

ASSURANCE OF VOLUNTARY COMPLIANCE

Because Colorado may receive substantial benefits from DISH locating its wireless headquarters in Colorado, becoming a wireless competitor, and deploying 5G service in Colorado in connection with the merger of T-Mobile and Sprint (the “Merger Parties”), the Office of the Attorney General agrees to drop its lawsuit to block the merger so long as DISH agrees to the specific commitments made below. At the same time, the Office of the Attorney General is entering into a separate binding agreement with the Merger Parties to ensure that Colorado benefits from improved 5G coverage in Colorado, especially in rural areas.

This Assurance of Voluntary Compliance (“Assurance”) is entered into between the State of Colorado, by and through its Office of the Attorney General (the “OAG”), and DISH Network Corporation (“DISH”). This Assurance is entered into by the OAG and DISH to have the OAG withdraw from participation in the multistate litigation described in Section II, paragraph 4 below and settle the claims asserted there.

I. PARTIES

1. The OAG has authority to enforce state and federal antitrust laws, and has authority to finally and fully resolve any antitrust disputes between the OAG and DISH.
2. DISH is a publicly traded corporation headquartered in Colorado. DISH started offering the DISH® branded pay-TV service in March 1996 and DISH is now the nation’s fourth largest live-linear television programming provider. DISH’s principal executive offices are located at 9601 South Meridian Boulevard, Englewood, Colorado 80112.

II. FACTUAL SUMMARY

3. On April 29, 2018, the Merger Parties announced that they had entered into a definitive agreement for an all-stock transaction in which T-Mobile and Sprint would combine to form the New T-Mobile (the “Merger”). The OAG investigated potential anticompetitive effects related to the proposed Merger and sought relevant information from the Merger Parties regarding New T-Mobile’s proposed business plan and strategic development for Colorado.
4. On June 11, 2019, the OAG joined other states in filing a civil antitrust law enforcement action to enjoin the Merger under Section 16 of the Clayton Act, 15 U.S.C. § 26, *State of New York et al v. Deutsche Telekom AG et al.*, No. 1:19-cv-05434 (S.D.N.Y. 2019) (the “SDNY Litigation”). In the SDNY Litigation, the OAG and other

states alleged that the Merger may lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. On July 26, 2019, the DOJ and Attorneys General for five states reached a settlement with T-Mobile and Sprint regarding the proposed Merger (the “DOJ Settlement”). DISH was also a party to this settlement. According to the DOJ, the “settlement requires a substantial divestiture package in order to enable a viable facilities-based competitor to enter the market. Further, the settlement will facilitate the expeditious deployment of multiple high-quality 5G networks for the benefit of American consumers and entrepreneurs.”

6. The DOJ found that the settlement provides DISH “with the assets and transitional services required to become a facilities-based mobile network operator that can provide a full range of mobile wireless services nationwide.” In addition to the DOJ Settlement, T-Mobile and DISH also made significant commitments to the Federal Communications Commission regarding 5G broadband deployment. Among other things, DISH has committed to “deploy a facilities-based 5G broadband network capable of serving 70 percent of the U.S. population by June 2023.”

7. In addition to the DOJ settlement, to resolve concerns posed by the OAG regarding the Merger, DISH has proposed, and the OAG has accepted, a series of commitments set forth below that will be enforceable by the OAG under the laws of the State of Colorado. This Assurance memorializes those commitments.

III. CONSIDERATION

8. This Assurance, in its entirety, shall be conditioned upon (and, for clarity, DISH’s obligations as set forth in this Assurance will not be effective unless and until) (a) the OAG withdrawing as a party to the SDNY Litigation and any other related adverse legal action by the OAG; (b) OAG becoming a party to a complaint filed by the DOJ regarding the Merger and further joining the DOJ in any settlement of such complaint; and (c) the closing of the Merger.

