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PROPOSED DECISION

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Decision PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 3/11/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
Sprint Communications Company L.P.
(U5112) and T-Mobile USA, Inc., a Delaware
Corporation, For Approval of Transfer of
Control of Sprint Communications
Company L.P. Pursuant to California Public
Utilities Code Section 854(a).

Application 18-07-011

And Related Matter.

Application 18-07-012

**DECISION GRANTING APPLICATION AND APPROVING WIRELESS TRANSFER
SUBJECT TO CONDITIONS**

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Proposed Merger of T-Mobile USA, Inc. and Sprint
Communications Company L.P

DECISION GRANTING APPLICATION AND APPROVING WIRELESS TRANSFER SUBJECT TO CONDITIONS

Summary

We grant the joint application of Sprint Communications Company L.P. (U5112C) and T-Mobile USA, Inc., (T-Mobile USA), a Delaware Corporation, (Joint Applicants) for approval of transfer of control of Sprint Communications Company L.P. pursuant to California Public Utilities Code Section 854(a); and we approve the Merger of Sprint Corporation, a Delaware corporation, (Sprint) with T-Mobile, a Delaware corporation, (T-Mobile) pursuant to Decision 95-10-032, subject to the conditions enumerated in the Ordering Paragraphs of this decision.

1. Jurisdiction

Wireless carriers are “telephone corporations” and therefore public utilities under Public Utilities Code Sections 216, 233 and 234. Both Joint Applicants, T-Mobile and Sprint, have California wireless subsidiaries that are public utility telephone corporations under state law, and subject to the jurisdiction of the Commission.¹ Pursuant to 47 USC § 322(c)(3), states can regulate neither wireless rates nor entry into the wireless market,² but they retain jurisdiction over “other terms and conditions” of wireless service. The legislative history of Section 322(c)(3) indicates that Congress intended to include transfers

¹ See e.g., Decision (D.) 01-07-030, Appendix A, Interim Rules Governing Non-Communications Related Charges on Telephone Bills, at 1, 6.

² (A) Notwithstanding sections 2(b) and 221(b) [47 USC §§ 552(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

of control in the “other terms and conditions” of wireless contracts.³ In Decision (D.) 95-10-032, the Commission addressed the problem of defining its remaining jurisdiction over wireless providers in light of the above law, and concluded that it retained jurisdiction over transfers of ownership of wireless companies.⁴

Article 6 of the Public Utilities Code, Sections 851-857, requires the Commission to review transfers of utility property. Section 854 specifically provides that a merger involving a public utility may not occur without authorization from the Commission.⁵

To implement its review of such transactions in an efficient manner, the Commission required 30 days advance notice of such a proposed transfer rather than an application for approval of the transfer,⁶ while reserving the right to require an application for approval of the transfer after review of the notice.⁷ Recognizing the near certainty that we would require an application in this case, Joint Applicants skipped the notice requirement and instead filed Application (A.) 18-07-011 for approval of the T-Mobile’s acquisition of Sprint Communications Company, L.P. in tandem with A.18-07-012, the application for approval of the merger of Sprint with T--Mobile. In his initial scoping memo

³ It is the intent of the Committee that the State still will be able to regulate the terms and conditions of these services. By “terms and conditions” the Committee intend to include such matters as . . . transfers of control . . .” House Report No. 103-111, at 251.

⁴ D.95-10-032, Conclusion of Law 9: “The transfer of ownership interests in a CMRS entity is not tantamount to entry, and Commission jurisdiction over such transactions is not preempted under the federal legislation.”

⁵ Section 854(a).

⁶ D.95-10-032 Ordering Paragraph 3.

⁷ *Ibid.*

covering the consolidated applications,⁸ the assigned Commissioner made plain that we would evaluate the Merger by broadly assessing its implications for competition between the merged companies and the two other national wireless companies⁹ and for deployment of advanced services including wireless broadband, together with its potential effects on our LifeLine programs,¹⁰ services to poor, rural, and minority communities, and other topics, evaluating them all under our historic public interest standard.

Section 854(b) applies to mergers “where any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars ...” Section 854(c) has very similar qualifying language.

In their amended application, Joint Applicants assert that neither T-Mobile USA nor Sprint are certificated entities in California and “there is no transfer of control of the T-Mobile California registered subsidiaries for California purposes.”¹¹ However, the Commission must determine whether to consider the revenues of the wireless subsidiaries of T-Mobile USA in the \$500 million threshold that would trigger review under Sections 854(b) and (c).

⁸ *Assigned Commissioner's Scoping Memo and Ruling*, September 28, 2018.
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M230/K386/230386776.PDF>

⁹ The Commission's review of the competitive implications of the Transaction is mandated by the California Supreme Court's holding in *Northern California Power Agency vs. Public Utilities Commission* (1971) 5 Cal. 3d 370 at 377 that “antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.”

¹⁰ “LifeLine” is low-cost phone service available to income qualified customers in California and subsidized by other phone customers and the federal government.

¹¹ Amended Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032 (Sept. 19, 2019) (“Amended Application”) at 9, n. 24.

Pub. Util. Code Section 854(f) governs whether a utility's affiliates should be considered in the threshold triggering Sections 854(b) and (c):

In determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control.

The Commission discussed the application of Section 854 in D.97-03-067, reviewing the merger of two holding companies – Pacific Telesis and SBC – and whether to consider the revenues of an affiliate – Pacific Bell (Pacific):

Although the transaction is technically structured as a merger between SBC and Telesis, the practical result of the proposed transaction, if it is consummated, is that it involves Pacific. Applicants' own witnesses confirm that Pacific represents 90% or more of Telesis' assets.

...

Pacific is key to the merger.... The Applicants' evidentiary presentation is largely based upon the economic benefits to be realized from the joint and combined operations of Pacific and Southwestern Bell telephone (SWBT).

We focus on substance rather than form in determining whether Pacific is a party within the meaning of § 854. (California Civil Code § 3528.) This is analogous to application of the legal doctrine of "piercing the corporate veil" as necessary properly to account for the substance rather than the form of this transaction.¹²

In the present case, Joint Applicants characterize the transaction as an acquisition by T-Mobile USA – a holding company – of Sprint's wireless California entities – Sprint Spectrum L.P. (U3062C), and Virgin Mobile USA, L.P. (U4327C). However, T-Mobile's wireless affiliates – T-Mobile West LLC

¹² D.97-03-067 at 11-12; *see also* Findings of Fact 9-11.

(U3056C) and Metro PCS California LLC (U3079C) – are also “key to the merger” and their revenues should be included in the threshold amount governing Sections 854(b) and (c).

T-Mobile’s wireless affiliates are integral to the Applicants’ claimed merger benefits:

The Transaction will enable the Combined Company to build a network with distinct advantages over both standalone networks planned by T-Mobile and Sprint and [that] will provide a platform for an unrivaled nationwide 5G mobile service.¹³

....

Not only will New T-Mobile provide higher data rates than standalone T-Mobile and Sprint, it will provide higher data rates to more consumers.¹⁴

....

Additionally, the greater available capacity will enable New T-Mobile to compete directly against more traditional broadband providers and deliver additional consumer benefits, including supporting higher quality video streaming, faster data downloads, and new and innovative applications such as augmented and virtual reality.¹⁵

....

Therefore, New T-Mobile will be able to provide a much more consistent signal strength throughout the coverage area than either T-Mobile or Sprint could on a standalone basis.¹⁶

¹³ Amended Application at 196 (citations omitted).

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 21 (citations omitted).

¹⁶ *Id.* at 22 (citations omitted).

All the above claimed merger benefits result from combining the networks, assets and customers of T-Mobile's wireless affiliates with those of Sprint's wireless affiliates. Both T-Mobile's and Sprint's wireless affiliates are central to the proposed transaction. Were the Commission to instead focus only on T-Mobile USA, ignoring its wireless affiliates, "[i]t would elevate form over substance to conclude that the Legislature was more concerned with competition if the utility was a party to the transaction absent the holding company structure but was less concerned about competition when a holding company was involved."¹⁷

Thus, the Commission finds that the gross annual California revenues of T-Mobile's wireless affiliates, which exceed \$500 million, trigger review under Sections 854(b) and (c).

Joint Applicants filed a Motion to Withdraw Wireline Application on March 30, 2020. The Public Advocates Office, Communication Workers of America District 9, The Utility Reform Network (TURN) and the and The Greenlining Institute (Greenlining) filed a joint Opposition to the Motion on April 10, 2020. Joint Applicants' Motion was predicated on Sprint Communications Company L.P.'s (U5112C) (Sprint Wireline) attempted relinquishment of its Certificate of Public Convenience and Necessity (CPCN) in Advice Letter 918 dated March 30, 2020; however, the Commission's Communications Division first suspended the Advice Letter and after several protests were filed, rejected it in a letter to Sprint Wireline on April 14, 2020. The CPCN remains valid and the Motion is denied.

¹⁷ D.97-03-067, Finding of Fact 11.

2. Introduction

Initially, we note that the ubiquitous wireless devices that we still call “phones” are far more than instruments for real-time voice communications. Indeed, the list of applications to which they are now put runs literally into the millions. They are Internet portals, GPS locators, and controllers, via the Internet, of other devices located around the corner or around the world. We use them to order our goods, pay our bills, unlock our cars, monitor our health, view movies and television shows, attend live events, wake us up and lull us to sleep. They are immediately accessible encyclopedias of the world’s accumulated knowledge. They have largely replaced a multitude of other items including still cameras, video recorders, watches, and printed books and magazines of all kinds from cookbooks to phone books, pocket calculators, portable audio players, and the list goes on. So when we consider, as we must, whether the proposed combination of two of the four national wireless companies is in the public interest of the residents of California, our focus necessarily extends beyond the use of handheld wireless devices to make phone calls and instead acknowledges the central role that these devices now play in almost every aspect of modern life.

It is to that broader vision the companies themselves invite us to look. The fundamental policy argument made by Sprint and T-Mobile in support of the Merger is that it will jumpstart the next wave of wireless technology – so-called fifth generation or “5G” wireless.¹⁸ The companies urge us to accept that their combination will allow them to move more quickly and more broadly into the

¹⁸ 5G stands for 5th Generation of mobile technologies. 5G follows previous generations of mobile technologies including 2G, which predominantly facilitated voice and text messaging; 3G, which focused on web browsing; and 4G, which enabled higher speed data and video streaming. 5G will transport much larger amounts of data at much higher speeds than 4G, enabling the creation of new applications that make use of this enhanced capacity and speed.

5G world than they could do as separate companies. They put forth technical engineering reasons for the conclusion and argue as well that, far from simply concentrating an already highly concentrated market, the Merger will lead to more robust competition, greater service offerings and lower prices.¹⁹ Because of the vast amount of data that a 5G network theoretically is able to process simultaneously, innovations such as cars that communicate with each other in real time to maintain safe speeds and distances are a genuine possibility. These and other benefits of exponentially higher speeds and data -carrying capacities will be of the greatest benefit to the heaviest users of the technology and thereby threaten to expand even wider the “digital divide” that separates the haves from the have -nots of the digital world. Will those members of the public who are already priced out of the most productive uses of wireless technology be further disadvantaged by the creation of a third wireless mega-company focused on serving the technology needs of the well--off? That is the background against which we begin our consideration of the Merger.

