

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint
Communications Company L.P. (U-5112) 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 Number 18-07-011

And Related Matter

Application Number 18-07-012

BRIEF OF THE CALIFORNIA EMERGING TECHNOLOGY FUND

Sunne Wright McPeak
President and CEO
California Emerging Technology Fund
414 13th Street, Suite 200B
Oakland, California 94610
sunne.mcpeak@cetfund.org

Rachelle Chong
Special Counsel to California Emerging
Technology Fund
Law Offices of Rachelle Chong
345 West Portal Avenue, Suite 110
San Francisco, California 94127
rachelle@chonglaw.net

December 20, 2019

TABLE OF CONTENTS

INTRODUCTION	1
QUESTION 1: Does the agreement with DISH substantially alleviate any competitive harms of the proposed merger?	2
QUESTION 2: How does the agreement with DISH affect customer service, consumer protections and privacy rights of California consumers?	10
QUESTION 3: How does the agreement with DISH affect the continued availability of low-cost plans?	10
QUESTION 4: What will happen to pre-paid customers with incompatible handsets when they are divested to DISH?	11
QUESTION 5: Are there LifeLine customers at risk of losing their subsidies if the proposed merger is consummated?	11
CONCLUSION	14

TABLE OF AUTHORITIES

Department of Justice, Proposed Final Judgment, Case 1:19-cv-02232-TJK (July 26, 2019)

Federal Communications Commission Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, FCC 19-103 (adopted Oct. 16, 2019; released Nov. 5, 2019)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) 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 Number 18-07-011

And Related Matter

Application Number 18-07-012

BRIEF OF THE CALIFORNIA EMERGING TECHNOLOGY FUND

In accordance with Rule 13.11 of the Commission’s Rules of Practice and Procedure and the schedule set by the “Assigned Commissioner’s Amended Scoping Ruling,” dated October 24, 2019, the California Emerging Technology Fund (CETF) hereby files its Brief on the limited issues presented in the “Administrative Law Judge’s Ruling Confirming Evidentiary Hearings and Establishing Their Scope,” dated November 26, 2019 (ALJ Ruling). As a party to the proceeding, CETF participated in the evidentiary hearings on December 5 - 6, 2019 on the five issues set forth in the ALJ Ruling. This ruling focused on the Proposed Final Judgment (PFJ)¹ reached between Joint Applicants and the Department of Justice (DOJ Commitment) relating to DISH Network (DISH). Prior to entry in the DOJ Commitment by Joint Applicants, CETF and the Joint Applicants reached an agreement memorized in the “Memorandum of Understanding

¹ Proposed Final Judgment, Case 1:19-cv-02232-TJK (July 26, 2019). Exhibit Jt. Appl.-19.

between California Emerging Technology Fund and T-Mobile USA, Inc.” (CETF MOU) filed in this proceeding previously.²

At the December hearings, CETF introduced into the record without objection “Supplemental Testimony of Sunne Wright McPeak on behalf of the California Emerging Technology Fund,” dated November 22, 2019 (Exhibit CETF -004). CETF further refers the Commission to “Response of California Emerging Technology Fund to Joint Applicants’ Amended Application,” filed in this docket on October 21, 2019, in which CETF set forth detailed comments on the Joint Applicants’ Amended Application, which encompassed the PFJ and an agreement reached by Joint Applicants with the Federal Communications Commission.³ CETF will not repeat these arguments herein but limits its brief to the ALJ Ruling questions relating to DISH Network (DISH).

QUESTION 1: Does the agreement with DISH substantially alleviate any competitive harms of the proposed merger?

The evidentiary record definitively shows that the DISH agreement will assist in alleviating some competitive harms of the proposed merger. CETF further recommends that the inverse of the question be considered: Does the agreement with DISH provide public benefits to the people of California? To both questions, CETF answers in the affirmative.

² A copy of the CETF-T-Mobile MOU (without exhibits) is in the record at Jt. Appl.-23C. A full copy of the CETF MOU with exhibits was filed as an attachment to the “Joint Motion of Joint Applicants’ and the California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.” (dated April 8, 2019) (granted on May 8, 2019).

