the Prepaid Assets Personnel will receive all promised incentives if they accept an offer of employment with the Acquiring Defendant and remain employed with the Acquiring Defendant until the date contemplated by the originally agreed-upon incentive. Divesting Defendants shall be responsible for reimbursing Acquiring Defendant the costs associated with such incentives.

c. For any Prepaid Assets Personnel who elect employment with Acquiring Defendant, Divesting Defendants shall waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which Prepaid Assets Personnel would be provided if

transferred to a buyer of an ongoing business.

d. For a period of two (2) years from the date of filing of the Complaint in this matter, Divesting Defendants may not solicit to hire, or hire, any Prepaid Assets Personnel who was hired by Acquiring Defendant, unless (a) such individual is terminated or laid off by Acquiring Defendant or (b) Acquiring Defendant agrees in writing that Divesting Defendants may solicit or hire that individual.

e. Nothing in this Section prohibits Divesting Defendants from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with Acquiring Defendant of Divesting Defendants' proprietary non-public information that is (a) not otherwise required to be disclosed by this Final Judgment, (b) related solely to Divesting Defendant's businesses and clients, and (c) unrelated to the Divestiture Assets.

f. Acquiring Defendant's right to hire Prepaid Assets Personnel pursuant to Paragraph IV(A)(2) and Divesting Defendants' obligations under Paragraphs IV(A)(2)(a)-(c) lasts for a period of one hundred and eighty (180) days after the closing of the divestiture of the Prepaid Assets.

3. Divesting Defendants shall warrant to Acquiring Defendant that the Prepaid Assets will be fully operational on the date of transfer.

4. At the option of Acquiring Defendant, Divesting Defendants shall enter into one or more transition services agreements to provide billing, customer care, SIM card procurement, device provisioning, and all other services used by the Prepaid Assets prior to the date of their transfer to Acquirer for an initial period of up to two (2) years after the transfer of the Prepaid Assets. During the initial two-year term of the agreement, Divesting Defendants shall provide the transition services at no greater than cost to Acquiring Defendant. All other terms and conditions of any such agreement must be reasonably related to market conditions for the provision of the relevant services and must be acceptable to the United States in its sole discretion, after consultation with the affected Plaintiff States. Upon Acquiring Defendant's request, the United States, in its sole discretion, after consultation with the affected Plaintiff States, may approve one or more extensions of such agreement(s) for a total of up to an additional one (1) year.

5. At Acquiring Defendant's option, on or before the divestiture of the Prepaid Assets, Divesting Defendants shall assign or otherwise transfer to

Acquiring Defendant all transferable or assignable agreements, or any assignable portions thereof, related to the Prepaid Assets, including, but not limited to, all supply contracts, licenses, and collaborations. Divesting Defendants shall use best efforts to expeditiously obtain from any third parties any consent necessary to transfer or assign to Acquiring Defendant all agreements related to the Prepaid Assets. To the extent consent cannot be obtained and the agreement is not otherwise assignable, Divesting Defendants shall use best efforts to obtain or provide for Acquiring Defendant, as expeditiously as possible, the full benefits of any such agreement as it relates to the Prepaid Assets by assisting Acquiring Defendant to secure a new agreement and by taking any other steps necessary to ensure that Acquiring Defendant obtains the full benefit of the agreement as it relates to the Prepaid Assets. Divesting Defendants will not assert, directly or indirectly, any legal claim that would interfere with Acquiring Defendant's ability to obtain the full benefit from any transferred third-party agreement to the same extent enjoyed by Divesting Defendant prior to the transfer.

6. At Acquiring Defendant's option, on or before the divestiture of the Prepaid Assets, Divesting Defendants shall provide contact information and make introductions to distributors and suppliers that support the Prepaid Assets. Divesting Defendants shall not interfere with Acquiring Defendant's attempts to negotiate with these distributors or suppliers.

#### **B. 800 MHz Spectrum License Transfer**

1. Divesting Defendants are ordered and directed, within three (3) years after the closing of the divestiture of the Prepaid Assets or within five (5) business days of the approval by the FCC of the transfer of the 800 MHz Spectrum Licenses, whichever is later, to divest the 800 MHz Spectrum Licenses in a manner acceptable to the United States, in its sole discretion, after consultation with the affected Plaintiff States. The United States, in its sole discretion, after consultation with the affected Plaintiff States, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and will notify the Court in such circumstances. Acquiring Defendant will make timely application to the FCC for the transfer of the spectrum to comply with this Paragraph.

2. Acquiring Defendant shall pay a penalty of \$360,000,000 to the United States if it elects not to purchase the 800 MHz Spectrum Licenses. The Acquiring

Defendant shall pay the penalty within thirty (30) days of declining to purchase the 800 MHz Spectrum Licenses. Notwithstanding the foregoing, the Acquiring Defendant will not be required to pay such penalty if it has deployed a core network and offered 5G Service to at least 20% of the U.S. population over DISH's facilities-based network within three (3) years of the closing of the divestiture of the Prepaid Assets.

3. If, at the expiration of this Final Judgment, Acquiring Defendant has acquired the 800 MHz Spectrum Licenses, but has not deployed all of the 800 MHz Spectrum Licenses for use in the provision of retail mobile wireless services, Acquiring Defendant shall forfeit to the FCC, at the United States' sole discretion, after consultation with the affected Plaintiff States, all of the 800 MHz Spectrum Licenses that are not being used to provide retail mobile wireless services, unless Acquiring Defendant already is providing nationwide retail mobile wireless services over DISH's facilities-based network.

4. If the Acquiring Defendant does not purchase the 800 MHz Spectrum Licenses, Divesting Defendants shall conduct an auction of the 800 MHz Spectrum Licenses within six (6) months of Acquiring Defendant declining to purchase the licenses. In such auction, Divesting Defendants will not divest the 800 MHz Spectrum Licenses to any other national facilities-based mobile wireless network operator, without the prior written approval of the United States, in its sole discretion, after consultation with the affected Plaintiff States, and will not be required to divest the 800 MHz Spectrum Licenses at a price that is lower than the price the Acquiring Defendant originally agreed to pay for such licenses. In addition, Divesting Defendants may apply to the United States to be relieved from the commitment to sell the 800 MHz Spectrum Licenses if (i) Acquiring Defendant declines to purchase the 800 MHz Spectrum License and (ii) the sale of the 800 MHz Spectrum Licenses is no longer needed fully to remedy the competitive harms of the merger, as determined by the United States in its sole discretion, after consultation with the affected Plaintiff States.

#### **C. Decommissioned Cell Sites**

1. Divesting Defendants shall make all Cell Sites Decommissioned by Divesting Defendants within five (5) years of the closing of the divestiture of the Prepaid Assets, which shall not be fewer than 20,000 Cell Sites, available to Acquiring

Defendant immediately after such Decommissioning.