3. The Transaction

Pursuant to the Business Combination Agreement between T--Mobile and Sprint dated April 29, 2018,²⁰ Sprint, and all of Sprint’s subsidiaries – including Sprint Spectrum L.P. (U3062C) and Virgin Mobile USA, L.P. (U4327C) (collectively referred to as the “Sprint Wireless Entities”)²¹ – will become wholly-

¹⁹ Hearing Exhibit JA6-C (Bresnahan Rebuttal Testimony) Attachment A (Economic Analysis of the proposed T-Mobile-Sprint Merger).

²⁰ A copy of the Business Combination Agreement can be found at: https://www.sec.gov/Archives/edgar/data/101830/000110465918028087/a18-12444_1ex2d1.htm.

²¹ Sprint Spectrum L.P. and Virgin Mobile USA, L.P. are wholly-owned subsidiaries of Sprint Corporation.

-owned indirect subsidiaries of T-Mobile (Transaction or Merger).²² After their transfer to T-Mobile, the Sprint Wireless Entities in California will continue to exist as separate, certificated carriers with no change in operational structure. The Wireless Notification, as well as the Public Interest Statement (PIS) submitted on June 18, 2018, by T-Mobile and Sprint to the Federal Communications Commission (FCC),²³ describes the Transaction in greater detail. As part of the Transaction, T-Mobile will also assume control of Sprint Wireline. For the sake of clarity, the post-Transaction merged company is sometimes hereafter referred to as “New T-Mobile.”

4. Parties to the Transaction

T-Mobile USA is a Delaware corporation wholly owned by T-Mobile (*see* next paragraph). Through its owned and operated retail stores, third-party distributors, and its websites, T-Mobile USA and its subsidiaries provide wireless voice and data services, as well as a wide selection of wireless devices and accessories, to customers in the United States, Puerto Rico, and the U.S. Virgin Islands. Through its wholly -owned subsidiary “Metro by T-Mobile” (formerly Metro PCS), T-Mobile USA provides handsets and telephone services to prepaid customers.

T-Mobile is a publicly traded Delaware corporation headquartered in Bellevue, Washington. Neither T-Mobile nor T-Mobile USA directly offers services in California and we have not certificated either company.²⁴

²² Hearing Ex. Jt Appl. 2-C (Sievert Rebuttal Testimony) at 10:3-10.

²³ *See* Wireless Notification at Section V; *see also* Sievert Rebuttal Testimony, Attachment A (Public Interest Statement and supporting declarations).

²⁴ T-Mobile does, however, have two indirect subsidiaries that are registered wireless providers in the state, -T-Mobile West, LLC (U3056C), and MetroPCS California, LLC (U3079C), that provide innovative- wireless service options to millions of California consumers.

Sprint is a publicly traded Delaware corporation with headquarters in Overland Park, Kansas.²⁵ It is not certificated in California.

Sprint's wholly -owned subsidiaries that provide wireless services in California are Sprint Spectrum L.P. and Virgin Mobile USA, L.P. (Sprint Wireless CA Entities). Sprint Spectrum L.P. provides a comprehensive range of prepaid and postpaid intrastate, interstate, and international wireless telecommunications and information/data services in California pursuant to its wireless registration with the Commission as well as the authority and licenses granted by the FCC. These services are provided under the commonly recognized trade names of "Sprint" and "Boost Mobile" or "Boost." Sprint and Boost also provide wireless devices and accessories in connection with these services.

Virgin Mobile provides a comprehensive range of prepaid intrastate, interstate, and international wireless telecommunications and information/data services in California pursuant to its wireless registration with the Commission and the authority and licenses granted by the FCC. Virgin Mobile also provides prepaid wireless LifeLine services in California pursuant to its designation as an eligible telecommunications carrier (ETC).²⁶ These LifeLine services are provided under the commonly recognized trade name of "Assurance Wireless Brought to You by Virgin Mobile" (Assurance Wireless). Assurance Wireless is

²⁵ See SoftBank Group, *Group Structure*, <https://www.softbank.jp/en/corp/irinfo/about/outline/> (last visited June 16, 2018).

²⁶ See Commission Resolution 17284 (May 5, 2011), authority provided in D.14-01-036, and advice letters submitted in compliance with D.14-01-036, and numerous subsequent Commission decisions. The CPUC designates ETCs pursuant to authority delegated in a provision of the federal Communications Act, 47 USC 214(e)(2).

the facilities--based carrier with the largest number of wireless Lifeline customers in California.

Sprint's subsidiary Sprint Wireline holds a CPCN as a competitive local exchange carrier and non-dominant interexchange carrier, providing services exclusively to business and carrier customers.

5. Procedural History

This proceeding was initiated through the Transfer of Control application (Application (A.) 18-07-011) and the Application for Review of Wireless Transfer Notification (A.18-07-012) Joint Applicants filed simultaneously on July 13, 2018. Protests were submitted on August 16, 2018, by the Commission's Public Advocates Office (Cal Advocates) and jointly by TURN , Greenlining (together, Joint Protesters). Joint Applicants provided a reply to the protests on August 27, 2018. On September 11, 2018, the assigned Administrative Law Judge (ALJ) issued a ruling consolidating the Wireless Notification proceeding with the Transfer of Control proceeding.

Subsequent and separate motions for party status filed by Media Alliance, Communications Workers of America District 9 (CWA), California Emerging Technologies Fund (CETF), and DISH Network Corporation (DISH) have since been granted. The group of parties, other than Joint Applicants and CETF, is sometimes hereafter referred to as "Intervenors."

On September 12, 2018, Cal Advocates and Joint Applicants filed prehearing conference (PHC) statements. A PHC was held on September 13, 2018. Following the PHC, an initial Scoping Memo was issued on September 28, 2018. On October 4, 2018, a first Amended Scoping Memo was issued replacing the initial Scoping Memo in its entirety. The Amended Scoping Memo states that the fundamental issue presented by these applications is

whether the Transaction is in the public interest and notes that the “scope of this proceeding includes all issues that are relevant to evaluating the proposed Merger’s impacts on California consumers and determining whether any conditions should be placed upon the merged entity.”²⁷ To that end, the first Amended Scoping Memo identified various issues and factors to be considered in the course of this proceeding.

On December 10, 2018, the Commission hosted a technical workshop open to the public. The workshop included two panels: (i) a panel of economists who discussed the impact of the Merger on competition; and (ii) a second panel which focused on the impact of the Merger on low -income consumers.

From January 15, 2019, to January 18, 2019, transcribed public participation hearings (PPHs) took place at three different locations in or near Joint Applicants’ service territory: Fresno, Los Angeles, and San Diego. During the PPHs, various attendees representing a range of interests and constituencies expressed support for the Merger including non-profit groups serving diverse communities, local government officials, chambers of commerce, small business owners, high school and community college representatives, home care workers, and both T--Mobile and Metro employees. Most of the opposition came from CWA and other labor organization -affiliated speakers.²⁸

Cal Advocates, CWA, CETF, and Greenlining submitted nine sets of testimony from eight different witnesses on January 7, 2019. Joint Applicants

²⁷ Amended Scoping Memo at 2.

²⁸ Approximately 100 people attended the first PPH in Fresno, with 28 expressing support, 11 expressing opposition, and 1 stating a neutral position. Approximately 220 people attended the second PPH in Los Angeles, with 50 expressing support, 22 expressing opposition, and 2 stating a neutral position. Approximately 130 people attended the last PPH in San Diego, with 28 expressing support and 19 expressing opposition.

submitted rebuttal testimony from 10 different witnesses on January 29, 2019. Four days of evidentiary hearings were held in this matter on February 2, 5, 6, 7, and 8, 2019.

T-Mobile has entered two Memoranda of Understanding (MOUs) in the course of this proceeding. The first MOU was with the National Diversity Council (NDC) and was executed on January 29, 2019.²⁹ It was included as Attachment A to the Rebuttal Testimony of Ms. Sylla Dixon submitted on that same date. The second MOU was entered with CETF on March 22, 2019, some six weeks after the hearing concluded.³⁰ That MOU was attached as an exhibit to the Joint Applicants and CETF Motion to Revise Position filed with the Commission on April 8, 2019.³¹

On May 20, 2019, Joint Applicants filed a "Motion to Advise the Commission of New FCC Commitments,"³² including a letter from Joint Applicants to Marlene H. Dortch, Secretary of the FCC. The letter contains specific nationwide commitments adopted by T-Mobile and Sprint in exchange for FCC support of the Transaction. The FCC commitments include Sprint's promise to divest its Boost Mobile subsidiary, as well as commitments to expand service to rural areas, poor and minority communities. The Joint Applicant's commitments to the FCC are described in FCC's order approving the transaction adopted on October 16, 2019.³³

²⁹ A copy of the NDC MOU is attached to this decision as Attachment 1.

³⁰ A copy of the CETF MOU is attached to this decision as Attachment 2

³¹ See Hearing Ex. Jt Appl.-08C (Sylla Dixon Rebuttal Testimony) at Attachment 1 (NDC MOU); see also Joint Applicants and CETF Motion to Modify Positions in Proceeding (filed April 8, 2019) at Exhibit A.

³² <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M311/K581/311581541.PDF>

³³ The FCCs Order is attached to this decision as Attachment 3.

On July 26, 2019, Joint Applicants filed a “Motion to Advise the Commission of DOJ Proposed Final Judgment.”³⁴ Under the Proposed Final Judgment, DISH will acquire Sprint’s prepaid wireless business (excluding the Assurance Wireless LifeLine business) and obtain additional rights that will strengthen DISH’s ability to compete in the retail mobile wireless services market. DISH also commits to offer consumers retail mobile wireless services (including postpaid wireless services) and to deploy a nationwide 5G broadband network. Three days later, on July 29, 2019, DISH filed a motion to withdraw its opposition to the Transaction. Joint Protestors promptly filed opposition to both motions.

On August 27, 2019, the presiding ALJ issued a ruling re-opening the record to take additional evidence and directing Joint Applicants to amend A.18-07-012.³⁵ The ALJ’s ruling admitted, the NDC MOU, the CETF MOU, the FCC Commitments and the DOJ Proposed Final Judgment into the record of the proceeding and provided other parties an opportunity for comment. In keeping with the ALJ’s ruling, Joint Applicants submitted an amended application on September 19, 2019.

The Commission held a second PHC on October 17, 2019, following which the assigned Commissioner issued a second Amended Scoping Memo³⁶ adding additional issues for resolution raised by the FCC Commitments, the DOJ Proposed Final Judgment and the CETF MOU.

³⁴ <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=311582539>. The DOJ Proposed Final Judgment is attached to this decision as Attachment 4.

³⁵ <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M311/K582/311582654.PDF>.

³⁶ <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M313/K974/313974062.PDF>.

On June 11, 2019, ten states, headed by New York and California, filed suit in the federal District Court for the Southern District of New York, seeking to block the Merger (the State Lawsuit). The State Lawsuit alleged that the Transaction, if completed, would violate Section 7 of the federal Clayton Act and asked the court to enter an injunction under Section 16 of the Clayton Act to prevent completion of the Transaction. The State Lawsuit alleged the Transaction would (1) result in presumptively anti-competitive market concentration in the largest cellular market areas (CMSs) in the United States, including the New York and Los Angeles metropolitan areas; (2) over time significantly raise prices for wireless services for all consumers compared to what they would have been had the Transaction not gone through; and (3) these negative consequences would not be cured by New T--Mobile's faithful adherence to the promises made to CETF and the FCC referenced above.