³ See FCC Order Granting Transfer of Control of the Licenses, Authorizations, and Spectrum Leases held by Sprint and Its Subsidiaries to T-Mobile (October 16, 2019), Jt Appl.-19 (FCC Commitment). The full FCC citation is in the Table of Authorities.

First, in what ways will the DISH agreement alleviate some of the alleged harms of the proposed merger. One of the major harms that the Public Advocates Office (PA) has alleged is the loss of Sprint as a fourth national wireless network competitor. PA's witness Selwyn in Reply Testimony attempted to make the case that it is uncertain that DISH can become a commercially viable, fourth retail facilities-based network, due to size, delayed divestitures of decommissioned cell sites and retail stores, and ability of DISH to raise \$10 billion of additional capital it needs to meet its 5G commitments.⁴

In the Testimony of Jeff Blum on behalf of Dish Network Corporation (DISH)⁵ as supplemented by the additional testimony provided on cross examination by Mr. Blum at the evidentiary hearing on December 6, 2019,⁶ significant testimony and data was provided that proved with a preponderance of evidence that Selwyn's concerns are misplaced. For example, Blum explained some of the unusual advantages that DISH will have as a new fourth wireless competitor under favorable mobile virtual network operator (MVNO) terms under the DOJ Commitment.⁷ In his Rebuttal Testimony, Selwyn had posited that DISH may be a weak competitor because there are delayed divestitures (up to three years) under the DOJ Commitment such as the decommissioned cell sites⁸ and the retail stores. In fact, Blum's testimony showed that the decommissioned cell sites are "nice to have" but are not critical to DISH's promised 5G build out by 2025 due to tower agreements DISH has with dozens of domestic tower companies giving DISH access to hundreds of thousands of towers.⁹ Further, on the need for the

⁴ See generally Reply Testimony of Lee Selwyn, Exhibit Pub Adv-0011.

⁵ Exhibit DISH-3.

⁶ See Reporters' Transcript (Transcript), Cross Examination of Jeff Blum, DISH, at pp. 1569-1682.

⁷ Witness Blum, Transcript, at p. 1624, line 18 to p. 1626, line 3; Transcript, at p. 1681 lines 2 to 27; see also Transcript, at p. 1625 lines 10-19 (DISH has unlimited capacity unlike other T-Mobile MVNOs).

⁸ Reply Testimony of Selwyn, at pp. 31-32.

⁹ Witness Blum Transcript, at p. 1628 lines 6-18.

decommissioned retail stores, Mr. Blum explained that DISH already has a network of thousands of independently-owned dealers that can add wireless services to the video services they already sell customers.¹⁰ Eight hundred of those independent DISH dealers are located in California.¹¹ Further the DOJ Commitment provides DISH with 7,400 independent Boost dealers¹² that are available on Day 1 of the post-merger era to sell DISH's wireless services to consumers. With the DOJ Commitment, DISH will be able to sell to additional consumers because the merger of T-Mobile and Sprint will add more coverage areas for former Boost customers, who currently are limited to the smaller coverage area of Sprint.¹³ Additionally, DISH has 12 million DBS and streaming TV Sling subscribers,¹⁴ and DISH will be able to leverage these relationships to sell wireless services to some of its existing subscribers in bundles.¹⁵

Selwyn also levied criticism of the DISH chances for success due to a lower amount of spectrum owned by DISH as compared to New T-Mobile, AT&T and Verizon.¹⁶ This criticism is not dispositive. How much spectrum to which a firm has access is only one aspect of success in the complex wireless industry. The evidence shows that DISH has a uniquely favorable infrastructure MVNO agreement with T-Mobile for a long period (7 years) with very favorable MVNO terms.¹⁷ For example, T-Mobile is obligated to "take all actions required" to enable DISH to provision any new or existing customer holding a compatible device onto the network.

¹⁰ Witness Blum Transcript, at p. 1576 lines 1-9.

¹¹ Witness Blum Transcript, at p. 1576 lines 1-3.

¹² Witness Blum Transcript, at p. 1573 lines 19-23 and Transcript at p. 1575 lines 10-14.

¹³ Witness Blum Transcript, at p. 1579 line 24 to p. 1580 line 6.

¹⁴ Selwyn Reply Testimony, at p. 30.

