

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

AT&T Mobility II and EchoStar Corporation's
Spectrum Assignment Applications

WT Docket No. 25-303

**COMMENTS OF PUBLIC KNOWLEDGE AND OPEN TECHNOLOGY
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I. Introduction and Summary

Public Knowledge and Open Technology Institute at New America (“Commenters”) submit these comments in response to the Commission’s Public Notice, DA 25-919 (WT Docket No. 25-303), announcing that it has accepted for filing the applications of AT&T Mobility II LLC and EchoStar Corporation for consent to assign certain 3.45 GHz and 600 MHz spectrum licenses pursuant to Section 310(d) of the Communications Act, 47 U.S.C. § 310(d). The parties also seek waivers of the 3.45 GHz aggregation limit and modifications of the 600 MHz construction deadlines, asserting that the proposed transaction will strengthen both firms and yield “significant public interest benefits.”¹

Commenters would have preferred to see Echostar continue its deployments and become a fourth national-facilities based competitor. As Department of Justice Assistant Secretary Gayle Slater observed in her statement on the US Cellular/T-Mobile transaction, we stand at a “pivotal moment” in the wireless industry, where the lack of available future spectrum makes the emergence of a new wireless competitor impossible.² But the Commission, rather than the market, did not allow Echostar to continue as a facilities-based competitor. This sale represents the culmination of regulatory choices that made it impossible for EchoStar to fulfill the role of a fourth, facilities-based nationwide competitor envisioned when the Commission and the Department of Justice (“DOJ”) approved the Sprint-T-Mobile merger.³

¹ Wireless Telecommunications Bureau Accepts for Filing AT&T Mobility II LLC and EchoStar Corporation’s Spectrum Assignment Applications, DA 25-919, at 1–2 (Sept. 30, 2025) (noting applicants’ waiver requests and describing their public-interest showing).

² Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Merger of T-Mobile and UScellular (July 10, 2025) (“DOJ Statement”), <https://www.justice.gov/opa/pr/statement-department-justice-antitrust-division-closing-its-investigation-merger-t-mobile>.

³ See Applications of T-Mobile US, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses, Leases, and Authorizations, Memorandum Opinion and Order, 34 FCC Rcd 10578, ¶¶ 6, 191–194 (2019) (“T-Mobile/Sprint Order”) (discussing facilities-based competition premise and Boost as envisioned new fourth competitor).

Under Chairman Carr, the Commission has changed its policy from relying on facilities-based competition to maximize consumer welfare to a policy of “spectrum efficiency” that prioritizes rapid utilization of frequencies by incumbent carriers over the preservation of market entry and competition. EchoStar, under constant regulatory scrutiny for perceived under-deployment, ultimately agreed to divest its mid-band and low-band licenses to AT&T. The Commission now confronts the logical consequence of those decisions: a marketplace dominated by three nationwide carriers controlling nearly all commercially deployable mobile spectrum. The DOJ recently described this structure as an “oligopoly” of the “Big 3” (AT&T, Verizon, and T-Mobile) who together “account for more than 90 percent of the roughly 335 million mobile subscriptions in the United States” and “control[] more than 80 percent of the mobile wireless spectrum in the country.”⁴

Against this backdrop, while it may be true that transferring EchoStar’s licenses to AT&T may modestly rebalance spectrum holdings among the three remaining national carriers, this transaction does nothing to restore lost competition. Indeed, absent strong, transaction-specific safeguards, the transaction risks entrenching the very oligopoly the DOJ has warned about. The Commission must therefore condition approval on measures that meaningfully advance Congress’s directive in Section 309(j) “to prevent . . . undue concentration of licenses and to disseminate licenses among a wide variety of applicants.”⁵

Accordingly, Commenters urge the Commission to recognize that this transaction is a direct result of its policy choices, which led to the elimination of the fourth facilities-based competitor. Therefore, the resulting remedies should be understood as transaction-specific. Commenters call for the imposition of pro-competitive conditions, such as mandatory roaming

⁴ DOJ Statement..