On February 11, 2020, the federal district court for the Southern District of New York rendered a decision in favor of defendants T--Mobile and Sprint.³⁷ While the district court found that both at the national level and in many CMAs the states had made prima facie showing that the Merger is anti-competitive, the states had not proved their contention that competitive harm would follow from the Merger. In reaching this decision, the court declared that the testimony of competing experts and the arguments of competing lawyers had essentially cancelled each other out, leaving the court to decide the case based on prior experience in evaluating the credibility of witnesses and the weight of evidence. Applying that standard, the court reached three general conclusions. First, if the

³⁷ A copy of the federal District Court decision may be found at <https://www.courtlistener.com/recap/gov.uscourts.nysd.517350/gov.uscourts.nysd.517350.409.0.pdf>

Merger is approved, T-Mobile will compete against, rather than collude with, AT&T and Verizon. Second, if the Merger is not approved, Sprint will sooner or later fail. Third, if the Merger is approved, DISH will keep its promises and become a viable fourth national wireless company.

On March 2, 2020, the Commission received an advisory opinion from the Attorney General (AG Opinion) regarding the proposed transaction.^{38 39} The AG Opinion concluded that within the state of California, the anti-competitive effects of the Merger outweighed its potential benefits.

6. Arguments in Favor of the Transaction

6.1 The Technical Argument

6.1.1 Spectrum

Voice and data are transmitted wirelessly using discrete portions of the electromagnetic spectrum. Spectrum necessary for 5G deployment falls in three broad categories. T-Mobile witness Neville Ray summarized them as follows:

Three complementary types of spectrum band are essential to successful 5G development: (1) low -band spectrum (below 1 GHz); (2) mid -band spectrum (from 1-6 GHz); and (3) high -band spectrum (often referred to as millimeter wave band spectrum or mm Wave).⁴⁰

Evidence in the proceeding establishes that Sprint and T-Mobile own complementary portions of the spectrum:

³⁸ Pursuant to Cal. Pub. Util. Code Section 854(b)(3), the Commission must make a finding that a proposed transaction shall not adversely affect competition. In making this finding, the commission may request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

³⁹ A copy of the Opinion of the Attorney General on Competitive Effects of Proposed Merger of T-Mobile USA, Inc. and Sprint Communications Company L.P. is attached to this decision as Attachment 5.

⁴⁰ Rebuttal Testimony of Neville Ray on behalf of T-Mobile USA Inc., at 13.

Currently, T-Mobile has a substantial amount of low -band 600 MHz spectrum, a small amount of mid -band spectrum (*i.e.*, AWS and PCS bands) currently dedicated to LTE usage; and limited amounts of high band, mm Wave spectrum in certain geographic areas. Sprint, conversely, has very little low -band spectrum, large amounts of mid -band spectrum (*i.e.*, 2.5 GHz and PCS bands), and no high -band spectrum.⁴¹

6.1.2 Cell Sites

Ray also testified to the importance of combining Sprint's cell sites with T-Mobile's. Existing Sprint cell sites can easily be outfitted with 5G -capable radios that can transmit signals over all the spectrum bands owned by the merged company. The effect is multiplicative rather than additive:

The addition of more cell sites and complementary spectrum allows for massive gains in capacity ... as a result of the Merger, New T-Mobile will have far more 5G enabled sites than either stand-alone company. ... The difference is because we (1) have access to more tower sites; and (2) have access to more spectrum, so we can deploy more radios to more sites.⁴²

6.1.3 Spectral Efficiency

According to Joint Applicants, the consequence of this synergistic combination is the creation of a competitor that uses the various segments of the electromagnetic spectrum far more efficiently than either component company could by itself. Consequently, New T-Mobile is more competent and capable of matching the 5G deployments of Verizon and AT&T than either T-Mobile or Sprint would be on its own:

In terms of capacity...the combined network enables almost 2X the 5G capacity by 2021 and more than 2X the capacity by 2024...[Because] T-Mobile and Sprint have complementary

⁴¹ *Ibid.* at 14.

⁴² *Ibid.* at 17.

spectrum portfolios...their combination would allow New T-Mobile to deploy mid -band spectrum (AWS, PCS, and 2.5 GHz) far more expansively than either company could as stand-alones, providing mid -band coverage over much of California's geography....⁴³

In sum, Sprint owns assets that will enable T-Mobile to become an effective and complete competitor with AT&T and Verizon - complementary spectrum holdings and existing, geographically dispersed cell sites. Combining their systems creates an entity with greater capacity and greater coverage than T-Mobile could achieve on its own or that the two could achieve as separate stand-alone companies.⁴⁴

6.2 The Economic Argument

The economic argument derives directly from the technical argument. With the technical advantages of the combination, New T-Mobile will be able to offer service bundles equivalent to those offered by AT&T and Verizon at lower prices, or better service bundles at similar prices, thereby increasing, rather than reducing, competition in the wireless space.⁴⁵ Post-transaction, the wireless market will have three robust national competitors in the 5G space rather than two strong companies and two comparatively weak companies.⁴⁶

⁴³ *Ibid.* at 31.

⁴⁴ Joint Applicants' Post-hearing Opening Brief at 2-4 and 21.

⁴⁵ Bresnahan Rebuttal Testimony, Attachment A.

⁴⁶ *Ibid.* Although this Commission is not precluded from considering the potential economic impacts of the proposed Merger in California, assessing the national antitrust implications of a Merger between two national wireless companies is primarily the responsibility of the antitrust division of the federal Department of Justice (DOJ). The California-specific implications vary from geographic location to geographic location within the same state. In those markets in which T-Mobile and Sprint presently enjoy a combined market share larger than that of either Verizon or AT&T, further concentration of such markets following the Merger might be a change for which ameliorative conditions would be appropriate. On the other hand, in those

Footnote continued on next page

Joint Applicants argue that the Merger will not merely **permit** them to compete more effectively with AT&T and Verizon, it will **require** them to do so:

The massive new capacity made possible by the Transaction is only profitable to New T--Mobile if it can sell it. This gives New T--Mobile compelling incentives to fill that capacity and grow by lowering prices to attract new customers, including new wireless customers from AT&T and Verizon; new wholesale customers by offering a better value proposition to MVNOs;⁴⁷ and new enterprise customers for whom AT&T and Verizon have up to now otherwise been the only meaningful options.⁴⁸

Joint Applicants argue that the need to sell enhanced capacity will create pro--competitive results no matter how AT&T and Verizon respond to new offerings from New T---Mobile. For example, if AT&T and Verizon do not respond to price reductions by New T--Mobile, then New T-Mobile will lure away customers⁴⁹ and those customers will enjoy the lower prices. On the other hand, if AT&T and Verizon respond by lowering their own prices, then even if market shares remain unchanged, all customers benefit from the market--wide price reduction.

As noted in the excerpt from Joint Applicants' opening brief quoted above, the same analysis that leads Joint Applicants' experts to conclude that the Merger

markets presently dominated by Verizon and/or AT&T, simply creating a stronger competitor via the Merger would be a desirable outcome.

⁴⁷ MVNO stands for Mobile Virtual Network Operators. MVNOs resell wireless telephone and data service leased from the four national wireless carriers and the regional carrier, US Cellular.

⁴⁸ Joint Applicants Opening Brief, at 51, citing Sievert Rebuttal Testimony at 22, 44, and 34.

⁴⁹ Hearing Tr. at 791:2-12 (Bresnahan Cross). ("It is a conclusion of our analysis that with improvements in network quality and lower marginal costs, the New T-Mobile is able to liberate customers from AT&T and Verizon that neither Merger partner can today, that it therefore has an incentive to compete harder in price and by offering people a better deal. And it does increase its market share, which is a pro-competitive outcome as a result of the Merger.")

is pro-competitive for retail customers applies equally to MVNOs and enterprise customers, all of whom represent opportunity for New T-Mobile to leverage its increased capacity and lowered marginal costs. In other words, New T-Mobile would be indifferent to who purchases its enhanced capacity and for what purpose, so long as someone purchases it; and for that reason, New T-Mobile will be incentivized to offer aggressive price and service options to customers of all types.

A similar analysis applies to the geographic reach of New T-Mobile compared with the two-existing stand-alone companies. By utilizing complementary spectrum and existing cell sites acquired from Sprint, New T-Mobile achieves nearly universal 5G coverage within California, something that would be impossible for either company standing alone or for the two of them operating separately.⁵⁰

The economic argument was potentially strengthened as a result of the DOJ Proposed Final Judgment. The original version of the Transaction envisioned the number of nationwide facilities--based Wireless Network Operators (WNOs) shrinking from four to three. However, the result of implementing the DOJ Proposed Final Judgment is that DISH, a provider of satellite--based television services, will become a fourth nationwide facilities--based WNO. DISH will initially operate as an MVNO riding on the New T-Mobile network but will build out its own facilities--based network over a period of seven years, beginning with cell towers and spectrum that will be transferred to it by Sprint and New T-Mobile.⁵¹ While the creation of a potential

⁵⁰ Ray Rebuttal Testimony at 31-33.

⁵¹ See Attachment 4 to this decision for DOJ's explanation of the DISH transaction.

fourth national facilities--based WNO in theory would go a long way towards ameliorating antitrust concerns, we must also ask what the implications are for the planned build-out of New T--Mobile's 5G service in California. We discuss these issues more extensively below.

6.3 The Social Benefits Argument

In the course of seeking approval of the Transaction, T-Mobile executed the MOUs with NDC and CETF that contain commitments relating to its service offerings for rural, low -income, and minority communities. Although T--Mobile did not submit the CETF MOU as a formal settlement, it has asked the Commission to allow CETF to enforce the terms of the MOU via a complaint filed at the Commission should T--Mobile default on its obligations thereunder. T-Mobile has also asserted that there is substantial evidence that the merger will have "overall positive effects on jobs" in California.⁵² It has committed to open a new customer experience center in Kingsburg, CA that will create 1,000 new jobs and therefore benefit the Central Valley economy.⁵³

As noted above, Joint Applicants made additional commitments in a letter to the FCC dated May 20, 2019 that are in addition to the California -specific commitments contained in the CETF MOU, and agreed to the additional conditions imposed on the Transaction by the DOJ Proposed Final Judgment. We discuss these commitments and conditions in turn, beginning with the commitments in the CETF MOU. Although the CETF MOU was neither denominated a settlement nor submitted to the Commission for approval, and other parties have not had the opportunity to comment on it, because the

⁵² Joint Applicants' Post-hearing Opening Brief, April 26, 2019, at 88.

⁵³ *Id.* at 86-87; fn.303.

signatories agreed to Commission enforcement of its terms⁵⁴ as well as significant incentives for CETF to see that it is fully implemented, we will accord weight to the MOU terms that we included in our conditions of approval in evaluating the overall desirability of the Transaction.