2. Divesting Defendants shall provide, no later than the closing of the Prepaid Assets divestiture, the Acquiring Defendant and Monitoring Trustee with a detailed schedule identifying, over the next five (5) years: (i) each Cell Site that the Divesting Defendants plan to Decommission; (ii) the forecasted date for Decommissioning; and (iii) whether a given Cell Site is freely transferrable. For a period of five (5) years following the closing of the divestiture of the Prepaid Assets, on the first day of each month Divesting Defendants shall submit to the Acquiring Defendant and Monitoring Trustee updated Cell Site Decommissioning schedules that include a rolling monthly forecast projected out two hundred and seventy (270) days. All forecasted Decommissionings within one hundred and eighty (180) days will be binding, subject to any mandatory restrictions on transfer imposed by federal or state law, unless the Monitoring Trustee determines that the Decommissioning was changed for good cause, and the changes and justifications are reported by the Divesting Defendants to the United States.

3. Divesting Defendants are ordered to pay to the United States, within ninety (90) days following the end of each fiscal quarter, \$50,000 multiplied by the total number of Cell Sites in excess of two (2) percent of Cell Sites in any 180-day Cell Site forecast: (a) for which the Acquiring Defendant exercised its option to acquire such Cell Site that was Decommissioned more than ten (10) days after the date forecasted in the 180-day Cell Site forecast or (b) that were Decommissioned but did not appear on any 180-day Cell Site forecast. If Divesting Defendants are incorrect, and have not cured within ten (10) days, on more than ten (10) percent of Cell Sites in any three 180-day Cell Site forecasts, the penalty shall increase to \$100,000 per incorrect Cell Site for which the Acquiring Defendant exercised its option to acquire such Cell Site starting on the fourth 180-day Cell Site forecast that is incorrect on at least ten (10) percent of Cell Sites and continuing at that level for any penalties imposed pursuant to this Paragraph. If Divesting Defendants demonstrate that there was good cause for the forecast to have been inaccurate with regard to an individual Cell Site, the United States may, in its sole discretion, after consultation with the affected Plaintiff States, waive some or all of the payments.

4. Divesting Defendants shall assign or transfer any rights that are assignable or transferrable and are useful for

Acquiring Defendant to deploy infrastructure on the Decommissioned Cell Sites and will waive or terminate any rights Divesting Defendants may have to impede or prevent Acquiring Defendant from doing so. Where Divesting Defendants do not have the right to assign or transfer such rights, Divesting Defendants will cooperate with Acquiring Defendant in its attempt to obtain the rights.

5. Divesting Defendants shall Decommission unnecessary Cell Sites promptly. Divesting Defendants will vacate a Decommissioned Cell Site as soon as reasonably possible after the site is no longer in use on any of the Divesting Defendants' networks. As soon as reasonably possible after making Decommissioned Cell Sites available to the Acquiring Defendant, Divesting Defendants shall also make any Decommissioned transport-related equipment (including microwave backhaul gear and network switches) on such cell sites available for purchase by the Acquiring Defendant. If the Monitoring Trustee determines that Divesting Defendants have not complied with this Paragraph, the Monitoring Trustee may recommend and the United States may impose a fine of up to \$50,000 per Cell Site per week for which Acquiring Defendant exercised its option to acquire such Cell Site or transport-related equipment for any violation.

6. Subject to the terms and conditions of the applicable lease or easement for such Cell Site, Divesting Defendants shall provide Acquiring Defendant reasonable access to inspect Decommissioned Cell Sites prior to the deadline for Acquiring Defendant to exercise its option on the Decommissioned Cell Sites.

#### **D. Decommissioned Retail Locations**

1. Divesting Defendants shall make all assignable or transferrable Retail Locations Decommissioned by Divesting Defendants within five (5) years of the closing of the divestiture of the Prepaid Assets, which will not be fewer than four hundred (400) Retail Locations, available to Acquiring Defendant immediately after such Decommissioning.

2. Divesting Defendants shall notify Acquiring Defendant of Retail Locations that Divesting Defendants plan to Decommission as soon as the locations are identified.

3. Divesting Defendants shall waive or terminate any rights they have to impede or prevent Acquiring Defendant from using the Retail Locations.

4. Subject to the terms and conditions of the applicable lease for such Retail

Location, Divesting Defendants shall provide Acquiring Defendant reasonable access to inspect Decommissioned Retail Locations prior to the deadline for Acquiring Defendant to exercise its option on the Decommissioned Retail Locations.

E. Unless the United States otherwise consents in writing or the Acquiring Defendant declines its option to purchase certain Decommissioned Cell Sites or Decommissioned Retail Locations, the divestitures pursuant to this Final Judgment will include the entire Divestiture Assets. The divestitures will 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. The divestitures will be accomplished so as to satisfy the United States, in its sole discretion, 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.

F. Acquiring Defendant shall use the Divestiture Assets to offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service within one (1) year of the closing of the sale of the Prepaid Assets.

G. Divesting Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Divesting Defendants shall warrant to Acquiring Defendant (1) that there are no material defects known to the Divesting Defendants in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, (2) that following the sale of the Divestiture Assets, Divesting Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets in a manner adverse to the Acquiring Defendant, and (3) that the Divestiture Assets will be capable of full operation on the date of transfer.

For purposes of this Paragraph, the Divestiture Assets shall not include any Decommissioned Cell Sites or Decommissioned Retail Locations as to which the Acquiring Defendant declined its option to acquire the assets.

I. For a period of up to one (1) year following the divestiture closing, if the

Acquiring Defendant determines that any assets not included in the Divestiture Assets were previously used by the divested business and are reasonably necessary for the continued competitiveness of the Divestiture Assets, it shall notify the United States, the Plaintiff States, and the Divesting Defendants in writing that it requires such assets. Provided, however, that such assets shall not include any tangible or intangible wireless network or spectrum assets (except as provided herein), or any tangible or intangible IT assets or software licenses used by the remaining Sprint business. The United States, in its sole discretion, after consultation with the affected Plaintiff States, taking into account Acquiring Defendant's assets and business, shall determine whether any of the assets identified should be divested to Acquiring Defendant. If the United States determines that such assets should be divested, Divesting Defendants and Acquiring Defendant will negotiate an agreement within thirty (30) calendar days providing for the divestiture of such assets in a period to be determined by the United States in consultation with the affected Plaintiff States and Divesting Defendants and Acquiring Defendant.

#### **V. 600 MHz SPECTRUM DEPLOYMENT**

A. Acquiring Defendant and Divesting Defendants agree to negotiate in good faith to reach an agreement for Divesting Defendants to lease some or all of Acquiring Defendant's 600 MHz Spectrum Licenses for deployment to retail consumers by Divesting Defendants. Defendants shall report to the Monitoring Trustee within ninety (90) days after the filing of this Final Judgment regarding the status of these negotiations. If, at the end of one hundred and eighty (180) days, Defendants have not reached an agreement to lease some or all of Acquiring Defendant's 600 MHz Spectrum Licenses for deployment by Divesting Defendants and use by retail consumers, the Monitoring Trustee shall report to the United States, which may then resolve any dispute at the United States' sole discretion, provided such resolution shall be based on commercially reasonable and mutually beneficial terms for both parties, recognizing that the lease(s) must be for a sufficient period of time for Divesting Defendants to make adequate commercial use of the 600 MHz Spectrum Licenses.