⁵ 47 U.S.C. § 309(j)(3)(B).

and wholesale access, to enable the remaining regional and virtual providers to compete effectively. Additionally, Commenters advocate for the adoption of consumer-protection conditions that ensure continued participation in Lifeline and other affordable service programs, along with device-unlocking commitments and open-internet obligations that are proportionate to the concentrated market structure.

Only with such conditions can the Commission reconcile approval of this transfer with its statutory obligations to promote competition, protect consumers, and prevent excessive spectrum concentration. Without them, the transaction would merely formalize the market consolidation the Commission itself has helped create.

II. The Commission’s Own Actions Forced EchoStar’s Exit from the Market

For more than two decades, the Commission pursued a consistent policy that defined the “public interest” in spectrum assignments by reference to competition, not mere utilization.⁶ The Commission’s approval of the Sprint-T-Mobile transaction rested on that premise: the deal could proceed only because Dish Network (now EchoStar) was expected to emerge as a new, fourth, facilities-based national carrier.⁷

That policy has since been abruptly reversed. Recently, the Commission under Chairman Carr reinterpreted its public-interest mandate to prioritize “spectrum efficiency” and intensity of use over market structure, notably departing from the competition-focused analysis put forward by the DOJ. Under this new approach, the Commission evaluates licensees not by their contributions to competition, but by how fully they have deployed their spectrum relative to incumbent carriers. For example, in granting the T-Mobile-USCellular transaction, the

⁶ See, e.g., Policies Regarding Mobile Spectrum Holdings, Report and Order, 29 FCC Rcd 6133 ¶¶ 5-6, 29 (2014) (“Spectrum Aggregation Order”).

⁷ T-Mobile-Sprint Order, 34 FCC Rcd at ¶ 6; id. ¶¶ 189–200 (Boost divestiture and related conditions).

Commission departed from the DOJ, claiming that “The Commission has never adopted a rigid numerical threshold to define effective competition ... Moreover, we are charged with managing spectrum—a scarce and valuable public resource—in a manner that promotes its highest and best use. In evaluating transactions or rulemakings involving spectrum access, we must weigh practical realities of deployment, innovation, and service to the public.”⁸ The same order noted that “[i]n analyzing the spectrum data for spectrum utilization, which is a measure of how much spectrum is deployed compared to the amount available, we find that T-Mobile seems to be more intensely deploying its available spectrum resources, whereas UScellular seems to be generally underutilizing its spectrum resources. Post-transaction, T-Mobile is expected to increase the acquired spectrum utilization to current T-Mobile’s high utilization rates by deploying additional spectrum resources.”⁹

Economists distinguish between static efficiency, which focuses on ensuring that resources are fully deployed at a given point in time, and dynamic efficiency, which measures whether allocation decisions promote long-term innovation and competition. Static efficiency might justify assigning spectrum to incumbents who can deploy it immediately, but dynamic efficiency recognizes that a system dominated by a few carriers--no matter how intensively they use their spectrum--can stifle future entry, technological experimentation, and consumer choice.

As the Australian Competition and Consumer Commission explains, “allocative efficiency is

⁸ Applications of T-Mobile Inc. and United Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations and Leases, GN Docket No. 24-286, Memorandum Opinion and Order, DA 25-605 (WTB/OIA July 11, 2025) (UScellular-T-Mobile Order), <https://docs.fcc.gov/public/attachments/DA-25-605A1.pdf>. Moreover, in public comments Chairman Carr has emphasized the theme of spectrum usage. See Commerce Global Aerospace Summit (Sept. 9, 2025), <https://docs.fcc.gov/public/attachments/DOC-414444A1.pdf> (discussing how EchoStar/SpaceX deal will bring “underused spectrum to bear for the American consumer.”) See Lower 37 GHz Band; Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, Report and Order, Sixth Report and Order, and Further Notice of Proposed Rulemaking, 40 FCC Rcd 3413, 3413 (2025).