Major features of the CETF MOU are outlined below:

6.3.1 LifeLine

- a. New T-Mobile will offer LifeLine indefinitely in California.⁵⁵
- b. With respect to *rates, terms and conditions*, New T--Mobile will continue to offer LifeLine services (pursuant to both federal FCC LifeLine and state CPUC LifeLine programs) indefinitely in California to both current and new LifeLine eligible customers *for free*, and at other terms and conditions no less favorable to eligible consumers than those offered under the Assurance Wireless brand as of the date of the close of the Transaction.⁵⁶ With respect to *data offerings*, New T--Mobile will provide all new LifeLine customers a minimum of 3 GB without the need to request the upgrade.⁵⁷
- c. New T--Mobile will strive to increase LifeLine adoption in California over five (5) years by enrolling at least 332,500 new low -income California households, consisting of
 - (i) new Assurance LifeLine households (gross additions)

⁵⁴ This decision adopts certain features of the CETF MOU as conditions of approval and these are enforceable by the CPUC. CETF must look to the Superior Court for enforcement of the balance of the agreement, should that necessity arise.

⁵⁵ Hearing Tr. at 269:16-269:22, 281:6-281:10 (Sievert Cross). To provide assurance of its commitment, New T-Mobile guarantees the provision of LifeLine in California *through the end of 2024 at a minimum*. CETF MOU at 4. However, should there be material changes to the LifeLine Program at either the state or federal level with respect to eligibility criteria, mandatory service standards, or subsidy amounts, New T-Mobile reserves the right to seek appropriate relief from the CPUC after consultation with CPUC staff, consumer groups, and stakeholders.

⁵⁶ Sylla Dixon Rebuttal Testimony at 3:8-3:11.

⁵⁷ CETF MOPU at 4-5.

approved by the LifeLine administrator, plus (ii) new low-income households so that New T-Mobile will be providing service to no fewer than 675,000 enrolled LifeLine/low-income households at the end of five (5) years.⁵⁸ To achieve these adoptions New T-Mobile will prepare a strategic plan which will be submitted to the Commission within 180 days following the close of the Transaction.⁵⁹ The strategic plan will generally describe the activities New T-Mobile will undertake to promote the LifeLine offers and enroll eligible California LifeLine and low-income customers, including but not limited to, community-based direct marketing and use of media.⁶⁰ New T-Mobile will place an appropriate share of the promotion investment with community media to ensure sufficient information in -language and in -culture, which shall be monitored to measure results and to analyze cost-effectiveness in comparison to other promotion investments. Furthermore, the strategic plan will include a promotion investment schedule providing for a minimum of \$1 million per year for 5 years for a total of at least \$5 million dedicated to outreach and promotion of the LifeLine service and enrollment of new LifeLine and low-income customers.⁶¹

6.3.2 Digital Inclusion

- a. New T-Mobile will provide up to \$1 million over 5 years for School Leadership Teams.
- b. New T-Mobile will provide \$7 million a year for 5 years, for a total of \$35 million to CETF to close the digital divide in California.⁶²

⁵⁸ CETF MOU at 5.

⁵⁹ CETF MOU at 6.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² CETF MOU at 8. Of the \$35 million, CETF will dedicate (i) \$12.5 million to school districts and schools participating in the New T-Mobile School Based Programs (representing up to

Footnote continued on next page

6.3.3 Investment in Infrastructure

- a. New T--Mobile commits to spend \$7.8 billion to develop 5G technology in California over the next 6 years following closing of the Transaction (with the right to defer \$1.2 billion for a year).⁶³

6.4 Major Features of the FCC Commitments

Joint Applicants made four broad commitments to the FCC.

6.4.1 Commitment to build a “world-leading nationwide 5G network”

Joint Applicants commit that within three years of the Merger’s closing, New T--Mobile will cover 75 percent of the country’s population with mid -band spectrum and 97 percent of the country’s population with low -band spectrum. Almost two--thirds of Americans will experience download speeds equal to or greater than 100 Mbps. Within six years of the Merger’s closing, New T--Mobile will deploy a 5G network that will cover 99 percent of the population with low -band spectrum and 88 percent of the population with mid -band spectrum. Ninety--nine percent of the population will experience download speeds equal to or greater than 50 Mbps and 90 percent of the population will experience download speeds equal to or greater than 100 Mbps.

6.4.2 Commitment to Provide High-Speed 5G Services for Rural America

Joint Applicants commit that within six years of the Merger’s closing, New T--Mobile will deploy a 5G network with low -band coverage of at least

25,000 students); (ii) \$4.5 million to community-based organizations to provide digital literacy training for up to 75,000 households; and (iii) \$5 million in CETF grants to county and city governments to implement digital inclusion policies and programs.

⁶³ CETF MOU at 9; Notice of Ex Parte Communication of Joint Applicants, February 24, 2020, Attachment 3, at 2. The Commission takes official notice of the contents of Joint Applicants’ Ex Parte Notice that was filed and served on the parties in this proceeding.

90 percent of the rural population and mid-band coverage of at least 66.7 percent of the rural population. Ninety percent of the rural population will experience download speeds equal to or greater than 50 Mbps and 66.7 percent of the rural population will experience download speeds equal to or greater than 100 Mbps.

T-Mobile also provided California specific information to the Commission regarding percentage of California population and rural population, with access to download speeds of 50, 100 and/or 300 Mbps.⁶⁴

6.4.3 Commitment for In-Home Broadband

Joint Applicants commit that New T-Mobile will offer in-home broadband service with minimum speeds of 25 Mbps downlink and 3 Mbps uplink and average speeds above 100 Mbps downlink. This service will be priced below current prices charged by other providers for service with comparable speeds, have no extra charge for the router, no installation charge, and no contract. Within three years of the Merger's closing, New T-Mobile will market its in-home broadband service to 9.6 million eligible households, of which at least 2.6 million are rural households. Within six years of closing, New T-Mobile will market its in-home broadband service to at least 28 million eligible households, of which 5.6 million are rural households.

6.4.4 Commitment to Divest Boost Mobile

Joint Applicants commit to sell Boost Mobile through a market process to a serious and credible buyer. As described in the next section of this opinion, if the

⁶⁴ See Supplemental Testimony of Neville R. Ray, Attachment H, Sections I. and II (percent of California population and rural population with access to download speeds of 50 Mbps 100 Mbps) and Rebuttal Testimony of G. Michael Sievert, at 21 (percent of California population with access to download speeds of 300 Mbps).

Merger is approved, that buyer will be DISH and the terms of the sale will be as set out below.

A copy of the public version of the documents comprising the FCC Commitments is attached to this decision as Attachment 3.

6.5 Major Features of the DOJ Proposed Final Judgment

6.5.1 Divestiture of Prepaid Businesses

As part of extensive mandated divestitures, DISH will acquire Sprint's Boost, Virgin Mobile, and Sprint -branded prepaid businesses and millions of Boost and Virgin Mobile customers.⁶⁵ (The divestitures exclude the Assurance brand LifeLine business, and New T--Mobile will continue to provide LifeLine service under that brand.)⁶⁶

6.5.2 Technical Support to DISH

To facilitate DISH's emergence as a new competing provider, T--Mobile and Sprint have agreed to provide DISH extensive support to ensure a smooth and orderly transition.⁶⁷

6.5.3 Employment Protection for Sprint Employees

DISH has the right to offer jobs to Sprint's Prepaid Asset Personnel (consistent with employee rights and employment laws), and New T--Mobile is obligated to facilitate that hiring process and the transition of employees.⁶⁸

6.5.4 Spectrum Purchase Agreement

DISH has agreed to buy all of Sprint's 800n MHz spectrum licenses.⁶⁹

⁶⁵ Ex. 1Att.4 at §§ II.L, IV.

⁶⁶ See Att.4Ex. 1 at § II.L.

⁶⁷ Ex. 1Att.4 at § IV.A.

⁶⁸ *Id.* at § IV.A.2.

6.5.5 DISH Purchase Options on Sprint and T--Mobile Property

DISH will have the option to assume select cell sites and retail locations that are decommissioned by New T--Mobile for five years following the closing of the divestiture transaction, subject to any assignment restrictions, and New T--Mobile will make available to DISH at least 20,000 decommissioned T--Mobile USA and Sprint cell sites, and at least 400 retail stores.⁷⁰

6.5.6 DISH Obligation to Offer Wireless Service

DISH is obligated to use the divested assets to “offer retail mobile wireless services, including offering nationwide postpaid retail mobile wireless service” within one year of the sale of the prepaid assets.⁷¹

6.5.7 DISH Obligation to Deploy 5G Network

DISH is also obligated to deploy a nationwide 5G broadband network and comply with various additional FCC requirements to utilize its extensive spectrum holdings, subject to specific deadlines and backed by penalties.⁷²

6.5.8 T--Mobile Obligation to Offer MVNO Network Access to DISH

Upon closing of the divestiture transaction, DISH and New T--Mobile will enter a 7-year MVNO agreement that allows DISH to sell retail wireless services under any DISH -owned brands using New T--Mobile’s network. In addition, DISH will be entitled to transition the acquired Boost, Virgin Mobile, and

⁶⁹ *Id.* at § IV.B.

⁷⁰ *Id.* at § IV.C-D.

⁷¹ *Id.* at § IV.F.

⁷² *Id.* at § VIII.A.

Sprint -branded prepaid customers to New T--Mobile's network and activate new customers on New T--Mobile's network.⁷³ The terms of the DISH MVNO must be "commercially reasonable and ... acceptable to the [DOJ]."⁷⁴

6.5.9 Transition Services Agreement

New T--Mobile will offer standard commercial support arrangements to DISH via a Transition Services Agreement for up to 3 years following the close of the divestiture transaction. The transition services provided by New T--Mobile will result in the orderly transfer of prepaid customers to DISH and will also ensure the continued and seamless operation of the Boost Mobile, Virgin Mobile, and Sprint -branded prepaid businesses following transition to DISH's ownership. New T--Mobile must not unreasonably discriminate against any DISH subscribers and must not unreasonably refuse to allow devices used by DISH customers to access the New T--Mobile network.⁷⁵

6.5.10 New T--Mobile Obligation to Honor Existing Agreements

New T--Mobile must honor all existing T--Mobile and Sprint MVNO agreements and agree to certain extensions of such agreements.⁷⁶

6.5.11 New T--Mobile Obligation to Support Existing Smartphones

New T--Mobile must support eSIM technology on smartphones (to the extent technically feasible) and allow "unlocking" of mobile devices.⁷⁷

⁷³ *Id.* at § IV.A, VI.

⁷⁴ *Id.* at § VI.A.

⁷⁵ *Id.* at § VI.B.

⁷⁶ *Id.* at § VII.

⁷⁷ *Id.* at § VII.

6.5.12 New T--Mobile Consent to Monitoring Trustee

A Monitoring Trustee will be appointed to ensure compliance with the terms of the Proposed Final Judgment.⁷⁸

A copy of the public version of the Proposed Final Judgment is attached hereto as Attachment 4. On July 26, 2019, T--Mobile USA entered into an Asset Purchase Agreement with Sprint Corporation and DISH that implements many of the terms of the Proposed Final Judgment. The terms of the Asset Purchase Agreement are described in greater detail in a Form 8-K T--Mobile USA filed with the Securities and Exchange Commission on July 26, 2019.

6.6 Summary of the MOU with the National Diversity Coalition

The NDC MOU contains a broad array of commitments, some of a general nature, regarding Corporate Governance (including efforts to achieve and maintain a diverse board of directors), Workforce Recruitment and Retention, Diverse Procurement, Access to Wireless Service for Low Income Consumers, and Philanthropy and Community Investment.