## **VI. FULL MOBILE VIRTUAL NETWORK OPERATOR**

A. Divesting Defendants and Acquiring Defendant shall enter into a Full MVNO Agreement for a term of no fewer than seven (7) years. The terms and conditions of the Acquiring Defendant's use of Divesting Defendants' wireless networks pursuant to any Full MVNO Agreement shall be commercially reasonable and must be acceptable to the United States, in its sole discretion, after consultation with the affected Plaintiff States.

B. In carrying out its obligations under any Full MVNO Agreement, Divesting Defendants:

1. shall not reject any of Acquiring Defendant's lawful traffic, unless authorized to do so by any Full MVNO Agreement and accepted by the United States, in its sole discretion, after consultation with the affected Plaintiff States;

2. shall not unreasonably discriminate against Acquiring Defendant or Acquiring Defendant's subscribers, including by blocking, throttling, or otherwise deprioritizing the Acquiring Defendant's customers differently than Divesting Defendants' own similarly situated customers, unless authorized to do so by any Full MVNO Agreement;

3. shall use reasonable best efforts to provide Acquiring Defendant all operational support required for Acquiring Defendant's customers (including, but not limited to, customers of the Prepaid Assets) to be able to use the Divesting Defendants' wireless networks;

4. shall not unreasonably refuse to allow any device used by Acquiring Defendant's customers to access the Divesting Defendants' wireless networks, or otherwise unreasonably refuse to approve or support any such devices, and shall approve such devices for use upon request as soon as reasonably practicable, and shall use commercially reasonable efforts to provide technical support or other assistance to the Acquiring Defendant as requested to facilitate approval of any devices for use on Divesting Defendants' wireless networks;

5. shall configure its wireless network as necessary to enable the provision of handover mobility for the Acquiring Defendant's customers in the boundary areas between the Acquiring Defendant's network, built out in contiguous coverage areas (e.g., city-wide coverage), and the Divesting Defendants' wireless networks; and

6. shall not otherwise unreasonably delay, impede, or frustrate Acquiring Defendant's ability to use any Full

MVNO Agreement and the Divesting Defendants' networks to become a nationwide facilities-based retail mobile wireless services provider.

## **VII. MOBILE VIRTUAL NETWORK OPERATOR COMPETITION**

A. Divesting Defendants shall abide by all terms of their existing MVNO agreements. Divesting Defendants shall agree to extend existing MVNO agreements on their existing terms (other than any "most favored nation" provisions) until the expiration of this Final Judgment unless the Divesting Defendants demonstrate to the Monitoring Trustee that doing so will result in a material adverse effect, other than as a result of competition, on the Divesting Defendants' ongoing business. For the avoidance of doubt, Divesting Defendants are not required to extend any MVNO agreements beyond the expiration of this Final Judgment or any existing infrastructure-based MVNO agreement that includes a reciprocal facility sharing arrangement unless it includes a mutually beneficial reciprocal facility sharing arrangement for the duration of the MVNO agreement. Any disputes arising from the negotiation of an agreement pursuant to this Paragraph shall be resolved by the United States in its sole discretion.

B. Divesting Defendants and Acquiring Defendant agree to support eSIM technology on smartphones, including working with handset equipment manufacturers to support eSIM-capable phones to the extent such phones are technically capable of operating on Divesting Defendants or Acquiring Defendant's wireless networks.

C. Divesting Defendants and Acquiring Defendant shall not discriminate against devices for the reason that the device uses remote SIM provisioning and eSIM technology to connect to the Defendants' wireless networks. Examples of discrimination would include, but are not limited to, refusing to sell a device because it contains or uses an eSIM, and refusing to certify for network access a device because it uses an eSIM, but discrimination would not include the application of the Defendant's generally applicable device-locking policies to devices sold or leased by Defendant, provided that the locking policy is consistent with Paragraph VII(F), below.

D. Divesting Defendants and Acquiring Defendant shall not discriminate against devices for the reason that the device allows multiple active profiles or for the reason that the device allows automatic switching

between those profiles. Examples of discrimination would include, but are not limited to, refusing to sell a device because it has these functions, and refusing to certify for network access a device because it has these functions. For avoidance of doubt, nothing contained in this provision will prohibit Defendants from exercising discretion to determine whether a device or technology will harm or impede the operation of their respective wireless networks.

E. Divesting Defendants and Acquiring Defendant shall make their network plans available to consumers who use on-screen selection software or applications from devices capable of being remotely provisioned on the same terms as offered to other consumers in that geographic area. This provision will apply to any device that is the same make and model as any device Defendants sell or otherwise certify for network access.

F. Divesting Defendants and Acquiring Defendant agree to abide by the following unlocking principles for all methods of locking (including any limitation on the use of an eSIM to switch between profiles) for any postpaid or prepaid mobile wireless device that they lock to their network: (i) Divesting Defendants and Acquiring Defendant will post on their respective websites their clear, concise, and readily accessible policies on postpaid and prepaid mobile device unlocking; (ii) Divesting Defendants and Acquiring Defendant will unlock mobile wireless devices for their customers and former customers in good standing and individual owners of eligible devices after the fulfillment of the applicable postpaid service contract, device financing plan, or payment of applicable early termination fee; (iii) Divesting Defendants and Acquiring Defendant will unlock prepaid mobile wireless devices no later than one (1) year after initial activation, consistent with reasonable time, payment, or usage requirements; and (iv) Divesting Defendants and Acquiring Defendant will automatically unlock devices remotely within two (2) business days of devices becoming eligible for unlocking, and without additional fee, provided, however, that if not technically possible to automatically unlock devices remotely, Divesting Defendants and Acquiring Defendant shall instead provide immediate notice to consumers that the devices are eligible to be unlocked.

**VIII. FACILITIES-BASED EXPANSION AND ENTRY**

A. Divesting Defendants shall comply with all network build commitments made to the FCC related to the merger of T-Mobile and Sprint or the divestiture to Acquiring Defendant as of the date of entry of this Final Judgment, subject to verification by the FCC. Acquiring Defendant shall comply with the June 14, 2023 AWS-4, 700 MHz, H Block, and Nationwide 5G Broadband network build commitments made to the FCC as of the date of entry of this Final Judgment, subject to verification by the FCC. Defendants shall provide to the United States and the Plaintiff States copies of any reports or submissions to the FCC that are associated with any FCC order(s) within three (3) business days of submission to the FCC.