⁹ UScellular-T-Mobile Order ¶ 99.

achieved where resources ... are allocated to their highest-valued uses,” while “dynamic efficiency reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.”¹⁰ The Commission’s recent emphasis on utilization alone elevates static efficiency at the expense of dynamic efficiency, at the expense of innovation and competition over time. As Professor Milton Mueller observed, “As a matter of pure engineering efficiency, it is of course true that a single, optimizing planner can make better use of limited spectrum bands than multiple, competitive providers. But then, that argument applies to any and all carriers (an AT&T-Verizon merger, for example) and to any resource – that’s why it was used by the socialists of the 19th century to claim that capitalism was inherently wasteful and inefficient. Dynamic efficiencies of competition typically benefit the public more than a few allocative efficiencies.”¹¹

Nevertheless, applying this new philosophy, Chairman Carr set his sights on EchoStar, which was still in the early phases of its 5G build-out and pursuing an Open RAN-based network architecture. EchoStar found itself under investigation for alleged underutilization of its licenses, despite the fact that it had previously negotiated an extension of its buildout obligations based on the COVID-19 pandemic, supply chain disruptions, the Russia-Ukraine war and resulting inflation, and technical difficulties deploying its novel Open RAN architecture.¹² This

¹⁰ Australian Competition & Consumer Comm’n, Competition and Efficiency Analysis, Network (Mar. 2017), <https://www.accc.gov.au/system/files/Network%20March%202017.pdf>.

¹¹ Milton Mueller, Why I Fear the AT&T-T-Mobile Merger, Technology Liberation Front (April 18, 2011), <https://techliberation.com/2011/04/18/why-i-fear-the-att-t-mobile-merger>.

¹² See Letter from Jeffrey H. Blum, Exec. Vice President, External & Legislative Affairs, EchoStar Corp., to Joel Taubenblatt, Chief, Wireless Telecomms. Bureau, FCC, at 6-7 (Sept. 17, 2024), <https://www.fcc.gov/ecfs/document/1091867842711/1>; Brendan Carr, Chairman, Fed. Commc’ns Comm’n, Letter to Charles W. Ergen, Chairman of the Bd. of Dirs., EchoStar Corp. (May 9, 2025), <https://prod-i.a.dj.com/public/resources/documents/Carr-Ergen-letter.pdf>.

reinterpretation departed from decades of precedent that treated spectrum concentration itself as a competitive harm.¹³

The initiation of these proceedings placed EchoStar under a regulatory cloud. Although the company remained compliant with its construction milestones, the Commission’s suggestion that it might reclaim or redistribute the licenses, in the words of economist Lawrence Spiwak, “poisoned the well with Wall Street about the continued viability of EchoStar’s spectrum portfolio, and no one should be surprised if EchoStar’s cost of capital increases to account for the heightened regulatory risk.”¹⁴ These actions by the FCC nearly drove EchoStar to bankruptcy.¹⁵ Thus by mid-2025, facing ongoing investigations and the prospect of having its licenses revoked, EchoStar agreed to sell its mid-band and low-band licenses to AT&T for roughly \$23 billion.¹⁶ The Wireless Telecommunications Bureau subsequently accepted the assignment applications for filing.¹⁷ In connection with the sale, EchoStar will continue operating under an extended wholesale agreement with AT&T.

Industry observers and market participants have confirmed that the sale was not a voluntary strategic realignment but a compelled divestiture. As MobileX founder Peter Adderton explained, “They all came together, not because they wanted to, not because it was a natural

¹³ See Spectrum Aggregation Order, 29 FCC Rcd 6133, ¶¶ 1-3.

¹⁴ Lawrence J. Spiwak, *The Curious Case of Brendan Carr Versus EchoStar*, Notice and Comment (June 9, 2025), https://www.yalejreg.com/nc/the-curious-case-of-brendan-carr-versus-echostar-by-lawrence-j-spiwak/?utm_source=chatgpt.com.

¹⁵ Mike Dano, *EchoStar could threaten bankruptcy over FCC inquiry*, LightReading (May 30, 2025), <https://www.lightreading.com/open-ran/echostar-could-threaten-bankruptcy-over-fcc-inquiry>.

¹⁶ AT&T Press Release, *AT&T to Acquire Spectrum Licenses from EchoStar* (Aug. 26, 2025), <https://about.att.com/story/2025/echostar.html> (announcing purchase of ~30 MHz of 3.45 GHz and ~20 MHz of 600 MHz spectrum nationwide).