7. Arguments Against the Transaction

7.1 The Technical Argument

Applicants' experts testified that the effect of the Merger is technically multiplicative; that is, the merged company will be able to provide greater coverage and more reliable service than the two companies could provide if they remained separate.⁷⁹ While Intervenors do not directly contest this argument, they dismiss it as providing a benefit that is not Merger--specific, meaning that in

⁷⁸ *Id.* at § XII.

⁷⁹ See Joint Applicants' Post-hearing Opening Brief at 21-24.

the opinion of Intervenor, the Merger is not needed to ensure rapid deployment of 5G technology.⁸⁰ Intervenor points to statements by Sprint management to the effect that Sprint is rolling out a 5G platform on its own.⁸¹ Thus, Intervenor argues, even if the Merger makes deployment of 5G technology marginally more efficient, the Merger is not necessary for the full benefits of 5G technology to be realized. In that regard, we take official notice of recent national advertising by T-Mobile claiming that its nationwide 5G network is already operational in some areas.⁸²

7.2 The Economic Argument

Intervenor criticizes the Merger simulations Joint Applicants' experts prepared, pointing out that both on a national level and in many major wireless markets, the principal effect of the Merger would be to concentrate the market to the point that it has an HHI value⁸³ above 2,500, which makes it presumptively anti-competitive.⁸⁴ Intervenor can also point to the DOJ Settlement for support, noting that the effect of the Settlement would retain a national market with four facilities--based mobile network operators MNOs, each of whom will offer 5G services, the same number of national facilities--based MNOs that will exist if the

⁸⁰ Opening Brief of the Public Advocates Office at 37 and 41.

⁸¹ *Id.* at 38, citing Joint Applicants Ex. 3, Testimony of Neville Ray (Ray) at 7.

⁸² <https://www.t-mobile.com/coverage/5g-coverage-map>.

⁸³ The Herfindahl-Hirschman Index (HHI) is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in a market and then summing the resulting numbers. It can range from close to zero to 10,000. The DOJ uses the HHI to evaluate the competitive impact of potential Mergers. By way of illustration, a market with 10 participants each of whom has a 10% share has an HHI of 1,000 (10 squared = 100; 100 x 10 = 1,000) while the same market with four participants, each of whom has a 25 percent share has an HHI of 2,500 (25 squared = 625; 625 x 4 = 2,500).

⁸⁴ Opening Brief of the Utility Reform Network at 7, citing Pub. Adv. Exh. 2 (Selwyn) at 19:19-21.

Merger is denied, but with one major negative difference: the revised Transaction approved in the DOJ Proposed Final Judgment results in three existing facilities--based national wireless carriers (AT&T, Verizon, and New T-Mobile) plus one such potential carrier (DISH) replacing four existing national existing facilities--based wireless carriers: AT&T, Verizon, T-Mobile, and Sprint.

Intervenors also reference historical data and long-standing economic theory to demonstrate that a movement from four providers to three has resulted in price increases, decreased innovation, and reduced consumer choice.⁸⁵ They argue that a similar outcome is likely in a market consisting of three strong existing participants and one weak new entrant. Such a market is likely to experience collusion through signaling that would render explicit agreements not to compete unnecessary. While Joint Applicants' experts argue that New T-Mobile will have to compete for postpaid, wholesale and enterprise customers in order to justify the price paid for Sprint, it is possible that AT&T, Verizon, and New T-Mobile might abandon the prepaid market to DISH in return for which DISH might abandon the postpaid market to its three larger competitors. The result would be a prepaid monopoly and a postpaid cartel, both of which would be undesirable consequences of the Merger.

7.3 The Social Benefit Argument

As described above, New T-Mobile has made a multitude of commitments to CETF and the FCC designed to ensure access to emerging telecommunications technology to underserved communities both urban and rural. In addition, the DOJ has imposed conditions on the Merger to ensure that the post-Merger telecommunications landscape will be competitive. New T-

⁸⁵ *Id.* at 9-12.

-Mobile has also agreed to allow the Commission to enforce the promises made in the CETF MOU, should we choose to do so.⁸⁶ If the Merger is not approved, then all the above benefits disappear.

Nonetheless, Joint Protesters argue that those benefits are outweighed by the harm that will result from the disappearance of Sprint and its potential replacement by DISH.⁸⁷ In almost every respect, Sprint is a more robust competitor today than DISH will be if the Merger is approved. Sprint has already invested heavily in network facilities. It is an experienced provider of telecommunications services. It is staffed by experienced employees. It has announced plans to roll out its own 5G service. Joint Protesters assert that it is unlikely DISH, a satellite company with no experience in the wireless market, could possibly compete as effectively as Sprint for a very long time, and possibly never.⁸⁸

8. Discussion

8.1 Standard of Review; Application of Specific Provisions of Section 854

The standard of review that we apply generally is “in the public interest”. This standard requires us to find that, taking all factors into consideration, there is a net public benefit to the proposed transaction.

The “net benefit” requirement we apply to large mergers finds statutory expression in Public Utilities Code Sections 854(b) and (c). Pursuant to

⁸⁶ Joint Motion of Joint Applicants and the California Emerging Technology Fund to Modify Position at 3-4.

⁸⁷ Opening Brief of TURN at 13 and 35; Opening Brief of the Public Advocates Office at 34 and 52 (even with suggested mitigation measures risks outweigh the benefits).

⁸⁸ Supplemental Brief of Joint Consumers at 6-12.

Section 854(b), before authorizing a merger, the Commission shall find that the proposed transaction does all the following:

- (1) Provides short-term and long-term economic benefits to ratepayers.
- (2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.
- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

As the Commission does not have ratemaking authority over wireless carriers, Section 854(b)(2) is not applicable here.

Public Utilities Code Section 854(c) designates criteria that the Commission should review, before authorizing a merger, in order to find that “on balance . . . [the proposed transaction] is in the public interest.” The criteria are as follows:

- (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
- (2) Maintain or improve the quality of service to public utility ratepayers in the state.
- (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.
- (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
- (5) Be fair and reasonable to the majority of all affected public utility shareholders.

- (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.
- (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
- (8) Provide mitigation measures to prevent significant adverse consequences which may result

“Section 854(c) does not require us to make an affirmative finding regarding each of its sub-sections; rather it requires us to find, on balance, that the Transaction, as measured by the specific criteria enumerated in the sub-sections, is in the public interest.”⁸⁹ Elaborating on this, the Amended Scoping Memo asks the questions: “[W]ould the benefits of the merger likely exceed any detrimental effects of the merger?” and “[S]hould the Commission consider conditions or mitigation measures to prevent significant adverse consequences which may result from the merger?”⁹⁰

8.2 Weighing Costs and Benefits

Applicants are aware of the task facing them and for that reason have entered into multiple agreements aimed at demonstrating a net benefit to the public. In attempting to determine if they succeeded at this task, we are guided by the above list of specific factors associated with transfers of ownership under Section 854.

⁸⁹ D.16-05-007 at 65. However, Section 854(b)(1) does require a finding of economic benefits to ratepayers.

⁹⁰ The Commission also included these questions in the scope of the proceeding investigating a previously proposed merger of AT&T Inc. and T-Mobile USA, Inc. Investigation 11-06-009 (6/15/2011), at 15.

During the pendency of this action before this Commission, the Transaction has been reviewed and approved (subject to the conditions enumerated above) by both the FCC and the DOJ. The DOJ in particular has examined the anti-competitive effects of eliminating one of the four national wireless carriers and has sought to mitigate the potential harms caused by a reduction from four to three such carriers by making its approval of the Transaction conditional upon T-Mobile and Sprint assisting in the creation of a new fourth national carrier, DISH. While there may be questions about whether the effort to create a fourth carrier will succeed, it is now difficult to argue, as Joint Protestors did prior to the release of the Proposed Final Judgment, that the Merger is presumptively anti-competitive because it reduces the number of national wireless carriers from four to three. We accept the conclusion of the DOJ that creating a fourth national carrier will over time offset, at the national level, the loss of competition resulting from T-Mobile's purchase of Sprint. In reaching this conclusion, we note that it accords with the February 11, 2020 decision of the federal district court in the Southern District of New York finding in favor of defendant wireless companies in the anti-trust action brought by a consortium of states.

However, we must also carefully evaluate the proposed transaction with an eye to its specific impacts in California. The district court noted that the wireless communication industry is extremely complex and dynamic.⁹¹ This limits the usefulness of traditional economic models and makes it very difficult to accurately predict results of the proposed merger.⁹² Post-Merger, New

⁹¹ Slip Op. at 149-155.

⁹² *Id.*

T-Mobile- might continue its pattern of aggressive competition but, as its own witness admitted on the stand, in a world where for years to come--and perhaps forever--there are only two other national competitors, it could be tempted to collude with Verizon and AT&T.⁹³ It would be neither surprising nor novel if these three companies preferred the soft bed of cooperation to the stony bench of competition. Second, however weak Sprint might be relative to the other three companies, it is a far stronger competitor than DISH. Sprint already owns substantial spectrum and a nationwide network of towers, radios, etc. While DISH owns considerable amounts of spectrum, it has none of the other assets necessary to operate as a national wireless carrier, including especially a trained and experienced workforce. After the Merger closes, DISH will have to undertake massive spending in order to create a network capable of competing with AT&T and Verizon. It will be years before DISH can become a true national competitor of the three other companies.

We are left with a dilemma. Three units of the federal government have approved the proposed Merger, albeit with substantial conditions imposed on the merging parties. On the other hand, we have serious reservations about the competitive effects of the Merger here in California, particularly in regional markets where T-Mobile is already a dominant competitor, and we are concerned that the conditions the FCC and the DOJ previously imposed on the Merger may be insufficient to ensure robust post-Merger competition in California or to close the existing “digital divide” between those Californians with access to the most modern wireless technology and those without it.

⁹³ Transcript Vol 7, at 794-5 (Bresnahan).

At the state level, the analysis of competitive effects is necessarily more granular than at the national level. As shown in detail in the AG Opinion, the market presence and market power of T-Mobile and Sprint vary greatly across California:

“New T-Mobile would dominate many California markets, including a combined market share of 57% in the Los Angeles CMA--the second largest CMA in the United State by number of subscribers – and a combined market share of 63% in the California 7 – Imperial CMA. New T-Mobile will exceed the 30% threshold in 18 California CMAs.”⁹⁴ Accordingly, the Attorney General concluded that the proposed merger of T-Mobile and Sprint is likely to have significant anticompetitive effects in California unless conditions are imposed.⁹⁵

Somewhat offsetting the concerns that are raised by the market consolidation resulting from Sprint’s exit from markets where it has a significant presence is that prices and service offerings for national carriers are for the most part set on a national basis and advertised on national media. This practice limits the extent to which dominant carriers in any specific market could leverage their dominance by initiating local promotions that differ radically from nationally advertised promotions. On the other hand, all wireless carriers offer promotions keyed to local market conditions and use their presence in local markets as a promotional tool. The dominant position that New T-Mobile will occupy in the Los Angeles CMA, for example, will almost certainly make it economically attractive to develop local promotional materials that reflect that

⁹⁴ AG Opinion, at 11.

⁹⁵ AG Opinion, at 33.

dominance, even if those local promotions are at odds with the national promotions put forth by New T-Mobile.