B. Divesting Defendants shall not interfere with Acquiring Defendant's efforts to deploy a nationwide facilities-based mobile wireless network, or to operate that network. Acquiring Defendant shall use its best efforts to serve subscribers over its facilities-based wireless network rather than over Divesting Defendants' wireless networks.

C. On the first day of the first fiscal quarter following the entry of this Final Judgment and every one hundred and eighty (180) days thereafter, Acquiring Defendant shall submit to the United States and the Plaintiff States an update on the status of its wireless network deployment. This update will include a description of Acquiring Defendant's deployment efforts since Acquiring Defendant's last report, including (a) the number of towers and small cells deployed by Acquiring Defendant; (b) the spectrum bands over which Acquiring Defendant has deployed equipment; (c) Acquiring Defendant's progress in obtaining subscriber devices that operate on each of its licensed spectrum bands; (d) the percentage of the population of the United States covered by Acquiring Defendant's wireless network; (e) the number of mobile wireless subscribers served by Acquiring Defendant; (f) the amount of traffic transmitted to and from these subscribers over Acquiring Defendant's facilities-based wireless network; (g) the amount of traffic transmitted to and from these subscribers over Divesting Defendants' network pursuant to a Full MVNO Agreement; and (h) any efforts by Divesting Defendants to interfere with Acquiring Defendant's efforts to deploy and operate its facilities-based wireless network.

**IX. FINANCING**

Divesting Defendants and Parent Defendants shall not finance any part of any purchase made pursuant to this Final Judgment, unless the United States approves such financing in its sole discretion.

**X. STIPULATION AND ORDER**

Until the divestitures required by this Final Judgment have been accomplished, Divesting Defendants shall take all steps necessary to comply with the Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

**XI. AFFIDAVITS**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, Divesting Defendants shall deliver to the United States and the Plaintiff States an affidavit that describes in reasonable detail all actions Divesting Defendants have taken and all steps Divesting Defendants have implemented on an ongoing basis to comply with Section X of this Final Judgment. Divesting Defendants shall deliver to the United States and the Plaintiff States an affidavit describing any changes to the efforts and actions outlined in Divesting Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

B. Divesting Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

**XII. APPOINTMENT OF MONITORING TRUSTEE**

A. Upon application of the United States, after consultation with the Plaintiff States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Stipulation and Order entered by the Court, and shall have such other powers as the Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Stipulation and Order, and the Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to: Divesting Defendants' sale of the Divestiture Assets, Divesting Defendants' compliance with its requirements to make Cell Sites and

Retail Locations available to Acquiring Defendant, and Acquiring Defendant's progress toward using the Divestiture Assets and other company assets to operate a retail mobile wireless network.

C. Subject to Paragraph XII(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Divesting Defendants any agents, investment bankers, attorneys, accountants, or consultants, who will be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of the Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Divesting Defendants pursuant to a written agreement with Divesting Defendants and on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Divesting Defendants are unable to reach agreement on the Monitoring Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any agents or consultants, provide written notice of such hiring and the rate of compensation to Divesting Defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance

with their individual obligations under this Final Judgment and under the Stipulation and Order. The Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States setting forth Defendants' efforts to comply with Defendants' obligations under this Final Judgment and under the Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports will not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to this Final Judgment, until the buildout requirements are complete pursuant to Section VIII of this Final Judgment, until any Full MVNO Agreement expires or otherwise terminates, or until the term of any transition services agreement pursuant to Paragraph IV(A)(4) of this Final Judgment has expired, whichever is later.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend that the Court appoint a substitute Monitoring Trustee.

### **XIII. FIREWALL**

A. During the term of this Final Judgment, the Divesting Defendants and Acquiring Defendant shall implement and maintain reasonable procedures to prevent competitively sensitive information from being disclosed by or through implementation and execution of the obligations in this agreement or any associated agreements to components or individuals within the respective companies involved in the marketing, distribution, or sale of competing products.

B. Divesting Defendants and Acquiring Defendant each shall, within thirty (30) business days of the entry of the Stipulation and Order, submit to the United States, the Plaintiff States, and the Monitoring Trustee a document setting forth in detail the procedures

implemented to effect compliance with this Section. Upon receipt of the document, the United States shall inform Divesting Defendants and Acquiring Defendant within thirty (30) business days whether, in its sole discretion, it approves of or rejects each party's compliance plan. In the event that Divesting Defendants' or Acquiring Defendant's compliance plan is rejected, the United States shall provide Divesting Defendants or Acquiring Defendant, as applicable, the reasons for the rejection. Divesting Defendants or Acquiring Defendant, as applicable, shall be given the opportunity to submit, within ten (10) business days of receiving a notice of rejection, a revised compliance plan. If Divesting Defendants or Acquiring Defendant cannot agree with the United States on a compliance plan, the United States shall have the right to request that this Court rule on whether Divesting Defendants' or Acquiring Defendant's proposed compliance plan fulfills the requirements of this Section.

#### **C. Divesting Defendants and Acquiring Defendant shall:**

1. furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty (60) calendar days of entry of the Stipulation and Order to (a) each officer, director, and any other employee that will receive competitively sensitive information; and (b) each officer, director, and any other employee that is involved in (i) any contacts with the other companies that are parties to any transition services agreement contemplated by this Final Judgment, or (ii) making decisions under any transition services agreement entered into pursuant to this Final Judgment;

2. furnish a copy of this Final Judgment and related Competitive Impact Statement to any successor to a person designated in Paragraph XIII(C)(1) upon assuming that position;

3. annually brief each person designated in Paragraph XIII(C)(1) and Paragraph XIII(C)(2) on the meaning and requirements of this Final Judgment and the antitrust laws; and

4. obtain from each person designated in Paragraph XI(C)(1) and Paragraph XI(C)(2), within thirty (30) calendar days of that person's receipt of the Final Judgment, a certification that he or she (a) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (b) is not aware of any violation of the Final Judgment that has not been reported to the company; and (c) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for contempt of

court against each Defendant or any person who violates this Final Judgment.

### **XIV. COMPLIANCE INSPECTION**

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents and consultants retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews will be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section will be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of

such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **XV. NO REACQUISITION OR SALE TO COMPETITOR**

A. Divesting Defendants and Parent Defendants shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

B. Divesting Defendants and Parent Defendants shall not acquire any other assets that are substantially similar to the Divestiture Assets from the Acquiring Defendant during the terms of this Final Judgment.

C. Acquiring Defendant shall not sell, lease, or otherwise provide the right to use the Divestiture Assets (including, but not limited to, selling wholesale wireless network capacity) to any national facilities-based mobile wireless provider during the term of this Final Judgment, except for a roaming arrangement, without prior approval of the United States; provided, however, that following the divestiture of the 800 MHz Spectrum Licenses, the Divesting Defendants will be permitted to lease back from the Acquiring Defendant up to 4 MHz of spectrum as needed for up to two (2) years following the divestiture of the 800 MHz Spectrum Licenses.