9. DISH and the OAG enter into this Assurance as a compromise and complete and final settlement of all pending claims related to the OAG’s participation in the SDNY Litigation. This Assurance is entered into without any trial or adjudication of any issue of fact or law or finding of liability of any kind, and nothing contained in this Assurance shall be construed to limit or to restrict DISH’s rights to use this Assurance to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal, contractual or equitable defense in any pending or future legal or administrative action.

10. Nothing contained in this Assurance may be taken as or construed to be an admission or concession by DISH of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing. Neither this Assurance, nor any negotiations, statements or documents related thereto, shall be offered or received in any

legal or administrative proceeding or action as an admission, evidence or proof of any violation or liability under or wrongdoing in connection with any law, rule or regulation, except in an action by the OAG to enforce the terms of this Assurance.

IV. RELEASE

11. The OAG acknowledges that execution of this Assurance constitutes a complete and final settlement and release by the OAG of all claims or disputes that were brought or could have been brought, including, but not limited to, civil claims, causes of action, restitution, disgorgement, damages, fines, costs, penalties, and/or attorney's fees that were asserted or could have been asserted by the OAG against the Merger Parties and/or DISH, and/or any of their respective Affiliates, successors, employees, shareholders, officers, directors, agents and/or assigns, individually or collectively, arising out of, relating to, or based on the subject matter of the SDNY Litigation.

V. DEFINITIONS

12. For purposes of this Assurance, unless otherwise defined herein, capitalized terms are defined as follows:

- a) "Affiliate" is defined as any entity, individual, firm, or corporation, directly or indirectly controlling, controlled by, or under common control with DISH.
- b) "Closing Date" is defined as the closing date of the sale of the Prepaid Assets (excluding certain Retail Locations and tower-related facilities, for which the sale is expected to occur throughout the term of this Assurance) from New T-Mobile to DISH.
- c) "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.
- d) "5G Broadband Service" means at least 3GPP Release 15 capable of providing Enhanced Mobile Broadband (eMBB) functionality.

VI. RELIEF

13. The OAG acknowledges that DISH has provided certain commitments to the Federal Communications Commission (“FCC”) and DOJ with respect to the Merger (“Federal Commitments”) and recognizes that such Federal Commitments may ultimately inure to the benefit of the State of Colorado and its consumers and are subject to the enforcement authority of the FCC and DOJ.

14. The OAG has accepted the terms of this Assurance and the terms and conditions contained in any final judgment entered in federal court as a complete and final settlement of all pending claims, as set forth herein. This Assurance shall further be enforceable by the OAG, as set forth herein. Therefore, DISH agrees to the following commitments regarding the State of Colorado (“Commitments”):

- a. Within one year of the Closing Date, the location designated by DISH as its wireless headquarters will be its Riverfront facility, located at 5701 S. Santa Fe Drive, Littleton Colorado 80120 (“Riverfront Facility”). The Riverfront Facility spans more than 200,000 square feet and DISH owns approximately 35 acres at the site. Following this relocation and thereafter during the term of this Assurance, DISH will maintain wireless headquarters in the State of Colorado.
- b. Within three years of the Closing Date, DISH expects to employ a minimum of 2,000 full-time employees working primarily on wireless at DISH facilities in Colorado, including the Riverfront, Inverness, and Meridian facilities. The Inverness facility is located at 100 Inverness Terrace East, Englewood, Colorado 80112 and the Meridian facility is located at 9601 S. Meridian Blvd, Englewood, Colorado 80112.
- c. The state of Colorado will be among the first ten states in which DISH plans to deploy as part of its commitment to the FCC to build out a 5G Broadband Service capable of serving at least 70 percent of the U.S. population by June 14, 2023 (“Colorado 5G Commitment”). DISH’s commitment to have Colorado be among the first ten states with 5G Broadband Service is a separate, additional commitment from its commitment to the FCC of covering 70% of the U.S. population by 2023. Under the Colorado 5G Commitment, Colorado may have more or less than 70% of its population covered by 2023.