As an offset to these concerns, we accord weight to T-Mobile's argument that the Transaction only makes economic sense if New T-Mobile uses the assets acquired from Sprint to aggressively pursue enlarging its customer base. Unless New T-Mobile uses its expanded spectrum and enlarged footprint to offer customers better service and/or lower prices than Verizon or AT&T, its purchase of Sprint will be pointless. As T-Mobile witness Sievert succinctly put it, "The massive new capacity made possible by the Transaction is only profitable to New T-Mobile if it can sell it."⁹⁶ We note that the district court reached a similar conclusion, finding that "the New T-Mobile would likely make use of [its increased capacity] by cutting prices to take market share from its biggest competitors," and that "it would be counter-productive, even self-defeating for New T-Mobile soon after the merger to fail to invest, innovate, and improve network speed, capacity and quality...and ultimately to lower prices."⁹⁷ Like the district court, we take note of T-Mobile's history of aggressive competition and market capture at the expense of Verizon and AT&T. In addition, T-Mobile has committed that New T-Mobile will offer the same or better rate plans (including with the same rate even if quality is improved) for three years following the merger.⁹⁸

⁹⁶ Sievert Rebuttal Testimony at 22.

⁹⁷ Slip Op. at 137, 162.

⁹⁸ See Jt. Appl. Post-Hearing Opening Brief § VI.C, p.58; CETF MOU § I.A. and Attachment A, Letter to FCC dated 2/4/19.

Moreover, we find that, without the merger, there is substantial uncertainty whether Sprint could continue to play an effective role as a fourth nationwide competitor.⁹⁹ We note that the district court found that Sprint is a weakened competitor that “does not have a sustainable long-term competitive strategy and will in fact cease to be a truly national MVO.”¹⁰⁰

Of equal concern to this Commission as the market effects of the Transaction are its implications for such programs as LifeLine and the Commission’s efforts to bridge the so-called “digital divide.” T-Mobile and its subsidiaries have chosen not to participate at all in the LifeLine program in California. T-Mobile’s commitments to the FCC regarding rural coverage and in-home broadband are welcome steps toward addressing these issues. They are also the subject matter of the MOU between T-Mobile and CETF. In addition, T-Mobile testified that New T-Mobile will continue offering LifeLine in California indefinitely to both Sprint’s existing LifeLine customers and to new customers. This, along with the FCC commitments, and the terms of the CETF and NDC MOUs that are included in our conditions of approval, taken together establish a framework for ensuring that the Transaction will significantly benefit those Californians most in need of reliable, affordable access to modern telecommunications technology. New T-Mobile’s commitments in those documents, if achieved, should result in a significant increase in access to LifeLine and affordable broadband for low-income and rural Californians.

⁹⁹ See Rebuttal Testimony of Brandon Dow Draper, Chief Commercial Officer, Sprint Corporation, January 29, 2019 (in particular at pp. 4, 8, 17, 19 and 35).

¹⁰⁰ Slip Op. at 100, 102.

Notwithstanding the presumptively beneficial effects of implementing the DOJ conditions, the FCC commitments and the CETF and NDC MOUs, we believe that additional conditions specific to California are needed to guarantee that this Merger, on balance, will be in the public interest of the citizens of this state and avoid any potential adverse impacts from reduced competition. Those conditions are spelled out in the ordering paragraphs of this decision and are intended to memorialize representations that Joint Applicants have made in this proceeding or complement and strengthen the promises already made by T-Mobile in the other forums in which this Merger has been evaluated and in the CETF and NDC MOUs. In light of the above analysis and adoption of these conditions ensuring New T-Mobile's provision of 5G service to rural CA customers, offering In-Home Broadband, LifeLine, and maintaining current LTE service price and quality (or better) during transition to 5G, we do not agree with opposing parties' assertion that the benefits of the merger are outweighed by the potential reduction in competition.

A DOJ-appointed monitor will oversee New T-Mobile's compliance with the conditions DOJ imposed on its approval of the Transaction. The FCC commitments, on the other hand, have no related enforcement mechanism. The CETF and NDC MOUs are legally different from either the DOJ conditions or the FCC commitments. They are contracts between CETF/NDC and T-Mobile for the benefit of rural and underserved communities in California. While we will not adjudicate disputes between the contracting parties, leaving that matter to the Superior Court, we will adopt, as conditions of approval, the commitments made by T-Mobile in the CETF and NDC MOUs that directly benefit rural and underserved communities in California that we find appropriate for Commission enforcement. To that end, we will require New T-Mobile to file a baseline report

shortly after completion of the Merger and annual reports for the following five years detailing its progress toward fulfilling the conditions imposed on the Transaction by this decision, including the conditions adopted from the commitments made in the CETF and NDC MOUs. We also will require an independent monitor to review New T-Mobile's compliance with all its commitments herein.

9. Conclusion

For the reasons set out above, we find that the merger will create a new company that is well-positioned to provide a robust 5G service network that can compete with the two larger carriers, while at the same time, the Transaction is subject to extensive conditions that mitigate potential adverse impacts on consumers. Accordingly, approval of the merger, as conditioned, is in the public interest. We will approve the Transaction subject to the conditions set out in the ordering paragraphs hereof.

10. Comments on the Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Bemederfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 1, 2020, and reply comments were filed on April 9, 2020 by Joint Applicants, Cal Advocates, TURN, Greenlining, CWA and CETF.

Many of the comments from all parties repeated arguments made earlier and considered in the drafting of this decision. Such comments were given no additional weight. They include the argument repeatedly made by Joint Applicants that the Commission lacks legal authority to review the Merger or to impose conditions on the merging parties; and the argument made by several

protesters that granting the applications is unlawful because the record establishes that the Merger will increase market concentration in eighteen CMAs in California, including Los Angeles, the state's largest, above 2500 on the HHI, a point at which such a CMA is presumptively anti-competitive. As to the first argument, we believe existing legal precedent clearly establishes the Commission's authority to review the Merger and to impose mitigating conditions. As to the second argument, while we find that the Merger will have that effect that finding is not the end of the matter because we further find, for the reasons described in this decision, that other factors including the agreements entered into by T-Mobile and the FCC and the DOJ, the commitments in T-Mobile's MOUs with CETF and NDC that are included in this Decision as conditions of approval, and the additional conditions we have imposed are together sufficient to overcome the presumption of anti-competitive effects and to render the Transaction in the public interest.

Changes have been made to the text and the Ordering Paragraphs in response to meritorious comments from the parties and are indicated by insertions, deletions and new text. Significant changes have been made to Ordering Paragraphs 4, 6, and 8.

The revisions remove the specific requirements for back-up power in Section C of the Order, because they are superseded by the Assigned Commissioner's Ruling and Proposal filed March 6, 2020 in R.18-03-011. In addition, in their comments, Public Advocates and TURN note that T-Mobile committed to achieving higher 5G download speeds than required in the

proposed decision.¹⁰¹ The CETF MOU includes a commitment for download speeds of at least 300 Mbps at cell sites, but we do not believe the speed at cell sites adequately reflects customers' experience. However, a T-Mobile witness (Sievert) indicated in his written Testimony that 93% of the California population will have access to at least 300 Mbps download speeds in 2024, and this is added to the conditions in Ordering Paragraph 4.¹⁰² We also removed the requirements in Ordering Paragraph 4 that T-Mobile's 5G commitments extend to 2030, since commitments about that time period were insufficiently developed in the proceeding. At Applicants' request, we revised Ordering Paragraph 6 so the requirement to maintain the existing LTE network quality is limited to the relevant timeframe.

In response to comments by Applicants and CETF, we removed the limit on eligible County fairgrounds in Section D; however, to ensure the investments are directed to locations most in need, we added that the Communications Division must approve the fairgrounds that are selected to participate in the program. Changes also were made in the Lifeline conditions (Section E) to ensure that T-Mobile, for as long as it or its subsidiaries operate in California, will participate in the Lifeline program on terms and conditions that are comparable or better than those currently offered by Assurance. In addition,

¹⁰¹ Comments of the Public Advocates Office on the Proposed Decision, at 13; Opening Comments of the Utility Reform Network, at 12 and footnote 43.

¹⁰² See Rebuttal Testimony of G. Michael Sievert, January 29, 2019, at 20-21. We reject Applicants' claim that this information is confidential for the reasons set forth in the Presiding Officer's Ruling Regarding Confidentiality of Information in Trial Exhibit, filed March 4, 2020. That Ruling rejects other claims of confidentiality for percentages of California population that will have access to particular download speeds in specific years after the merger.

with respect to New T-Mobile retaining the current Boost Pilot Programs, the requirement to "secure" federal approval was modified since T-Mobile correctly noted that this may be beyond its control, and provisions were added for establishing replacement programs, if necessary. At Applicants' request, we have also made some revisions to the CalSPEED drive test funding requirement and to coordinate with the federally-required testing.

11. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Voice and data are transmitted wirelessly using discrete portions of the electromagnetic spectrum.
2. T-Mobile owns a substantial amount of low -band spectrum, a small amount of mid -band spectrum; and limited amounts of high -band, mm Wave spectrum in certain geographic areas.
3. Sprint owns very little low -band spectrum, large amounts of mid -band spectrum, and no high -band spectrum.
4. High -band spectrum carries large amounts of data over short distances.
5. Mid -band spectrum carries moderate amounts of data over moderate distances.
6. Low -band spectrum carries small amounts of data over long distances.
7. Efficient operation of a 5G wireless network covering both urban and rural areas requires a combination of low-, medium-, and high -band spectrum.
8. A statewide wireless network requires thousands of widely distributed cell towers.

9. Sprint owns towers whose coverage does not overlap the coverage of T-Mobile cell towers.

10. By combining Sprint's spectrum and non-overlapping cell towers with T-Mobile's spectrum and non-overlapping cell towers, New T-Mobile will be able to offer 5G wireless service to 99 percent of Californians.

11. The combination of Sprint and T-Mobile's complementary spectrum will result in a 5G network with greater capacity and speed than either company would have on its own.

12. The Transaction will increase market concentration throughout California.

13. In 18 California cellular market areas, including Los Angeles, San Diego, San Jose, San Francisco-Oakland, and Sacramento, post-Merger HHI levels will exceed 2,500, a level that is presumptively anti-competitive.

14. Wireless service is offered on both a pre-paid and post-paid basis.

15. T-Mobile and Sprint will transfer their prepaid businesses, other than Assurance, to DISH.

16. T-Mobile agreed to continue to offer LifeLine service on the same terms and conditions as it has been heretofore offered by Assurance, pursuant to the terms of the Memorandum of Understanding between T-Mobile and the California Emerging Technology Fund.

17. T-Mobile agreed to increase the number of LifeLine customers pursuant to the terms of the Memorandum of Understanding between New T-Mobile and CETF.

18. DISH will acquire towers, radios, spectrum and other assets from Sprint to enable it to become a wireless network provider.

19. T-Mobile will carry DISH traffic over its network while DISH is building out its own wireless network.

20. New T-Mobile has made significant commitments to the California Emerging Technology Fund to prioritize the delivery of 5G technology to unserved and underserved communities throughout the state.

21. New T-Mobile has made significant commitment to the Federal Communications Commission regarding the price and availability of wireless service to unserved and underserved communities nationally following the Merger.

22. The Department of Justice has imposed significant conditions on its approval of the Merger including, among other things, partial divestiture of Sprint's prepaid business to DISH and the requirement that New T-Mobile allow DISH access to its network as an MVNO pending DISH's creation of its own national network.