#### **XVI. NOTIFICATIONS**

A. Acquiring Defendant shall notify the United States at least thirty (30) calendar days prior to any change in the corporation(s) that may affect compliance obligations arising under this Final Judgment, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which Acquiring Defendant learns fewer than thirty (30) calendar days prior to the date such action is to take place, Acquiring Defendant shall notify the United States as soon as is practicable after obtaining such knowledge.

B. For transactions that are not subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR

Act"), Divesting Defendants shall not, without providing advanced notification to the United States, directly or indirectly acquire a financial interest, including through securities, loan, equity, or management interest, in any company that competes for the provision of mobile wireless retail services. Acquiring Defendant shall not sell any of the Divestiture Assets or any currently held substantially similar assets, directly or indirectly, without providing advance notification to the United States.

C. Such notification will be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification will be provided at least thirty (30) calendar days prior to acquiring any such interest, and will include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within thirty (30) calendar days after notification, the United States makes a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting and certifying, in the manner described in Part 803 of Title 16 of the Code of Federal Regulations as amended, the truth, correctness, and completeness of all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section will be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section will be resolved in favor of filing notice. Defendants may, however, provide informal notice and request that the United States waive the requirement of formal notice for any transaction.

D. Defendants represent and warrant to the United States that they have disclosed all agreements between Acquiring Defendant and either Divesting Defendants or Parent Defendants related to the settlement of this action and their obligations and commitments put forth in this Final Judgment. Defendants will provide thirty (30) days written notice to the United States of any intent to enter into or execute any amendment, supplement, or modification to any of the agreements

between Divesting Defendants or Parent Defendants and Acquiring Defendant. Notwithstanding any provision to the contrary in the agreements between Divesting Defendants or Parent Defendants and Acquiring Defendant, Divesting Defendants or Parent Defendants may not amend, supplement, terminate, or modify any of the agreements or any portion thereof without obtaining the consent of the United States in its sole discretion. The United States will not withhold consent to amendment, supplementation, modification, or termination of any of the agreements or portion thereof if Divesting Defendants demonstrate to the United States, in its sole discretion, that a refusal to amend, supplement, modify, or terminate the agreements would prevent Divesting Defendants from meeting any build out requirements imposed by the FCC.

#### **XVII. RETENTION OF JURISDICTION**

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### **XVIII. ENFORCEMENT OF FINAL JUDGMENT**

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefore by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of

this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years after the expiration or termination of the Final Judgment pursuant to Section XIX, if the United States has evidence that a Defendant violated this Final Judgment before it expired or was terminated, the United States may file an action against that Defendant in this Court requiring that the Court order (i) Defendant to comply with the terms of this Final Judgment for an additional term of at least four (4) years following the filing of the enforcement action under this Section, (ii) any appropriate contempt remedies, (iii) any additional relief needed to ensure that Defendant complies with the terms of the Final Judgment, and (iv) fees or expenses as called for in Paragraph XVIII(C).

#### **XIX. EXPIRATION OF FINAL JUDGMENT**

Unless the Court grants an extension, this Final Judgment expires seven (7) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures, buildouts and other requirements have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

#### **XX. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the

Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_  
[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

United States District Judge

#### **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

*United States of America, et al.*, Plaintiffs,  
*v. Deutsche Telekom AG, et al.*, Defendants.  
Civil Action No. 1:19-cv-02232-TJK

#### **COMPETITIVE IMPACT STATEMENT**

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

#### **I. NATURE AND PURPOSE OF THE PROCEEDING**

On April 29, 2018, Defendant T-Mobile US, Inc. ("T-Mobile") agreed to acquire Defendant Sprint Corporation ("Sprint") in an all-stock transaction valued at approximately \$26 billion. The United States filed a civil antitrust Complaint on July 26, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for retail mobile wireless service in the United States, resulting in increased prices and less attractive service offerings for American consumers, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a Stipulation and Order and proposed Final Judgment, which are designed to preserve competition by enabling the entry of another national facilities-based mobile wireless network carrier. The proposed Final Judgment, which is explained more fully below, requires T-Mobile to divest to DISH Network Corporation ("DISH") certain retail wireless business and network assets, and supporting assets (collectively, the "Divestiture Assets"). It also requires that T-Mobile provide to DISH certain transition services in support thereof and all services, access, and assets necessary to facilitate DISH operating as a Full Mobile Virtual Network Operator ("Full MVNO", and together with the Divestiture Assets, the "Divestiture

Package").<sup>1</sup> Additionally, the Final Judgment requires that T-Mobile and Sprint extend their current Mobile Virtual Network Operator ("MVNO") agreements until the expiration of the Final Judgment, and that T-Mobile, Sprint, and DISH support remote SIM provisioning and eSIM technology.

The primary purpose of the proposed Final Judgment is to facilitate DISH building and operating its own mobile wireless services network by combining the Divestiture Package of assets and other relief with DISH's existing mobile wireless assets, including substantial and currently unused spectrum holdings, to enable it to compete in the marketplace. The proposed Final Judgment thus obligates DISH to build out its own mobile wireless services network and offer retail mobile wireless service to American consumers. DISH's long-term build out of a new network, along with the short-term requirement that DISH and T-Mobile negotiate a lease for DISH's currently unused 600 MHz spectrum, promise to increase output and put currently fallow spectrum into use by American consumers. The required Divestiture Package and related obligations in the proposed Final Judgment are intended to ensure that DISH can begin to offer competitive services and grow to replace Sprint as an independent and vigorous competitor in the retail mobile wireless service market in which the proposed merger would otherwise lessen competition. Further, the proposed Final Judgment would allow the potential benefits of the merger to be realized, including expanding American consumers' access to high quality networks.

Under the terms of the Stipulation and Order, T-Mobile will take certain steps to ensure that, prior to the completion of all of the proposed divestitures, the Divestiture Assets are preserved and remain economically viable and ongoing business concerns.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

<sup>1</sup> Deutsche Telekom, T-Mobile, SoftBank, Sprint, and DISH are referred to collectively as "Defendants."

## II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

### A. *The Defendants and the Proposed Transaction*

Deutsche Telekom AG (“Deutsche Telekom”), a German corporation headquartered in Bonn, Germany, is the controlling shareholder of T-Mobile, with 63% of T-Mobile’s shares. Deutsche Telekom is the largest telecommunications operator in Europe, with net revenues of €75.7 billion (approximately \$85 billion) in 2018.

T-Mobile, a Delaware corporation headquartered in Bellevue, Washington, is the third largest mobile wireless carrier in the United States. In 2018, T-Mobile had nearly 80 million wireless subscribers and approximately \$43.3 billion in total revenues. T-Mobile sells postpaid mobile wireless service under its T-Mobile brand and prepaid mobile wireless service primarily under its Metro by T-Mobile brand. T-Mobile also sells mobile wireless service to businesses and indirectly through MVNOs, which resell the service to consumers.