¹⁷ Public Notice, DA 25-919, at 1 (Sept. 30, 2025)

solution, but because they were all smashed together in absolute, massive desperation[.]”¹⁸ In short, the Commission’s enforcement posture made EchoStar’s continued independence untenable. EchoStar’s exit ends any realistic possibility of a fourth facilities-based carrier and effectively extinguishes the only ongoing nationwide Open RAN deployment effort. This outcome contradicts both the T-Mobile-Sprint Order and national policy objectives to reduce dependence on foreign equipment suppliers.¹⁹

The Commission thus faces a self-created dilemma. Its decisions to redefine “efficient use” of spectrum and to pursue enforcement against EchoStar led directly to the consolidation now before it. The instant applications are therefore not ordinary secondary-market transactions, but the regulatory hangover of a policy experiment that traded competition for concentration. The Commission cannot undo those choices, but it can mitigate their effects by conditioning approval here to restore the competitive safeguards Congress demanded in Sections 309 and 310 of the Act.

III. This Transaction Strengthens the “Big Three” Oligopoly and Undermines Statutory Goals

The proposed transfer exacerbates the “Big Three” oligopoly identified by the Department of Justice, fails to restore competitive balance, and operates in a market that cannot self-correct. These harms require Commission intervention.

A. The Department of Justice Has Already Identified the Competitive Harm

In its recent statement closing the T-Mobile-UScellular investigation, the Department of Justice (“DOJ”) warned that continued consolidation of spectrum among the three nationwide

¹⁸ Catherine Sbeglia Nin, AT&T–EchoStar Spectrum Deal Tests U.S. Regulatory Resolve, RCR Wireless News (Sept. 8, 2025), <https://www.rcrwireless.com/20250908/carriers/att-echostar-spectrum-2>.

¹⁹ See Secure and Trusted Communications Networks Act of 2019, P.L. 116-124, 47 U.S.C. § 1601 et seq.

carriers (AT&T, Verizon, and T-Mobile) has produced “an oligopoly” controlling more than 90 percent of subscribers and over 80 percent of spectrum suitable for mobile use. The DOJ explained that this trend “threatens to impede the path for a fourth national player to emerge and challenge the entrenched incumbents with new and innovative offerings.”²⁰ The same risk is present here: assigning EchoStar’s mid-band and low-band licenses to AT&T consolidates yet more spectrum into the hands of the Big Three and forecloses the emergence of any new nationwide carrier for the foreseeable future.

B. At Best, the Transfer Slightly Rebalances Spectrum Within the Oligopoly

AT&T argues that the acquisition should be viewed as pro-competitive because it allows the company, currently the spectrum-poorest of the three, to approach parity with Verizon and T-Mobile. Post-transaction, AT&T’s total holdings will be “415 megahertz of spectrum, including up to 110 megahertz of below-1-GHz spectrum and up to 100 megahertz of 3.45 GHz spectrum.”²¹ In light of the Commission’s actions that made Echostar’s spectrum sale inevitable, we agree. This is not a case like the AT&T/T-Mobile transaction, where preventing AT&T from acquiring T-Mobile forced T-Mobile to become a stronger competitor. The Commission’s actions have ensured that if Echostar cannot sell its spectrum to AT&T, it will go to either Verizon or T-Mobile. It is better for AT&T to acquire this spectrum and achieve parity among the Big 3 remaining carriers than to allow either T-Mobile or Verizon to acquire an insurmountable spectrum advantage. Additionally, the structure of the deal allows Echostar to continue to operate as a “hybrid” MVNO, rather than exiting the market as US Cellular did.

But parity among oligopolists is not competition, and a hybrid MVNO is not a facilities based competitor. Put another way, the least worst outcome is not a “good” outcome that serves

²⁰ DOJ Statement.

²¹ DA 25-919, at 2

the public interest. Even if the deal alleviates an internal imbalance among the Big Three, it simultaneously raises the barrier to entry that new or smaller providers would need to enter the market, and forecloses them entirely from the most valuable spectrum. The competitive harm is structural and cumulative: every transaction that increases the spectrum share of one incumbent makes the collective position of the three harder to dislodge. It is therefore incumbent on the Commission to take steps to mitigate the harms caused by its own actions that have brought the market to this state of consolidation.