23. New T-Mobile will have to compete aggressively against AT&T and Verizon following the merger to succeed in capturing market share.

24. New T-Mobile has represented to federal agencies, the federal district court and this Commission that it intends to compete aggressively with Verizon and AT&T following the Merger.

25. Without the merger, there is substantial uncertainty whether Sprint could continue to play an effective role as a fourth nationwide competitor.

Conclusions of Law

1. The Transaction is subject to review under Public Utilities Code Section 854(a), (b) and (c) and D.95--10--032.

2. T-Mobile USA's wireless affiliates T-Mobile West LLC (U3056C) and Metro PCS, California LLC (U3070C) are parties to the Transaction.

3. The benefits of the Transaction, as modified by the conditions imposed herein, outweigh its detriments.

4. With the conditions enumerated in the ordering paragraphs hereof, the Transaction should be approved.

5. Approval of the Transaction, with the conditions enumerated in the ordering paragraphs hereof, complies with Public Utilities Code Section 854(b)(1) and (b)(3).

6. Approval of the Transaction, with the conditions enumerated in the ordering paragraphs hereof, is on balance, in the public interest.

7. The Commission may rely on obligations imposed on applicants and DISH Network Corporation in agreements with the FCC and U.S. Department of Justice that are legally binding and enforceable by those federal agencies.

8. Joint Applicants' Motion to Withdraw Wireline Application should be denied.

O R D E R

IT IS ORDERED that:

1. The Joint Application of Sprint Communications Company L.P. (U5112C) and T-Mobile USA, Inc., a Delaware Corporation, for Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a) is approved, subject to the conditions in Ordering Paragraphs 2-41. Pursuant to California Public Utilities Code section 854, the Commission approves the transfer of control of the Sprint Wireless Entities to T-Mobile, subject to the conditions in Ordering Paragraphs 2-41.

A. FEDERAL and OTHER COMMITMENTS

2. New T-Mobile shall provide to California Public Utilities Commission any California specific data in updates documents or reports it provides to the

Federal Communication Commission (FCC) or Department of Justice (DOJ) regarding implementation of the conditions within the FCC Order and the Proposed Final Judgment simultaneously with the provision of such material to the FCC or DOJ.

3. New T-Mobile shall simultaneously provide to Communications Division staff (Staff) all updates, data, documents or reports it provides to the California Emerging Technology Fund (CETF) or other party to whom such information is provided pursuant to the Memorandum of Understanding Between CETF and T-Mobile USA Inc. (CETF MOU).

B. 5G and LTE NETWORKS

4. New T-Mobile shall achieve the following 5G network milestones:

- a. By year end 2023, New T-Mobile shall provide 5G service to at least the percentage of California population indicated below:
 - i. 91.0% with access to service with download speeds of at least 50 Mbps;
 - ii. 86.0% with access to service with download speeds of at least 100 Mbps;
 - iii. 81.0% of rural population with access to service with download speeds of at least 50 Mbps; and
 - iv. 79.0% of rural population with access to service with download speeds of at least 100 Mbps.
- b. By year end 2024, New T-Mobile shall provide access to service with at least 300 Mbps download speeds to 93% of the California population).
- c. By year end 2026, New T-Mobile shall provide:
 - i. 99.0% of California population with access to service with download speeds of at least 100 Mbps;

- ii. 94.0% of California rural population with access to service with download speeds of at least 50 Mbps; and
- iii. 85.0% of California rural population with access to service with download speeds of at least 100 Mbps.

5. Where there is sufficient capacity, New T-Mobile shall offer in-home broadband service wherever 5G service is available. Within 3 years of the close of the merger, T-Mobile shall have in-home broadband service available to at least 912,000 California households, of which at least 58,000 shall be rural. Within 6 years of the close of the merger, T-Mobile shall have in-home broadband service available to at least 2.3 million California households, of which at least 123,000 shall be rural. There will be an affordable plan offering that is priced less than other available in-home broadband service, with no contract, no equipment charges, no installation charges, and no surprises.

6. The legacy Sprint and T-Mobile customer experience shall not be degraded during the customer migration period (2020-2023) or the 5G build-out period (2020-2026). During such time New T-Mobile shall maintain LTE broadband speeds and coverage areas in California at no less than the speeds and coverage areas reported to the Federal Communications Commission on Form 477 by T-Mobile and Sprint for their respective LTE services as of December 31, 2019.

7. In California, New T-Mobile shall prioritize rolling out its planned 5G network in 10 unserved or underserved California areas. The 10 unserved or underserved areas for prioritization shall be selected by New T-Mobile after consultation with Staff, California Emerging Technology Fund (CETF) and the Rural Regional Consortia. New T-Mobile shall meet jointly with Staff, the Rural Regional Consortia and CETF within 180 days of the close of the Transaction to:

- a. Provide an overview of planned 5G network improvements and capital expenditures in California; and
- b. Obtain input from and consult with Staff, CETF and the Rural Regional Consortia to identify the 10 unserved/underserved areas that New T-Mobile shall prioritize as specified above.

The California Advanced Services Fund shall not reimburse the Rural Regional Consortia for any expenses relating to meeting and consulting with New T-Mobile, CETF or Staff in connection with this condition.

C. NETWORK RELIABILITY AND EMERGENCY PREPAREDNESS

8. New T-Mobile shall comply with all backup power requirements imposed in CPUC in Rulemaking 18-03-011, or any subsequent proceeding, on the timetable and subject to the other requirements developed in that proceeding.

D. PERMANENT OPERATIONS AT FAIRGROUNDS

9. Within 5 years of the close of the Transaction, New T-Mobile shall deploy permanent 5G wireless service at 10 County Fairgrounds in rural counties, at least 3 of which shall be installed in the first 3 years.

10. The wireless networks shall provide robust connectivity for Fairground users and administrators adequate to support the capacity and speed needed during an emergency by a response and evacuation center.

11. Priority consideration shall be given to the rural Fairgrounds most frequently used in the last decade to stage wildfire, flooding, and other emergency responses, and support recovery activities. Priority consideration also shall be given to rural Fairgrounds for which the County Fair Board (in consultation with California Office of Emergency Services (OES), County Board of Supervisors and other local stakeholders) has developed a plan for digital

inclusion and other economic development activities when the site is not being used for emergency response and recovery.

12. The 10 Fairgrounds shall be proposed by New T-Mobile after consultation with CETF, the Rural Regional Consortia, OES and Staff. The final selection of 10 Fairgrounds must be approved by Staff.

E. CALIFORNIA LIFELINE

13. New T-Mobile (through Assurance or any other of its subsidiaries), for as long as New T-Mobile or any of its subsidiaries operate in California and offer service plans to consumers, shall participate in the California LifeLine Program on terms and conditions that are comparable or better than those currently offered by Assurance and be subject to the Commission LifeLine Program rules. New T-Mobile can accomplish this objective by utilizing the existing Virgin Mobile USA, L.P. (Virgin) model and/or any future models authorized by the Commission.

14. New T-Mobile shall add at least 300,000 new LifeLine customers in California over the next five years. These customers will be in addition to those already participating in LifeLine.

- a. New T-Mobile shall enroll LifeLine customers that were not enrolled in the California LifeLine program in the previous month.
- b. New T-Mobile shall train and monitor employees adequately to ensure they only enroll new LifeLine customers who are eligible.
- c. New T-Mobile shall offer LifeLine sign-ups at all New T-Mobile (and subsidiaries) physical stores.

15. New T-Mobile shall submit a Tier 2 Advice Letter Implementation Plan to the Communications Division within 60 days of the effective date of the Commission Decision approving the merger. This Implementation Plan

Advice Letter shall include components including by way of example but not limitation the following:

- a. network transition.
- b. handset distribution.
- c. consumer education.
- d. applicable changes in consumers' accounts.
- f. applicable activities related to the California LifeLine Administrator.
- g. draft content for the consumer education materials.

16. New T-Mobile (and its subsidiaries) shall conduct outreach to inform consumers about the California LifeLine Program via the following methods, at a minimum:

- a. Sales scripts (for phone, online, and in-store sales);
- b. Text messages;
- c. Blurb on post-paid phone bills; and
- d. Web sites

17. New T-Mobile shall submit to CPUC for review and approval all California LifeLine related outreach materials.

18. New T-Mobile shall provide a sample of customer bills (to show the required outreach message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the CPUC to send staff to audit compliance into California stores and call centers at any time during operating hours.

19. All Assurance LifeLine customers with incompatible handsets shall be migrated on the same timeframe as the non-LifeLine legacy Sprint customers to the New T-Mobile network. New T-Mobile shall distribute handsets that are compatible with the New T-Mobile network, and comparable to the consumer's

existing handset such that the consumer does not experience a loss in service, to all active California LifeLine participants receiving cell phone services from Virgin, through Assurance, whose handsets belong to either of the following categories, at the time of migration:

- a. The consumer's handset was previously provided by Virgin but is incompatible with the New T-Mobile network;
- b. The consumer's "Bring Your Own Device" handset is incompatible with the New T-Mobile network

20. With respect to the Pilot Programs approved in Decision 19-04-021: New T-Mobile shall make a good faith effort to secure any necessary approvals from the Federal Communications Commission and Department of Justice to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture.

21. If New T-Mobile receives approval to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program, New T-Mobile shall:

- a. Within 60 days of the effective date of the Commission Decision approving the merger, submit a Tier 2 Advice Letter to the Communication Division Commission requesting transfer of the California LifeLine Pilot Program from Sprint Spectrum to New T-Mobile or a different T-Mobile brand.
- b. Assume operation of the California LifeLine Pilot Program (whether with the MetroPCS brand or a different New T-Mobile brand) for as long as the Commission CPUC continues to add and maintain Project Members within the Pilot Program, under the same terms and conditions approved in Decision 19-04-021.

- c. Work with the California LifeLine team and Boost's existing Pilot team to transition the California LifeLine .
- d. Provide new handsets to all existing and active pilot participants whose current handsets will not be compatible with New T-Mobile's network, at no cost to the consumer or the California LifeLine Program.
- e. Seek approval from the CPUC of the handset models that it would like to provide to iFoster pilot participants, to ensure that the new handsets are comparable to the pilot participants' existing handsets.

22. If New T-Mobile fails to receive approval to maintain the Boost customer base currently receiving service under the California LifeLine Pilot Program, New T-Mobile shall:

- a. Within 60 days of the effective date of the Commission Decision, if federal approval was not secured, submit a Tier 2 Advice Letter to the Communications Division requesting a new LifeLine Pilot Program under New T-Mobile or a different T-Mobile brand.
- b. Upon approval from the Communications Division, operate the new California LifeLine Pilot Program (whether with the MetroPCS brand or a different New T-Mobile brand) for as long as the Commission continues to add and maintain Project Members within the new Pilot Program, under the same terms and conditions approved in Decision 19-04-021, except where both the Commission and New T-Mobile agree to amendments.
- c. Work with the California LifeLine team and Boost's existing Pilot team to develop the new Pilot Program as soon as a Resolution is adopted, maintaining continuity with the processes and procedures developed by the existing pilots, except where both the Commission and New T-Mobile agree to amendments.
- d. Work with the California LifeLine team and Boost's existing Pilot team to develop the new Pilot Program as soon as a Resolution is adopted, maintaining continuity

with the processes and procedures developed by the existing pilots, except where both the Commission and New T-Mobile agree to amendments.