SoftBank Group Corp. (“SoftBank”), a Japanese corporation and the controlling shareholder of Sprint, owns 85% of Sprint’s shares. SoftBank’s operating income during its 2018 fiscal year was ¥2.3539 trillion (approximately \$21.25 billion).

Sprint is a Delaware corporation headquartered in Overland Park, Kansas. It is the fourth largest mobile wireless carrier in the United States. At the end of its 2018 fiscal year, Sprint had over 54 million wireless subscribers, and its fiscal year 2018 operating revenues were approximately \$32.6 billion. Sprint sells postpaid mobile wireless service under its Sprint brand, and prepaid mobile wireless service primarily under its Boost and Virgin Mobile brands. Sprint also sells mobile wireless service to businesses and indirectly through MVNOs, which resell the service to consumers. Sprint also operates a wireline telecommunications business throughout the United States.

DISH is a Nevada corporation with its headquarters in Englewood, Colorado. It is the owner of satellite and wireless spectrum assets and currently offers television and related services and products to American consumers nationwide. At the end of its 2018 fiscal year, DISH had over 12 million Pay-TV subscribers, and its fiscal year 2018 operating revenues were approximately \$13.6 billion.

On April 29, 2018, T-Mobile and Sprint agreed to combine their respective businesses in an all-stock

transaction. In recognition of the significant competitive concerns raised by the proposed merger, T-Mobile has agreed to divest certain retail mobile wireless business and spectrum assets, and supporting assets, and to provide certain transitional and network services. As discussed in Section III.E, *infra*, DISH has agreed to be bound by the terms of the proposed Final Judgment.

T-Mobile and Sprint also are subject to obligations contained in their commitments to the Federal Communications Commission (“FCC”) as reflected in a statement issued by FCC Chairman Ajit Pai on May 20, 2019.

### B. *The Competitive Effects of the Transaction*

The Complaint alleges that the proposed merger likely would substantially lessen competition in the retail mobile wireless service market in the United States. Retail mobile wireless service includes voice, text, and data services that consumers access on phones, tablets, and other devices. Mobile wireless carriers deliver retail mobile wireless service over a network of facilities, including, for example, towers, radios, antennas, and fiber, that support the various frequencies of spectrum that transmit wireless service. Mobile wireless carriers with their own such facilities that offer service throughout the United States are called national facilities-based mobile wireless carriers. Unlike the facilities-based mobile wireless carriers, traditional MVNOs do not operate their own mobile wireless networks and instead buy capacity wholesale from facilities-based carriers and then resell mobile wireless service to consumers. By contrast, a Full MVNO owns some facilities that it can use to carry a portion of its traffic, while relying on wholesale agreements to carry the remainder.

Currently, the national facilities-based mobile wireless carriers in the United States are Verizon Communications, Inc., AT&T Inc., T-Mobile, and Sprint. These four national facilities-based mobile wireless carriers compete for retail mobile wireless service customers by offering a variety of service plans and devices at different price points and by promoting their prices, plan features, device offerings, customer service, and network quality. Without the merger, T-Mobile and Sprint would continue competing vigorously for market share as “challenger” brands to Verizon and AT&T, the largest and second largest national facilities-based mobile wireless carriers in the United States, respectively. If the merger is permitted

to proceed unremedied, that competition would be lost.

#### 1. Relevant Market

As alleged in the Complaint, retail mobile wireless service is a relevant product market under Section 7 of the Clayton Act. Retail mobile wireless customers include consumers and small and medium businesses who buy their mobile wireless services at retail stores or online, choosing pricing and plans made available to the general public. Retail customers cannot substitute the mobile wireless service they purchase with the mobile wireless service purchased by large businesses and government entities, who purchase services through a distinct process and receive different pricing than the general public. Accordingly, a hypothetical monopolist of retail mobile wireless service profitably could raise prices.

The Complaint alleges a national geographic market for retail mobile wireless service. Wireless carriers generally price, advertise, and market their retail mobile wireless service on a nationwide basis. Because the wireless carriers compete against each other on a nationwide basis, a hypothetical monopolist of retail mobile wireless service in the United States profitably could raise prices.

#### 2. Competitive Effects

The market for retail mobile wireless service in the United States is highly concentrated and would become more so if T-Mobile were allowed to acquire Sprint. As discussed above, currently four national facilities-based mobile wireless carriers compete for retail mobile wireless service customers: Verizon and AT&T are the two largest, and T-Mobile and Sprint are the smaller two. The merger would result in three national facilities-based mobile wireless carriers, each with roughly one-third share of the national market.

The elimination of a fourth national facilities-based mobile wireless carrier would remove competition from Sprint and restructure the retail mobile wireless service market. The combination of T-Mobile and Sprint would eliminate head-to-head competition between the companies and threaten the benefits that consumers have realized from that competition in the form of lower prices and better service. The merger would also leave the market vulnerable to increased coordination among the remaining three carriers. Increased coordination harms consumers through a combination of higher prices, reduced innovation, reduced quality, and fewer choices.

Finally, competition between Sprint and T-Mobile to sell wireless service wholesale to MVNOs has benefited consumers by facilitating innovation by some MVNOs. The merger's elimination of this competition likely would reduce future innovation.

### 3. Entry and Expansion

A national facilities-based mobile wireless carrier needs to have spectrum and network assets deployed nationwide to provide retail mobile wireless service in the United States. Thus, *de novo* entry by a facilities-based mobile wireless carrier is very difficult. Without the relief provided in the proposed Final Judgment, neither entry nor expansion is likely to occur in a timely manner or on a scale sufficient to replace the competitive influence now exerted on the market by Sprint.

## III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires structural relief in the form of divestitures designed to ensure the development of a new national facilities-based mobile wireless carrier competitor to ultimately remedy the anticompetitive harms that flow from the change in the market structure that otherwise would have occurred as a result of the merger.

After careful scrutiny of Defendants' businesses, the United States identified a divestiture package to address the United States' concerns about the likely anticompetitive effects of the acquisition. The proposed divestiture requires T-Mobile to divest to DISH certain retail mobile wireless business assets and to facilitate DISH building its own mobile wireless network with which it will compete in the retail mobile wireless service market.

### A. Divestitures and Other Relief

#### 1. Divestitures

Under the terms of the proposed Final Judgment, T-Mobile must divest to DISH certain assets, including Sprint's prepaid retail wireless service business and certain spectrum licenses, and provide DISH an exclusive option to acquire cell sites and retail stores decommissioned by the merged firm.

- **Prepaid Assets.** The proposed Final Judgment requires T-Mobile to divest to DISH almost all of Sprint's prepaid wireless business,<sup>2</sup> including the Boost-branded, the Virgin-branded, and the

<sup>2</sup> The divestiture would not include subscribers to the Assurance Lifeline program (part of the Virgin Wireless business), or Sprint's prepaid customers receiving services through its Swiftel and Shentel affiliates, due to various contractual and regulatory obligations.