¹⁵ Witness Blum Transcript, at p. 1668 lines 11-19.

¹⁶ Selwyn Reply Testimony, at pp. 19-30.

¹⁷ Testimony of M. Sievert, at p. 1544 lines 3-8. ("DISH has the unique benefit in this arrangement of being all those [MVNO and a fourth wireless competitor] at the same time. They start out as an MVNO but an MVNO with unprecedented rights, the lowest prices in our history as well as the unconventional ability to combine their network with ours.")

The DOJ Commitments require New T-Mobile to treat DISH's customers fairly and in a non-discriminatory manner, and to use its reasonable best efforts to provide all operational support required for the DISH customers to use the New T-Mobile network. Also, at DISH's option, New T-Mobile will offer at cost extension transition services with respect to such issues as billing, customer care, SIM Care procurement and device provisioning.¹⁸ This unique MVNO agreement allows DISH seven years to build out its own facilities-based 5G network while using the New T-Mobile network. DISH made clear it intends to build out its own facilities-based network and not remain an MVNO on New T-Mobile's network for more than seven years.¹⁹

Further DISH Witness Blum testified that since 2008, DISH has spent over \$20 billion on various spectrum assets and investments,²⁰ acquiring a number of blocks of FCC radio spectrum in order to build out an Internet of Things terrestrial wireless network. In May of this year, Blum testified that the DOJ approached DISH to acquire assets from the Joint Applicants to be fourth terrestrial wireless network.²¹ An option in the DOJ Commitment is for DISH to purchase 800 MHz spectrum from Sprint²² within three years of closing, if DISH decides it needs that spectrum. Intervenors expressed concern whether this 800 MHz spectrum was critical to New T-Mobile's 5G build out. Neville Ray, EVP and Chief Technology Officer of T-Mobile, testified that this 800 MHz spectrum (and the decommissioned cell sites and retail stores) is not necessary

¹⁸ Witness Blum Transcript, at p. 1681 lines 2 to 27; see also Transcript, at p. 1625 lines 10-19 (DISH has unlimited capacity unlike other T-Mobile MVNOs). Supplemental Testimony of Sievert, at p. 11, lines 11-19.

¹⁹ Witness Blum Transcript, at p. 1586 lines 15-17. (Blum discusses DISH plans for first 5G city by end of 2020 with aggressive build out in 2021.)

²⁰ Witness Blum Transcript, at p. 1586 line 26 to p. 1587 line 8.

²¹ Witness Blum Transcript, at p. 1581 line 26 to p. 1582 at line 5. DISH initially had protested the T-Mobile and Sprint consolidation in the FCC merger docket.

²² Witness Blum Transcript at p. 1605 lines 11-13.

for the New T-Mobile 5G build out in California.²³ DISH's Blum testified that the 800 MHz spectrum is not necessary for DISH's fulfillment of the population coverage commitments it has with the FCC as to certain spectrum under its the FCC Commitments.²⁴

The Blum cross examination testimony made it crystal clear that DISH has strong incentives to perform the build out of a nationwide facilities-based 5G wireless network, due to the DOJ Commitments and the FCC Commitment. Failing to perform the build out will result in the loss of very valuable and expensive FCC licenses for some of DISH's spectrum and penalties.²⁵ Blum testified that "Dish has made commitments to the FCC regarding the deployment of a 5G Broadband Service on its AWS-4, Lower 700 MHz E Block, AWS H Block and 600 MHz licenses."²⁶ The FCC Commitments include DISH committing to the following 5G deployment milestones, which will benefit rural areas of California:

- DISH 5G broadband service to at least 20% of the US population by 2022; and
- DISH 5G broadband service to at least 70% of the US population by 2023.

According to Mr. Blum's testimony, *DISH is subject to \$2.2 billion in voluntary contributions and potential license forfeitures if the commitments are not met.*²⁷ In CETF's view, DISH is

²³ Supplemental Testimony of Neville Ray (as corrected, confidential version, dated Nov. 7, 2019), at p. 2, lines 10-16 ("Similarly, the DOJ Commitments, which require (in part) New T-Mobile's divestiture of its 800 MHz spectrum, transfer of prepaid customers and making available certain decommissioned prepaid assets to DISH, will not impede New T-Mobile's ability to construct the world-leading 5G network described in my prior testimony. Nor do those commitments negatively impact, decrease, or detract from the benefits that this world-leading 5G network will bring to California and consumers in the state or change the network-related commitments in the CETF MOU or any of the other network-related commitments that we have made in California.").