VII. ENFORCEMENT & VERIFICATION

15. Verification of Performance Under this Agreement. For the Colorado 5G Commitment, DISH will provide the OAG with any additional Colorado-specific results

and data produced as part of any reporting provided to the FCC or DOJ as part of the Federal Commitments verification processes within sixty (60) days of providing the verification material to the FCC and DOJ.

16. Enforceability of Terms Under this Agreement. The terms of this Assurance are subject to the authority of the Colorado Attorney General’s Office, and the OAG may take action as provided under the laws of the State of Colorado to enforce the terms of this Assurance, provided, however, that: (a) the OAG shall promptly (and, in any event, within fourteen (14) days) give written notice to DISH of any specific alleged breach of any term of this Assurance or any failure to meet any Commitment under this Assurance; (b) DISH shall remedy such breach as soon as practicable but will have up to one-hundred and twenty (120) days from the OAG’s notification of such alleged breach or failure to remedy such alleged breach or failure before OAG may take enforcement action (the “Cure Period”) or, alternatively, DISH shall provide to the OAG within forty-five (45) days from receipt of the notice a response including a statement explaining why DISH believes that no breach has occurred and an explanation of the facts and circumstances at issue, or, where applicable, a statement explaining why the alleged breach cannot reasonably be cured. In the event that DISH materially fails to meet any of the Commitments agreed to herein, or to satisfactorily explain or remedy such breach as provided in this Section VII, the OAG may seek a monetary remedy by commencing the appropriate proceeding in state court for enforcement of this Assurance (the “Enforcement Proceeding”). The OAG agrees to refrain from initiating the Enforcement Proceeding, or filing any other civil or criminal action pertaining to the subject matter of this Assurance, until after the expiration of such Cure Period and any applicable waivers or extensions thereto. DISH expressly consents to jurisdiction of the state courts in Denver, Colorado, and all parties waive any objection of any kind that could arise from § 6-4-107(3), C.R.S.

17. Voluntary Contribution. DISH agrees that, in the event that the Enforcement Proceeding concludes that DISH has materially failed to meet any of Commitments, DISH will make a voluntary contribution (the “Voluntary Contribution”) to the OAG within sixty (60) days of such determination. Any payment made under this Assurance shall be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of actual costs and attorneys’ fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, or to support consumer education and public welfare. The Voluntary Contribution will be in lieu of the OAG taking any other civil or criminal action pertaining to the subject matter of this Assurance. The amount of the Voluntary Contribution will be calculated as follows:

- (A) if, at the time that this Assurance would otherwise end, DISH is not maintaining a wireless headquarters in the State of Colorado, DISH shall permit inspection of its books and records to determine how many full-time employees are working primarily on wireless-related functions at DISH facilities in Colorado, and, if fewer than 2,000 such employees, DISH shall pay the Colorado Attorney General’s office a payment of

- \$25,000 for each employee less than 2,000, up to a total of \$10,000,000, subject to Section 18 below; and
- (B) Up to \$10,000,000, subject to Section 18 below, for failure to satisfy the Colorado 5G Commitment.

18. Excessive Contribution Prevention. Notwithstanding any other provision in this Section, the amount of any Voluntary Contribution for failure to satisfy the Colorado 5G Commitment will be reduced, on a dollar-for-dollar basis, by any amount paid by DISH pursuant to any failure to meet the Federal Commitments. Because there is no Federal Commitment to maintain wireless headquarters in Colorado, no contributions otherwise due related to DISH's wireless headquarters under this agreement will be reduced by any amount paid by DISH pursuant to any failure to meet the Federal Commitments.

19. Force Majeure. In making a determination regarding DISH's compliance under Section 17 above, the OAG and/or court in the Enforcement Proceeding shall take into account and, in its reasonable discretion, appropriately reduce the metric, extend the deadline and/or reduce the Voluntary Contribution amount sought in the Enforcement Proceeding associated with Commitments missed due to unanticipated *force majeure* circumstances beyond the DISH's control, including, but not limited to, war, rebellion, hurricanes and other major storms, earthquakes, fires, terrorism, strikes, riots, insurrections, civil commotions, blockades, law or order of any government body, significant interference or exceptional failures of state or local governmental authorities, significant interruptions in the supply chain, or acts of God.