Sprint-branded businesses. These Prepaid Assets, coupled with required network support from T-Mobile described more fully below, will provide an existing business, with assets including customers, employees, and intellectual property, that will enable DISH to offer retail mobile wireless service. Acquiring this existing business will enhance DISH's incentives to invest in a robust facilities-based network, because acquiring an installed base of existing customers is expected to increase the returns on such investment.

- **800 MHz Spectrum Licenses.** The proposed Final Judgment further requires T-Mobile to divest to DISH Sprint's 800 MHz spectrum licenses. This spectrum would add to DISH's existing spectrum assets in order to ensure DISH has sufficient spectrum to meet its buildout and service requirements and provide mobile wireless service to customers. DISH may, at its option, elect not to acquire the spectrum if DISH can meet certain network buildout and service requirements without it. In such case, T-Mobile will auction the 800 MHz spectrum licenses to any person who is not already a national facilities-based wireless carrier.

- **Cell Sites and Retail Stores.** The proposed Final Judgment also requires T-Mobile to provide to DISH an exclusive option to acquire all cell sites and retail store locations being decommissioned by the merged firm. This requirement will enable DISH to utilize such existing cell sites and retail stores that are useful to DISH in building out its own wireless network and providing mobile wireless service to consumers.

The assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by DISH as a viable, ongoing business that can compete effectively in the retail mobile wireless service market. DISH is required to use the Divestiture Assets to offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service within one year of the closing of the sale of the Prepaid Assets. Defendants are also prohibited from taking any action that would jeopardize the divestitures ordered by the Court.

#### 2. Transition Services

Under the terms of the proposed Final Judgment, and at DISH's option, T-Mobile and Sprint shall enter into one or more transition services agreements to provide billing, customer care, SIM card procurement, device provisioning, and all other services used by the

Prepaid Assets prior to the date of their transfer to DISH for an initial period of up to two years after transfer. Such transition services will enable DISH to use the Prepaid Assets as quickly as possible and will help prevent disruption for Boost, Virgin, and Sprint prepaid customers as the business is transferred to DISH.

#### 3. 600 MHz Spectrum Deployment

The proposed Final Judgment requires DISH and T-Mobile to enter into good faith negotiations to allow T-Mobile to lease some or all of DISH's 600 MHz spectrum for use in offering mobile wireless services to its subscribers. Such an agreement would expand output by making the 600 MHz spectrum available for use by consumers even before DISH has completed building out its network, and would assist T-Mobile in transitioning consumers to its 5G network.

#### 4. Full MVNO Agreement

The proposed Final Judgment requires T-Mobile and Sprint to enter into a Full MVNO Agreement with DISH for a term of no fewer than seven years. Under the agreement outlined in the proposed Final Judgment, T-Mobile and Sprint must permit DISH to operate as an MVNO on the merged firm's network on commercially reasonable terms and to resell the merged firm's mobile wireless service. As DISH deploys its own mobile wireless network, T-Mobile and Sprint must also facilitate DISH operating as a Full MVNO by providing the necessary network assets, access, and services. These requirements will enable DISH to begin operating as an MVNO as quickly as possible after entry of the Final Judgment, and provide DISH the support it needs to offer retail mobile wireless service to consumers while building out its own mobile wireless network.

#### 5. Facilities-Based Entry and Expansion

The proposed Final Judgment requires T-Mobile and Sprint to comply with all network build commitments made to the Federal Communications Commission (FCC) related to their merger or the divestiture to DISH as of the date of entry of the Final Judgment, subject to verification by the FCC.<sup>3</sup> In turn, DISH is required to comply with the June 14, 2023 AWS-4, 700 MHz, H Block, and Nationwide 5G Broadband network build commitments made to

<sup>3</sup> See Letter to Marlene Dortch (FCC) from Nancy J. Victory and Regina M. Keeney (Counsel for T-Mobile and Sprint, respectively), May 20, 2019 at Attachment 1, available at <https://www.fcc.gov/sites/default/files/t-mobile-us-sprint-letter-05202019.pdf>.

the FCC on July 26, 2019, subject to verification by the FCC.<sup>4</sup> Incorporating these obligations into the proposed Final Judgment is intended to increase the incentives for the merged firm to achieve the promised efficiencies from the merger and for DISH to build out its own national facilities-based mobile wireless network to replace the competition lost as a result of Sprint being acquired by T-Mobile. Increasing DISH's incentives to complete the buildout of a fourth nationwide wireless network also serves to decrease the likelihood of coordinated effects that arise out of the merger.

#### 6. MVNO Requirements

The proposed Final Judgment obligates T-Mobile and Sprint to extend all of its current MVNO agreements until the expiration of the proposed Final Judgment. This obligation will ensure that T-Mobile's and Sprint's MVNO partners remain options for the consumers who currently use them. It also permits T-Mobile's and Sprint's MVNO partners to retain their current presence until the expiration of the proposed Final Judgment, by which time DISH is expected to have become an additional potential provider of services.

#### 7. T-Mobile's and DISH's eSIM Obligations

The proposed Final Judgment requires T-Mobile and DISH to support eSIM technology and prohibits T-Mobile and DISH from discriminating against devices based on their use of remote SIM provisioning or use of eSIM technology. The more widespread use of eSIMs and remote SIM provisioning may help DISH attract consumers as it launches its mobile wireless business. These provisions are intended to increase the disruptiveness of DISH's entry by making it easier for consumers to switch between wireless carriers and to choose a provider that does not have a nearby physical retail location, thus lowering the cost of DISH's entry and expansion. These benefits also decrease the likelihood of coordinated effects by increasing DISH's ability to reach consumers with innovative offerings.

#### B. Monitoring Trustee

The proposed Final Judgment provides that the United States may appoint a monitoring trustee with the power and authority to investigate and report on the Defendants' compliance

with the terms of the Final Judgment and the Stipulation and Order during the pendency of the divestiture, including, but not limited to, T-Mobile's sale of the Divestiture Assets, T-Mobile's compliance with exclusive option requirements for cell sites and retail store locations, and DISH's progress toward using the Divestiture Assets to operate a retail mobile wireless network. The United States intends to recommend a monitoring trustee for the Court's approval. The monitoring trustee will not have any responsibility or obligation for the operation of the Defendants' businesses. The monitoring trustee will serve at T-Mobile's and Sprint's expense, on such terms and conditions as the United States approves, and Defendants must assist the trustee in fulfilling its obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the divestiture of all the Divestiture Assets is finalized and the buildout requirements are complete, or until the term of any Transition Services Agreement has expired, whichever is later.