- e. Provide new handsets to any existing and active pilot participants whose current handsets will not be compatible with New T-Mobile's network and who choose to switch to New T-Mobile's Pilot, at no cost to the participant or the California LifeLine Program.
- f. Seek approval from the Commission of the handset models that it will provide to iFoster pilot participants, to ensure that the new handsets are comparable to the pilot participants' existing handsets.
- g. Conduct marketing and outreach on behalf of New T-Mobile's Pilot Program at T-Mobile's expense and using methods approved by Commission staff.

23. New T-Mobile shall submit an information-only filing to the Communications Division's Director of any changes to service plans available in the pilot program. (see examples of California LifeLine related information-only filings at <https://www.cpuc.ca.gov/General.aspx?id=1100>)

24. Within 90 days of the effective date of the Commission Decision approving the merger, Metro PCS (or whichever T-Mobile brand will replace Boost in the pilot program) shall provide a sample of customer bills (to show the required message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the CPUC to send staff to audit compliance into California stores and call centers at any time during operating hours.

F. JOB CREATION

25. New T-Mobile shall have a net increase in jobs in California, such that the number of full time and full-time equivalent New T-Mobile employees in the State of California at three years after the close of the transaction shall be at least

1,000 greater than the total number of full-time and full-time equivalent employees of Sprint, Assurance Wireless and T-Mobile in the State of California as of the date of the Transaction closing.

26. New T-Mobile shall hire approximately 1,000 new employees (or more) at its planned Kingsburg customer experience center in Fresno County and shall focus on new hires for the center coming from the region in consultation with local workforce development boards, economic development organizations, and nearby community colleges, such as West Hills Community College.

G. EDUCATIONAL BROADBAND SPECTRUM (EBS)

27. Within 90 days of the effective date of the Commission Decision approving the merger, New T-Mobile shall establish a single point of contact for California tribes and educational entities interested in gaining access to New T-Mobile spectrum holdings and/or leases. This contact will be accessible to California tribes and educational entities that would like to acquire EBS from New T-Mobile, partner with New T-Mobile to utilize EBS, or discuss opportunities for cooperation with New T-Mobile.

H. CALSPEED TESTING

28. Annually or at such other frequency as Staff determines appropriate, CPUC may perform CalSPEED drive tests of the New T-Mobile and DISH networks from 2020 through 2026. New T-Mobile shall reimburse the CPUC for the reasonable costs of such drive tests, and for analysis and mapping of the test results.

- a. Testing shall be performed at 4000 locations (including those in urban, rural and tribal areas), or such other number of test locations that Staff deems appropriate. Staff

- shall consult with New T-Mobile on the distribution of these test locations.
- b. Staff shall review its test code/methodology with New T-Mobile prior to commencing its testing.
 - c. Staff shall determine New T-Mobile's costs by allocating pro-rata the costs of CalSPEED testing, analysis and mapping that the New T-Mobile and DISH networks bear to the total number of networks tested, plus the reasonable cost of mobile devices and service subscriptions deemed necessary by Staff.
 - d. New T-Mobile shall reimburse the Commission for such costs within 60 days of receiving notice of such costs from Staff.
 - e. Notwithstanding anything in this OP, New T-Mobile's obligation to pay for all costs in Section H. shall not exceed \$1 million annually.

29. CPUC shall provide New T-Mobile with statewide maps of the test point results and interpolations of up/down speeds and latency and perform geographic coverage analysis of areas and population with available download speeds at or above 50 Mbps, 100 Mbps and 300Mbps for both urban and rural areas.

30. Unless otherwise agreed to by Staff, or by the Commission as a result of a challenge as provided in subparagraph a. of this Ordering Paragraph, interpolated results from CalSPEED drive tests of LTE and 5G service created by CPUC Staff or its contractors performed on or after the third and sixth anniversaries of the closing date of the merger shall be the basis upon which New T-Mobile compliance with the deployment requirements in Ordering Paragraph 4 subparagraphs a. and c. shall be determined, and results from such drive tests performed on or after the fourth anniversary of the closing date of the merger shall be the basis upon which New T-Mobile compliance with the

deployment requirements in Ordering Paragraph 4 subparagraph b. shall be determined. Such results shall be presented to New T-Mobile during a period between eight months and nine months following the third, fourth and sixth anniversaries of the closing date of the merger.

- a. New T-Mobile may challenge such results within 60 days of receipt from Staff of CalSPEED results showing non-compliance with the deployment requirements in OP 4.
- b. Staff and New T-Mobile shall meet and confer to discuss their respective positions regarding compliance and attempt to resolve any issues to the extent possible. Staff and New T-Mobile shall provide the Compliance Monitor with a report regarding such meetings identifying any outstanding disagreements with respect to New T-Mobile's compliance with the requirements in Ordering Paragraph 4.

31. As New T-Mobile is required by the FCC to submit drive test results within nine months of the third and sixth anniversaries of the closing date of the merger, New T-Mobile shall meet with Staff to consult regarding the drive test methods and specifications it proposes to use prior to concluding its consultation with the FCC on design of the drive test. Within 30 days of the submission of its drive test results to the FCC, New T-Mobile shall provide Staff with the California portion of this data, analysis and reports. New T-Mobile shall provide Staff with all testing data, analysis and reports thereof it provides to the California Emerging Technology Fund at the same time it provides such information to CETF. Staff shall determine New T-Mobile costs by allocating pro-rata the costs of CalSPEED testing and analysis that the T-Mobile and Dish networks bear to the total number of networks tested, plus the cost of mobile devices and service subscriptions deemed necessary by Staff. Staff shall review its test code/methodology with New T-Mobile prior to commencing its testing.

I. DIVERSITY

32. New T-Mobile shall strive to achieve and maintain a diverse board of directors that includes substantial representation by people of color. New T-Mobile shall evaluate the makeup of its Board on an ongoing basis, encourage its stockholders to select diverse candidates to fill Board vacancies, and propose a diverse pool of candidates for its stockholders to consider when filling vacancies.

33. New T-Mobile shall continue to have a Diversity and Inclusion Office led by a Vice President with budgetary and decision-making authority to ensure that diversity is integrated into all aspects of the company and is among the company's core values.

34. New T-Mobile shall continue to have a Vice-President of Governmental Affairs who works with community organizations on policy matters, technology needs, and investment.

35. New T-Mobile shall strive to increase the diversity of its workforce in California at all levels to reflect the diversity of communities where it operates. It shall conduct (and enhance existing) mentoring, outreach, recruiting, development and training programs that provide meaningful opportunities for employment and advancement.

36. New T-Mobile shall support and partner with local trade schools and other community and civic organizations in California to train and/or certify individuals for employment in the wireless, telecommunications, or technology industries. New T-Mobile shall invest in local community programs designed to prepare people of color and other diverse individuals to succeed in the workplace, including mentoring programs to enhance opportunities for upward mobility from entry-level to mid-level and senior management.

37. New T-Mobile shall strive to substantially increase, over the next three years, its diverse supplier spending in California. It shall establish specific goals in this area, including goals for the use of minority-owned banking, accounting, other financial, and legal services companies. New T-Mobile's goal for five years following the merger shall be to exceed T-Mobile's 22.88% annual diversity spending in California in 2019.¹⁰³

J. ENSURING COMPLIANCE

38. Compliance Monitor and Enforcement. Within 120 days of the effective date of the Commission decision approving the merger, CPUC shall hire, at New T-Mobile's expense, an independent monitor to review New T-Mobile's compliance with all its commitments herein. The Compliance Monitor shall meet initially with Staff within 30 days of being hired and at least quarterly thereafter to report on New T-Mobile's adherence to the conditions imposed by this decision.

39. The Compliance Monitor will make semi-annual findings on merger compliance and/or lack of compliance. For the instances where the New T-Mobile is out of compliance, the Compliance Monitor will recommend a penalty to bring T-Mobile into compliance and forward his findings and recommendation to the Director of the Commission's Communications Division and the Attorney General. The Attorney General may enforce this Order either pursuant to Public Utilities Code Sections 702 and 2101, or under its independent authority, and such enforcement actions would not interfere with the

¹⁰³ See T-Mobile's 2019 Annual Report and 2020 Plan, March 2, 2020, pursuant to CPUC's General Order 156, available at: <https://www.cpuc.ca.gov/supplierdiversity/>. The Commission takes official notice of this report.

Commission's authority but would be complementary. The CPUC shall develop a citation program that can be utilized to impose penalties on New T-Mobile for violations of the terms of this decision.

40. Baseline Report. Following completion of the Merger, New T-Mobile shall provide the following information to CPUC annually in the 4th calendar quarter of each year through 2026 or on such other timetable as New T-Mobile and CPUC shall agree on:

- a. Current California full time and full-time equivalent employee headcount. The first report shall also include the number of full-time and full-time equivalent employees of Sprint, Wireless Assurance and T-Mobile full-time and full-time equivalent employees in California on April 1, 2020.
- b. Transfer of LifeLine customers from Sprint to New T-Mobile.

41. MVNO agreements and their status Annual Compliance Reports. New T-Mobile shall submit annual compliance reports to CPUC within thirty (30) days of the end of every calendar year. These reports shall include:

- a. Capital expenditures in California – totals and by project.
- b. Year-end shapefiles showing where in-home broadband is offered and including the following information:
 - (i) Speeds offered.
 - (ii) New T-Mobile pricing.
 - (iii) Competitor pricing.
- c. Upcoming buildout plans.
- d. Detailed reports on network enhancements and timeframes. For rural areas, identify specific locations where work is being done.
- e. Inventory of EBS spectrum leases, including the licensee, whether the spectrum is currently in use and

whether there have been requests by the educational institutions or any California tribal organizations to utilize the spectrum, including documentations of meeting or partnerships, and discussions of additional buildout. Identification and progress on the 10 Homework Gap pilots.

- f. New T-Mobile capacity limitations including reporting on how DISH's network use may be impacting capacity.
- g. Pricing for its mobile phone plans offered in California, including explanations of the available handsets and terms identifying the plan as prepaid or postpaid.
- h. Progress in designating and building the prioritized facilities in 10 rural areas.
- i. Price structures and number of subscribers by price tier/plan reported and pricing for its plans offered in California, including explanations of the available handsets and terms identifying the plan as prepaid or postpaid
- j. Price schedules for all in-home broadband services
- k. Progress in implementing the DoJ condition to honor existing California MVNO agreements on their existing terms, and to extend these MVNO agreements for seven years unless having demonstrated to the DoJ Monitoring Trustee that doing so will result in a material adverse effect, other than as a result of competition, on New T-Mobile's ongoing business.
- l. Total full time and full time equivalent employees by business unit in the State.
- m. For California LifeLine Program:
 - (i.) New T-Mobile shall report on its progress according to the Implementation Plan submitted according to Condition E3 above. New T-Mobile shall include information about which elements of the Implementation Plan have been implemented and the results.

(ii.) New T-Mobile shall report on its participation in the pilot program (under Metro by T-Mobile or whichever T-Mobile brand replaces Boost in the pilot program).

42. The claim of confidentiality for the percentage of the California population that will have access to New T-Mobile service with download speeds of at least 300 Mbps is denied.

43. Joint Applicants' Motion to Withdraw Wireline Application is denied.

44. Applications (A.) 18-07-011 and A.18-07-012 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENTS 1-5