20. Notwithstanding the above, the terms of this Assurance are independent of the terms of any commitments to, or conditions imposed by, the FCC and/or the DOJ. The OAG acknowledges that DISH may be subject to enforcement of such terms by the FCC and/or the DOJ and that enforcement of such terms is not within the scope of this Assurance or the authority of the OAG, unless otherwise provided in any final consent judgment entered by a federal court.

21. The OAG represents that it will seek enforcement of the provisions of this Assurance with due regard for fairness.

VIII. GENERAL PROVISIONS

22. Term. The Term of this Assurance shall be seven (7) years from the Closing Date.

23. No Third-Party Beneficiaries. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms. No person or entity is intended to be a third-party beneficiary of the provision of this Assurance for the purposes of any civil, criminal, or administrative action in any court or before any authority. Nor shall any person or entity be permitted to assert any claim or right as a beneficiary or protected class under this Assurance. Nothing contained in this Assurance shall be construed to

deprive any person, corporation, association, agency, or other entity of any right provided by law, regulation, or administrative pronouncement independent of this Assurance.

24. No Waiver. Nothing in this Assurance shall be construed or used as a waiver, limitation or bar on any defense otherwise available to DISH's rights to defend itself from or make arguments in any pending or future legal or administrative action, proceeding, local or federal claim or suit, including without limitation, private individual or class action claims or suits, relating to DISH's conduct prior to the execution of this Assurance, or to the existence, subject matter, or terms of this Assurance.

25. Severability. Each provision of this Assurance is separable and divisible from every other provision and the enforceability of any one provision does not limit the enforceability, in whole or in part, of any other provision. In the event that a court or administrative body of competent jurisdiction holds any provision of this Assurance to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, then such provision must be construed by limiting, reforming and reducing it so that such provision is valid, legal and fully enforceable while preserving to the greatest extent permissible the original intent of the Parties; the remaining terms and conditions of this Assurance will not be affected by such alteration, and shall remain in full force and effect.

26. Preemption. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, DISH may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance.

27. Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs in connection with this subject matter. DISH expressly agrees that it waives any right to costs under Federal Rule 41(d) or its state equivalent based on any action discussed in this Assurance.

28. Public Record. Once fully executed, this Assurance is a public document. Upon request, a copy of this document or any information in it shall be made available to any person by the Office of the Attorney General.

29. Headings. The titles and headings of each section of this Assurance are for convenience purposes only and are not intended by DISH or the OAG to lend meaning to the actual terms of this Assurance.

30. Notice. All notices required to be sent under this Assurance shall be sent via United States Certified Mail, return receipt requested, to the following addresses:


For the Attorney General:
Colorado Department of Law
Consumer Protection Section
Antitrust Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203

For DISH
Jeffrey H. Blum
Senior Vice President, Public Policy & Government Affairs
1110 Vermont Ave NW
Suite 750
Washington, DC 20005

31. Execution in Counterparts. This Assurance may be executed in counterparts, each of which is an original and all of which are one and the same.

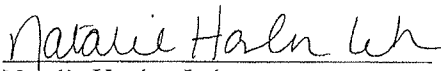
32. Entire Agreement. This Assurance sets forth the entire agreement of DISH and the OAG with respect to the subject matter of this Assurance, and this Assurance may be amended solely by written agreement signed by the OAG and DISH or their authorized representatives.

WHEREFORE, the following signatures are affixed hereto:



Jeffrey Blum
Senior Vice-President

DISH Network Corporation

 10/18/2019

Natalie Hanlon Leh
Chief Deputy Attorney General

State of Colorado, by and through its
Office of the Attorney General