C. The Commission's Own Precedent Requires It to Address Spectrum Concentration

For nearly three decades, the Commission has recognized that preventing undue aggregation of spectrum is central to promoting competition.²² Section 309(j)(3)(B) of the Communications Act directs the Commission to avoid “undue concentration of licenses” and to ensure that spectrum is disseminated among “a wide variety of applicants.”²³ That statutory obligation applies equally to secondary-market transfers approved under Section 310(d).

Here, AT&T seeks waivers of both the 3.45 GHz band aggregation limit,²⁴ and the 600 MHz build-out rules.²⁵ Granting these requests would not only increase AT&T's spectrum depth in nearly every market, but also weaken the Commission's spectrum-screen safeguards. Allowing one of the Big Three to exceed the cap before its expiration, without offsetting pro-competitive conditions, would signal that the Commission now views its spectrum limits as a barrier to “efficiency” rather than as essential enforcement tools.

²² See Spectrum Aggregation Order, 29 FCC Rcd 6133 at ¶¶ 5-6, 29.

²³ 47 U.S.C. § 309(j)(3)(B).

²⁴ 47 C.F.R. § 27.1606

²⁵ 47 C.F.R. §§ 27.14(t), 1.953, 1.946(e)(3)

D. The Market Cannot Self-Correct Under the Present Structure

Some analysts argue that other players, such cable operators, MVNOs, and emerging satellite-to-handset providers, will discipline the market.²⁶ Experience shows otherwise. Cable MVNOs remain geographically bounded to their wireline footprints and market wireless service primarily as a bundle component, not as a stand-alone nationwide offering. MVNOs rely on wholesale access determined entirely by the host carrier, which can adjust pricing or technical terms unilaterally. And direct-to-device satellite service, though promising, is complementary to terrestrial service and lacks the spectrum capacity to substitute for it. These models depend on the Big Three's networks; they do not compete with them. Without regulatory intervention, concentration of spectrum ownership will continue to yield parallel pricing and diminished innovation. As the DOJ noted, "Increased coordination harms consumers through a combination of higher prices, reduced innovation, reduced quality, and fewer choices."²⁷

IV. Conditions Necessary to Protect Consumers and Advance the Public Interest

The Commission cannot justify further consolidation solely in the name of "spectrum efficiency." For decades, the FCC has proceeded on the assumption that facilities-based rivalry would protect consumers.²⁸ Having now accepted a market structure of three integrated carriers

²⁶ Nicole Ferraro, Jeff Baumgartner, *What's the Story? AT&T's \$23B EchoStar spectrum splurge*, LIGHT READING (Sep. 2, 2025), <https://www.lightreading.com/5g/what-s-the-story-at-t-s-23b-echostar-spectrum-splurge>; Diana Goovaerts, *Are consumers winners or losers in AT&T's EchoStar deal?*, FIERCE NETWORK (Aug. 27, 2025), <https://www.fierce-network.com/wireless/ding-dong-wireless-competition-dead-or-it> (quoting Jeff Moore as saying "I do think that the MVNO model continues to be a factor in ensuring healthy competition."). See also See DA 25-919 at 1–2 (describing EchoStar's ongoing wholesale arrangements and service operations).

²⁷ DOJ Statement.

²⁸ See, e.g., Updating Part 1 Competitive Bidding Rules, *Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order*, 30 FCC Rcd 7493, ¶ 4 (2015) ("We anticipate that, with experience in operations and investment, smaller companies may ultimately engage in more robust competition, including as facilities-based providers in certain markets, which has been--and remains--a goal of the Commission.")

controlling nearly all spectrum suitable for terrestrial mobile service, the Commission must re-engage its statutory duty to counteract concentration through enforceable conditions. The remainder of these comments propose such conditions to restore competition, and protect consumers.