²⁴ Witness Blum Transcript, at p. 1607 lines 11-24.

²⁵ Witness Blum Transcript, at p. 1618 lines 5-7 (Mr. Blum testified, "So, our obligations in terms of FCC is our, you know, if we don't do it, we will lose our licenses by 2025."); see also Blum Testimony Transcript at p. 1588, lines 12-18.

²⁶ Testimony of Jeff Blum on Behalf of Dish Network Corporation, dated Nov. 7, 2019 (Blum Testimony), Exhibit DISH-3, at p. 4.

²⁷ Blum Testimony, Exhibit DISH-3, at pp. 5-6. For example, if DISH is offering 5G broadband service with respect to AWS-4 Licenses to less than 50% of the US population by 6/14/2023, DISH's AWS-4 Licenses are subject to automatic termination in any Economic Area (EA) where DISH is offering 5G

“betting the farm” on its 5G network and thus will be very committed to fulfilling its obligations under the DOJ and FCC Commitments. With billions in penalties and FCC spectrum licenses at risk, it is clear that DISH will be highly motivated to meet its build out commitments for its 5G network and to serve its wireless customers well.

Selwyn also questioned DISH’s financial capacity to raise the \$10 billion of additional capital it needs to meet its 5G commitments.²⁸ Mr. Blum of DISH testified that it has been successful in raising \$30 billion in capital in the markets, never having missed a payment and never having to secure its debt with its spectrum.²⁹ With its diminishing satellite video business due to new over-the-top streaming video options, DISH is highly motivated to make its new wireless business a success, particularly in light of license forfeitures and potential fines it faces should it fail to deploy the promised 5G network, as discussed above. Mr. Blum testified to significant spectrum holdings held by DISH: 700 MHz spectrum, AWS-4, H Block, and 12 GHz (millimeter wave), in addition to its satellite spectrum that DISH has held for 39 years.³⁰ Given the advantages DISH has under the PFJ and FCC Commitments as a New T-Mobile MVNO and its sizable spectrum assets, the evidence shows that DISH ought to be successful in raising money for its capital build. Further, as Mr. Blum pointed out, DISH will immediately have wireless revenue on Day 1 after the merger closes from the Boost and Sprint-branded prepaid Virgin mobile (excluding the Assurance LifeLine customers) customers it will be acquiring from

broadband service to less than 70% of the population in each EA, including CA EAs. Similar requirements apply to DISH’s 700 MHz E Block licenses and AWS-H Block licenses.

²⁸ Reply Testimony of Selwyn, at pp. 55-62.

²⁹ Witness Blum Transcript, at p. 1589, lines 1-8.

³⁰ Witness Blum Transcript, at p. 1603, line 4 to p. 1604 line 11; Transcript, at p. 1587, lines 2-8; Transcript at p. 1676, lines 17-27.

Joint Applicants. DISH intends to offer comparable service, lower prices and better coverage areas immediately.³¹

CETF requests the Commission also consider the inverse of this question: Does the agreement with DISH provide public benefits to the people of California?

The answer is undeniably yes. When the instant Applications were filed, the state would have lost the fourth wireless provider (Sprint) and ended up with a strengthened third player (New T-Mobile) in the wireless marketplace. After the PFJ and FCC Commitments, we now have the strengthened third player in New T-Mobile and a new fourth player, DISH. DISH has plans to follow its satellite playbook and be a low-cost price disrupter with a greenfield state-of-the-art 5G network. Both New T-Mobile and DISH have expressed separately to this Commission that they desire to be low cost price leaders.³² Thus, CETF finds it reasonable based on this evidence that we can expect to see some vigorous head-to-head competition in the prepaid wireless services, and in low cost plans for postpaid wireless customers. Such competition will help drive prices low for those who cannot afford more expensive wireless packages. This competition also will help put pressure on wireless prices generally, including those offered by AT&T Wireless and Verizon Wireless, the two largest players who focus on the post-paid wireless market.