#### C. Firewall

Section XIII of the proposed Final Judgment requires T-Mobile and DISH to implement firewall procedures to prevent each company's confidential business information from being used by the other for any purpose that could harm competition. Within thirty days of the Court approving the Stipulation and Order, T-Mobile and DISH must submit their planned procedures for maintaining firewalls. Additionally, T-Mobile and DISH must explain the requirements of the firewalls to certain officers and other business personnel responsible for the commercial relationships between the two companies about the required treatment of confidential business information. T-Mobile and DISH's adherence to these procedures is subject to audit by the monitoring trustee. These measures are necessary to ensure that the implementation and execution of the obligations in the proposed Final Judgment and any associated agreements between T-Mobile and DISH do not facilitate coordination or other anticompetitive behavior during the interim period before DISH becomes fully independent of T-Mobile.

#### D. Prohibition on Reacquisition or Sale to Competitor

To ensure that DISH and T-Mobile remain independent competitors, Section XV of the proposed Final Judgment prohibits T-Mobile from

reacquiring from DISH any part of the Divestiture Assets, other than a limited carveout for T-Mobile to lease back a small amount of spectrum for a two-year period. Further, Section XV of the proposed Final Judgment prohibits DISH from selling, leasing, or otherwise providing the right to use the Divestiture Assets to any national facilities-based mobile wireless carrier. These provisions ensure that T-Mobile and DISH cannot undermine the purpose of the proposed Final Judgment by later entering into a new transaction, with each other or with another competitor, that would reduce the competition that the divestitures have preserved.

#### E. Enforcement Provisions

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. As set forth in the Stipulation and Order, DISH has agreed to be joined to this action for purposes of the divestiture. Including DISH is appropriate because the United States has determined that DISH is a necessary party to effectuate the relief obtained; the divestiture package was crafted specifically taking into consideration DISH's existing assets and capabilities, and divesting the package to another purchaser would not preserve competition. Thus, as discussed above, the proposed Final Judgment imposes certain obligations on DISH to ensure that the divestitures take place expeditiously and DISH meets certain deadlines in building out and operating its own mobile wireless services network to provide competitive retail mobile wireless service.

Paragraph XVIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XVIII(B) provides additional clarification regarding the

<sup>4</sup> See Letter to Donald Stockdale (FCC) from Jeffrey H. Blum (DISH's S.V.P. for Public Policy & Government Affairs), July 26, 2019 at Attachment A, available at <https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf>.



interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment seeks to restore competition that would otherwise be permanently harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XVIII(C) of the proposed Final Judgment further provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XVIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Section XVIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIX of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no

longer necessary or in the public interest.

#### *F. Stipulation and Order*

Until the divestitures required by the proposed Final Judgment are accomplished, the Defendants are required to take all steps necessary to comply with a Stipulation and Order entered by the Court.

#### **IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

#### **V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT**

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain

circumstances, published in the Federal Register.

Written comments should be submitted to: Scott Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 7000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### **VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT**

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits challenging the merger. The United States could have continued this litigation and sought preliminary and permanent injunctions against T-Mobile's acquisition of Sprint. The United States is satisfied, however, that the relief described in the proposed Final Judgment will provide a reasonably adequate remedy for the harm to competition in the retail mobile wireless service market. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

#### **VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT**

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the

violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at \*3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>5</sup>

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152-53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (quoting *United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged[.]"). Because the

<sup>5</sup> *See also BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass").

"court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237, § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000)).

## VIII. DETERMINATIVE DOCUMENTS

In formulating the proposed Final Judgment, the United States considered (1) the "Network and In-Home Commitments" commitments made to the FCC by T-Mobile and Sprint,<sup>6</sup> and (2) the "DISH Network 5G Buildout Commitments and Related Penalties" commitments made to the FCC by DISH.<sup>7</sup> These documents were determinative in formulating the proposed Final Judgment, and the Department will file a notice with the

<sup>6</sup> *See* Letter to Marlene Dortch (FCC) from Nancy J. Victory and Regina M. Keeney (Counsel for T-Mobile and Sprint, respectively), May 20, 2019 at Attachment 1, available at <https://www.fcc.gov/sites/default/files/t-mobile-us-sprint-letter-05202019.pdf>.

<sup>7</sup> *See* Letter to Donald Stockdale (FCC) from Jeffrey H. Blum (DISH's S.V.P. for Public Policy & Government Affairs), July 26, 2019 at Attachment A, available at <https://www.fcc.gov/sites/default/files/dish-letter-07262019.pdf>.

Court that includes these documents to comply with 15 U.S.C. § 16(b).

Dated: July 30, 2019.

Respectfully submitted,  
Frederick S. Young  
D.C. Bar No. 421285, Trial Attorney,  
Telecommunications and Broadband  
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Department of Justice, 450 Fifth Street  
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20530, Telephone (202) 307-2869

[FR Doc. 2019-17153 Filed 8-9-19; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On August 6, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Oregon in the lawsuit entitled *United States v. Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob*, Civil Action No. 19-cv-01217.

The United States brought this action under the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2701, *et seq.*, to recover from defendants Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob, \$994,146.43 in costs and damages incurred by the National Pollution Funds Center of the United States Coast Guard ("the NPFC") for actions undertaken and damages paid by the Coast Guard in response to discharges of oil from a fuel storage tank located under a partially-collapsed pier on the Columbia River in Astoria, Oregon. The Consent Decree resolves the United States' claims against the defendants. Under the Consent Decree, the defendants will pay the NPFC \$994,146.43, which is the full amount of its claim. The United States will, in return, grant the defendants a covenant not to sue under OPA, subject to standard re-openers and reservations of rights.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Cannery Pier Hotel, LLC, and Terry Rosenau solely in his capacity as Personal Representative for the Estate of Robert H. Jacob*, D.J. Ref. No. 90-5-1-1-12151. All comments

must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2019-17163 Filed 8-9-19; 8:45 am]

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## DEPARTMENT OF JUSTICE

[OMB Number 1121-NEW]

### Agency Information Collection Activities: Proposed New Information Collection Activity; Comment Request, Proposed Study Entitled "The National Baseline Study on Public Health, Wellness, & Safety"

**AGENCY:** National Institute of Justice, U.S. Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** The Department of Justice encourages public comment and will accept input until October 11, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the

proposed information collection instrument with instructions or additional information, please contact Christine Crossland, National Institute of Justice, Office of Research, Evaluation, and Technology, 810 Seventh Street NW, Washington, DC 20531 (overnight 20001), (202) 616-5166 or via email at [NIJ\\_NationalBaselineStudy@usdoj.gov](mailto:NIJ_NationalBaselineStudy@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the National Institute of Justice, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* New survey.
2. *The Title of the Form/Collection:* "The National Baseline Study on Public Health, Wellness, & Safety".
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the U.S. Department of Justice is the National Institute of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Title IX, Section 904(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162 (codified at 42 U.S.C. 3796gg-10 note), as amended by Section 907 of the Violence Against Women Reauthorization Act, Public Law 113-4, mandates that the National Institute of Justice (NIJ), in consultation with the U.S. Department of Justice's Office on