Section 254(b)(1)–(3) of the Communications Act directs the Commission to ensure that “quality services are available at just, reasonable, and affordable rates” and that “access to advanced telecommunications and information services” is provided to all Americans.²⁹ The statute further emphasizes the obligation of the Commission to protect “low-income consumers and those in rural, insular and high-cost areas.”³⁰ In approving transactions under Section 310(d), the Commission has repeatedly interpreted these principles to require targeted consumer-protection and pro-competition conditions where consolidation threatens affordability or universal service.³¹

Following EchoStar’s withdrawal as a facilities based competitor, only three nationwide incumbents will control the networks capable of providing full-coverage mobile service. Without enforceable conditions, these carriers will have diminished incentive to serve low-income or credit-constrained consumers who depend on prepaid and discount options. As the Commission recognized in earlier transaction reviews, market concentration heightens the need for explicit consumer-protection obligations.³²

²⁹ 47 U.S.C. § 254(b)(1)–(3).

³⁰ 47 U.S.C. § 254(b)(3).

³¹ See Applications of AT&T Inc. & Leap Wireless Int’l, Inc., *Memorandum Opinion & Order*, 29 FCC Rcd 2735 ¶¶ 3, 72, 171 (2014) (requiring conditions to protect value-conscious consumers in the Cricket/Leap acquisition); see also Applications of T-Mobile US, Inc. & Sprint Corp., *Memorandum Opinion & Order*, 34 FCC Rcd 10578 ¶¶ 341–344 (2019) (addressing low-income and Lifeline concerns).

³² See Verizon-TracFone Order, 36 FCC Rcd 16994 ¶¶ 5, 37 (2021) (conditioning approval on consumer-protection commitments, and noting effect of concentration on competition).

A. Lifeline and Affordability Obligations

The Commission should require AT&T and EchoStar (through Boost Mobile) to maintain active participation in the Lifeline program and any successor low-income support mechanism, including any reauthorized Affordable Connectivity Program. In prior transactions, the Commission has found that maintaining such participation serves the public interest by preserving affordable service options for vulnerable subscribers.³³ Likewise, the Commission required comparable commitments in the AT&T-Leap and T-Mobile-Sprint orders to protect value-conscious consumers.³⁴

Given the companies' scale and financial capacity, continued participation imposes no undue burden.. Accordingly, the Commission should require AT&T to offer Lifeline-eligible plans throughout its nationwide footprint; and Boost Mobile to continue its existing Lifeline offerings for no less than five years post-closing, subject to Commission review.

B. Preservation of Prepaid and No-Contract Offerings

EchoStar's Boost Mobile brand has historically served credit-limited and price-sensitive consumers through prepaid, no-contract plans. The Commission has repeatedly recognized the importance of preserving such offerings to protect "value-conscious" subscribers.³⁵

AT&T should be required to maintain and publicly advertise a portfolio of prepaid plans (under its AT&T Prepaid, Cricket, or Boost brands) that (1) do not require credit checks or long-term contracts; (2) include a low-cost option with unlimited talk and text and a reasonable data allowance consistent with current industry benchmarks; and (3) remain available for at least

³³ See Verizon-TracFone Order ¶ 6 ("Verizon commits to continue to offer TracFone's Lifeline-supported services over the same service area where TracFone currently offers Lifeline service for a minimum of seven years following the close of the transaction.").

³⁴ AT&T/Leap Order, 29 FCC Rcd 2735 ¶¶ 72, 171; T-Mobile/Sprint Order, 34 FCC Rcd 10578 ¶¶ 341–344.

³⁵ See T-Mobile–Sprint Order, 34 FCC Rcd 10578 at ¶¶ 191–194, 341–344; AT&T–Leap Order, 29 FCC Rcd 2735 at ¶¶ 71–76.

five years after closing. This requirement mirrors the Commission’s approach in prior transaction proceedings to protect affordability and consumer choice.

C. Device Unlocking and Portability

Device locking continues to impede consumer mobility, especially for prepaid users. The DOJ and FCC have both used unlocking conditions to remedy some of the anticompetitive effects of wireless mergers.³⁶ Consistent with this, AT&T and EchoStar should be required to automatically unlock all handsets within 60 days of a customer’s fulfillment of any financing obligation or after one year for prepaid users, whichever occurs first. The requirement should apply across all affiliated brands and be enforceable through the Commission’s complaint process.