Thus, a clear benefit of the merger as now proposed is that California will end up with four 5G wireless networks in our state. New T-Mobile will deploy throughout the state with strong 90% rural deployment commitments in its Application, with compliance being checked by

³¹ Witness Blum Transcript, at p. 1577, lines 7-16.

³² Witness Blum Transcript, at p. 1650, lines 7-9 (Blum states DISH sees opportunities to lower prices right away due to large 60% margins in the wireless industry). Joint Applicants' Application, Attachment A, page ii (“[New T-Mobile] will compete aggressively with lower prices to take market share from Verizon and AT&T”)

both the FCC and the mechanism in the CETF MOU. In addition, if approved, California will also have a fourth 5G greenfield network being deployed by DISH, first riding on New T-Mobile's network as an MVNO and then deploying its own facilities-based 5G network using its spectrum assets. The FCC and DOJ will be ensuring this DISH 5G network will be built with serious license forfeitures and penalties should it not be completed as promised. The addition of these third and fourth 5G networks is a significant public benefit for California and will benefit all consumers but particularly rural customers and households requiring lower cost plans. Both T-Mobile and DISH have made significant rural commitments to the FCC,³³ which will benefit the rural areas of our state by creating additional competition and choice in these rural areas.

In looking at the marketplace, AT&T Wireless and Verizon Wireless will continue to focus on the postpaid market. In the post-merger marketplace, DISH brings us two low-cost providers, New T-Mobile and DISH, competing head-to-head to service the prepaid market and those households who cannot afford the more expensive wireless plans of the two largest market participants. While AT&T Wireless and Verizon Wireless as the dominant and largest players in the marketplace, it is important to also have market participants that are going to focus on the unique needs of low income and rural households, plus place important competitive pressures to avoid a duopoly and the more serious market concerns a two player market imposes.

CETF is very encouraged by the commitments of both New T-Mobile and DISH to the FCC and to this Commission to bring needed improved wireless coverage to rural areas of the state. Given the Commission's 98% population coverage goals under Assembly Bill 1665, any increase in wireless broadband coverage is a major public benefit that must be heavily weighed.

³³ Blum Testimony, at pp. 4-6.

Finally, DISH demonstrated that it has a scrappy business plan to be a low-cost provider of wireless services, similar to its disruptive business plan in the video market. DISH is known for being one of the first satellite video providers to cater to rural households with low cost plans, and for its innovation in providing Sling, an over-the-top video service.³⁴

QUESTION 2: How does the agreement with DISH affect customer service, consumer protections and privacy rights of California consumers?

Mr. Blum of DISH testified that DISH ranks first in JD Power rankings for customer service for its satellite business.³⁵ This demonstrates a strong commitment to customer service by DISH. No credible evidence was presented to show that DISH will not provide consumer protections and privacy rights to California consumers, consistent with state and federal law.

QUESTION 3: How does the agreement with DISH affect the continued availability of low-cost plans?

Mr. Blum of DISH testified that its business plan is to be the low-cost leader for wireless services.³⁶ As set forth above, the new 5G greenfield network and the advantageous MVNO agreement with New T-Mobile will help enable these initiatives. The Joint Applicants' Application similarly stated that as New T-Mobile expands its capacity with the 5G network, the cost of delivering each gigabyte of data to customers will be greatly reduced, and so the cost of delivering data will plummet. As a result, New T-Mobile pledged to compete aggressively and with lower prices to take market share from Verizon Wireless and AT&T Wireless.³⁷

³⁴ Witness Blum Transcript, at p. 1673, lines 3-14.

³⁵ Witness Blum Transcript, at p. 1578 line 28 to p. 1579 line 2.

³⁶ Witness Blum Transcript, at p. 1673, lines 3-14.

³⁷ Joint Applicants' Amended Application (Confidential version), Attachment A, at pages I and ii.

In light of both these representations, CETF has no evidence to believe that low-cost plans are going to disappear any time soon. The introduction of DISH to compete with New T-Mobile will help keep prices competitive for low-cost service plans.

QUESTION 4: What will happen to pre-paid customers with incompatible handsets when they are divested to DISH?

No response, as DISH is best able to respond to this question.

QUESTION 5: Are there LifeLine customers at risk of losing their subsidies if the proposed merger is consummated?

The answer to this question is emphatically no. If the proposed merger is consummated, New T-Mobile has committed as follows under the CETF MOU: “New T-Mobile shall offer LifeLine services (pursuant to both federal FCC Lifeline and state CPUC LifeLine programs) indefinitely in California. To provide assurance of its commitment, New T-Mobile guarantees the provision of LifeLine in California through the end of 2024 at a minimum. New T-Mobile agrees to continue to offer Lifeline services in California to both current and new eligible customers under rates (i.e. free), terms, and conditions no less favorable to eligible consumers than those offered under the Virgin/Assurance brand as of the date of the close of the Transaction.”³⁸

In the Supplemental Testimony of Mr. Sievert, he has stated:

“The divestiture to DISH of the Sprint prepaid customers has no impact on the CETF MOU provision regarding LifeLine or on my testimony regarding LifeLine. All of Sprint’s LifeLine customers are served by Assurance Wireless. These customers are not being transferred to DISH. Accordingly, those customers will stay with T-Mobile, and

³⁸ Jt. Appl.-23C, CETF MOU, at p. 4.

we will continue to provide them LifeLine service. Moreover, under the CETF MOU we have affirmative obligations to (i) continue to offer LifeLine services indefinitely in California; (ii) continue to offer LifeLine services in California to both current and new eligible customers for free and under terms and conditions no less favorable than those offered by Assurance Wireless as of the date of the close; and (iii) grow that customer base. As I noted above, we stand by all of our commitments.”³⁹

Following the signing of the DOJ and FCC Commitments by T-Mobile, CETF finds this reaffirmation of T-Mobile’s CETF MOU commitments by its President and Chief Operating Officer reassuring. According to company press releases, Mr. Sievert has been selected by the Board of Directors to become the T-Mobile President and CEO as of May 1, 2020.⁴⁰ T-Mobile has committed to meet all its Lifeline-related commitments in the CETF MOU, including the five-year term commitment, the handset and network assignment commitment, and the goal for new adoptions for both LifeLine and low-income adoptions.⁴¹ CETF does not have any reason to doubt New T-Mobile will meet its commitment, using New T-Mobile’s Assurance brand and any new postpaid brand it may launch should the merger close.⁴²

CETF also observes that similar to some of the intervenors, CETF had concerns about T-Mobile’s initial ‘indefinite commitment’ to offer Lifeline services in California. Hypothetically, an ‘indefinite commitment’ could end the day after the merger closes. As a result, CETF negotiated a satisfactory agreement that New T-Mobile’s Lifeline commitment would be a *five-year term*, which CETF believes is a significant time period that well exceeds prior commitments (three years) by other communications providers involved in consolidations.

³⁹ Supplemental Testimony of Sievert, at p. 6, line 20 to p. 7, line 2.

⁴⁰ <https://www.t-mobile.com/news/mike-sievert-to-succeed-john-legere>

⁴¹ Jt. Appl.-23C, CETF MOU, at pp. 4-5.

⁴² CETF ask this Commission to oversee any enforcement of the CETF MOU, in case there are any future problems with compliance by New T-Mobile. CETF will not hesitate to bring an action should there be future non compliance.

CETF also acknowledges that some intervenors expressed concern during evidentiary hearings about language in the CETF MOU that allows New T-Mobile to discuss with CETF and the Commission issues relating to Lifeline service following any major changes in the Commission's LifeLine program or the FCC's Lifeline program. Participation in the wireless LifeLine program is *voluntary* by wireless carriers. The programs are complex. Should the Lifeline programs change significantly in either the federal or state regimes, it is only fair that discussion take place should New T-Mobile have concerns about such changes. This does not mean CETF will waive the commitments but will listen to concerns and seek solutions that meet the spirit and goal of the Lifeline commitment in the CETF MOU.