D. Open-Internet and Non-Discrimination Commitments

In a three-firm market, open-internet and non-discrimination safeguards are essential to prevent anticompetitive behavior such as paid prioritization and blocking. The Commission has previously found that such practices harm consumers and edge providers and are inconsistent with the public interest.³⁷

AT&T and EchoStar should therefore be prohibited from blocking, throttling, or engaging in paid prioritization of lawful content or applications on any mobile broadband offering until the Commission adopts uniform rules governing all providers. This condition is narrowly tailored to prevent foreseeable harms identified by the DOJ and to fulfill the Commission’s duty under 47 U.S.C. § 201(b) to ensure “just and reasonable” practices.

³⁶ Amended Final Judgment, *United States v. Deutsche Telekom AG*, Case 1:19-cv-02232, at § VII.F.iii (TJK) (D.D.C.) (Oct. 23, 2023); *Verizon-TracFone Order* ¶ 8; *Verizon-TracFone Order* ¶ 8.

³⁷ *Protecting and Promoting the Open Internet, Report & Order*, 30 FCC Rcd 5601 (2015).

E. Roaming and Wholesale

Roaming and wholesale access obligations are essential safeguards in a wireless market now dominated by three nationwide carriers. The Commission has repeatedly found that ensuring reasonable roaming arrangements is important to promoting competition and innovation because it allows smaller and regional carriers to offer seamless service and compete effectively with nationwide incumbents.³⁸ Without mandated roaming, dominant carriers can use their control of essential network facilities to deny interoperability to rivals, resulting in service gaps and higher consumer prices, outcomes in tension with the Commission’s duty to promote “reasonable and nondiscriminatory access” under Sections 201(b) and 202(a) of the Communications Act.

Similarly, the Commission has long recognized that wholesale access enables entry by mobile virtual network operators (MVNOs) and fosters new service models that benefit consumers. In approving the T-Mobile-Sprint merger, the Commission expressly relied on the continued availability of wholesale arrangements to mitigate harms to competition, noting that MVNOs offer a range of “differentiated services.”³⁹ The Department of Justice likewise observed that the loss of such competition can harm consumers and that the concerns it expressed over the T-Mobile-Sprint merger “remain highly relevant.”⁴⁰

Absent enforceable roaming and wholesale obligations, the three nationwide carriers retain unchecked power to restrict network access, foreclose entry, and extract supracompetitive wholesale rates. Accordingly, any approval of the AT&T-EchoStar spectrum assignment must

³⁸ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Second Report and Order, 26 FCC Rcd 5411, ¶¶ 6-31 (2011).

³⁹ Applications of T-Mobile US, Inc. & Sprint Corp., 34 FCC Rcd 10578 ¶ 11, 63 (2019).

⁴⁰ DOJ Statement.

include conditions requiring AT&T to provide fair, reasonable, and nondiscriminatory roaming and wholesale access on its network.

F. Accountability, Reporting, and Enforcement

To ensure compliance with these conditions, the Commission should require annual public filings for five years post-closing detailing: (1) Lifeline and low-income program participation levels; (2) the number and pricing of prepaid plans offered; (3) device-unlocking metrics; and (4) network-management or traffic-prioritization practices. Each report should be filed in the transaction docket and certified by a corporate officer under penalty of perjury. Comparable reporting obligations have been imposed in prior transactions to facilitate oversight and accountability.

V. Conclusion

For the foregoing reasons, the Commission should not permit this assignment to proceed as a routine, conditions-free transfer that further entrenches the “Big Three.” Instead, to satisfy its obligations under §§ 309(j) and 310(d) to prevent undue concentration of licenses, protect consumers, and advance competition, the Commission should approve the applications, if at all, only with enforceable, transaction-specific safeguards.. With them, the Commission can mitigate the competitive harms it and the DOJ have identified in this and similar transactions, preserve options for low-income and price-sensitive consumers, and keep a path open for future entry and innovation by non-facilities-based providers.

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