CETF reminds the Commission of the many benefits of the CETF MOU provisions on the provision of Lifeline services. First if all, LifeLine customers who were with Sprint's Assurance brand will obtain a much larger coverage area with New T-Mobile's broader coverage footprint in California. Second, any handset necessary to make the change from Assurance to New T-Mobile will be completely free. Third, pricing, terms and conditions will remain in place or have more favorable terms for five years from date of close. Fourth, New T-Mobile has agreed to aggressive goals to bring 332,500 new or additional low-income households through New Assurance Lifeline customers and low-income customers in five years, with an overall goal of 675,000 enrolled LifeLine/low-income customers. *These MOU commitments are nothing less than "game changers" for low-income households having access to the Internet.* Internet access is increasingly more important than telephone service, and it would be a travesty for California to not seize the unprecedented public benefits assured by the MOU which will be enforceable by the Commission if incorporated into their Order to approve.

Finally, CETF is pleased that Mr. Sievert affirmed New T-Mobile's commitment to the \$5 million dollar advertising campaign over five years for Lifeline and affirmed New T-Mobile's commitment to both state and federal Lifeline for at least the five-year period.⁴³

CONCLUSION

It is federal and state policy to favor competition in all communications markets. The wireless market grew up as a fully competitive market from its earliest days. Mergers and consolidations are the norm in this industry, as are the birth of new competitors armed with new technologies and unconventional marketing techniques. Given this historical backdrop, CETF has reviewed this consolidation carefully and pragmatically. A plethora of real and verifiable public benefits will flow from the proposed consolidation to our state's residents. Public benefits have *increased* with the subsequent post-hearing commitments to CETF, the FCC and DOJ. While other intervenors have focused their efforts trying to halt the proposed consolidation, CETF has been taking a commonsense approach to ensuring as many public benefits for all our residents. The public benefits include: an improved and confirmed New T-Mobile 5G network especially in rural areas; a three year pricing commitment; ensuring at least five years of Lifeline service by New T-Mobile with a million per year advertising effort; bringing expanded digital literacy programs for school children; and expanding emergency efforts by New T-Mobile. Further, a thousand new jobs will come to California from New T-Mobile.

Finally, the DOJ Commitments have brought the exciting possibility of the formation of a fourth wireless competitor in DISH. While the long-term success of DISH is unclear, its mere birth with unique and advantageous MVNO advantages brings a number of potential benefits to

⁴³ Transcript, at p. 1532 line 25 to p. 1533 line 21.

wireless customers. The evidence shows that DISH will bring low-cost plans and vigorous competition to the marketplace, including in the low-income customer segment. DISH will also bring to our state a fourth facilities-based 5G network that also has FCC buildout commitments to improve the quality rural broadband infrastructure. The addition of DISH will ensure competition to New T-Mobile in the prepaid market, and will generally assist in driving prices down as to all wireless providers.

Given the approvals of the FCC, the DOJ and all other state regulatory agencies for this consolidation, this Commission risks losing these significant public benefits for our state. The assignment of assets to DISH as a fourth competitor is a far better resolution of the issues in the interest of California consumers than allowing the transaction to fail, making the Sprint assets unavailable to California consumers. The proposed transaction is superior in either today's marketplace competition, or the economic devolution that inevitably will occur to Sprint if T-Mobile does not acquire it.

WHEREAS, for all the reasons contained herein, CETF respectfully requests that this Commission:

- Approve promptly the proposed consolidation so that the many public benefits may flow to California consumers;
- Order the Joint Applicants to comply fully with the terms of the CETF MOU, the DOJ PFJ, and the FCC Commitments, and attach all of these documents to the final Commission decision in their entirety; and,
- Acknowledge in an Ordering Paragraph that CETF or other intervenors representing consumers may pursue enforcement actions against Joint Applicants for failing to comply with the CETF MOU, DOJ PFJ and the FCC commitments at this Commission as to California consumers.

Respectfully submitted,

/s/ Sunne Wright McPeak

Sunne Wright McPeak
President and CEO
California Emerging Technology Fund
414 13th Street, Suite 200B
Oakland, California 94610
sunne.mcpeak@cetfund.org

/s/ Rachelle Chong

Rachelle Chong
Special Counsel to California Emerging Technology Fund
Law Offices of Rachelle Chong
345 West Portal Avenue, Suite 110
San Francisco, California 94127
rachelle@chonglaw.net

December 20, 2019