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 No. 18-07-011
And Related Matter.	Application No. 18-07-012

OPENING BRIEF OF
COMMUNICATIONS WORKERS OF AMERICA DISTRICT 9

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CWA respectfully urges the Commission to **deny** the proposed merger as currently structured because:

- The merger is not in the public interest;
- The merger would eliminate thousands of California jobs;
- The merger would combine two companies with a long history of labor and employment violations;
- The merger would increase wireless employers' power to unilaterally set wages;
- The merger would adversely affect competition, disproportionately impacting low- and moderate-income customers;
- The merger would increase New T-Mobile's prepaid plan prices by as much as 15.5% and postpaid plan prices by as much as 9.1%;
- There are no merger-specific, verifiable public interest benefits;
- The merger would not significantly improve the current level of coverage and capacity for rural Californian;
- T-Mobile and Sprint don't need the merger to roll out 5G services; and
- Both companies would continue to be viable as standalone companies.

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Communications Workers of America District 9 ("CWA") respectfully submits this Opening Brief pursuant to Rule 13.11 of the Rules of Practice and Procedure and the March 25, 2019 Administrative Law Judge's Ruling Granting the Motion of the Office of the Public Advocate to Compel Responses to Data Requests and Revising the Schedule of this Proceeding.

I. INTRODUCTION

The proposed merger would combine the nation's third (T-Mobile) and fourth (Sprint) largest mobile wireless carriers. The merger would harm competition and harm the public interest by eliminating jobs and increasing prices with no countervailing verifiable, merger-specific benefits. The Commission cannot lawfully authorize the merger.

The record shows that the merger would eliminate more than 3,000 California jobs, increase wireless employers' power to unilaterally set wages and combine two companies with a long history of labor and employment violations. The proposed merger also raises serious competitive concerns that would disproportionately impact low- and moderate-income customers. The record shows that the merger would increase New T-Mobile's prepaid plan prices by as much as 15.5% and postpaid plan prices by as much as 9.1%. New T-Mobile's low- and moderate-income prepaid customers, many of whom depend on their smartphones for broadband access, could be priced out of the wireless market.

Moreover, T-Mobile and Sprint have failed to provide evidence of verifiable, merger-specific public interest benefits. The record shows that both companies are already poised to roll out 5G services and both companies would continue to compete as standalone companies. The record also does not support the applicants' claim that the merger is necessary to bring improved service to rural California.

In short, the proposed merger would eliminate thousands of California jobs, adversely affect competition and raise prices for consumers, with no countervailing verifiable, merger-specific benefits. The merger is not in the public interest. The Commission cannot lawfully approve the merger.

II. STANDARD OF REVIEW

A public utility merger in California must be authorized by the Commission[1] and the Commission has full discretion and authority to review a merger involving wireless entities and to impose conditions where "necessary in the public interest."[2] Pursuant to Public Utilities Code sections 854(b) and (c), before authorizing a merger where the parties to the transaction meet certain revenue thresholds, the Commission must find that the merger provides short-term and

[1] Pub. Util. Code § 854(a).
[2] D.95-10-032, pp. 15-18.

long-term economic benefits to ratepayers, does not adversely affect competition and is in the public interest.[3] The Commission has consistently found that the public interest criteria set forth in sections 854(b) and (c) serve as a useful framework for evaluating mergers under section 854(a) regardless of corporate and financial structures that often allow transactions to evade the revenue thresholds of sections 854 (b) and (c).[4]

The Commission has broad discretion to determine if a merger is in the public interest[5] and must consider, on balance, a range of criteria, including whether the merger maintains or improves the quality of service to ratepayers, is fair and reasonable to utility employees, and benefits the state and local economies and communities served by the resulting public utility, among other factors.[6]

T-Mobile and Sprint, as merger applicants, must prove by a preponderance of the evidence that the merger satisfies these requirements.[7] T-Mobile and Sprint have failed to make this showing and, therefore, the Commission cannot find that the merger would benefit ratepayers, is in the public interest, and would not adversely affect competition. On the contrary, the record shows that the proposed merger would eliminate thousands of California jobs, adversely affect competition and harm ratepayers (particularly low-income ratepayers).

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[3] *Id.*, §§ 854(b) and (c).
[4] See e.g., D.07-05-061, p. 24; D.06-02-033, p. 23; D.10-10-017, p. 15; D.16-05-007, p. 20; D.01-06-007; *Northern California Power Agency v. Public Utilities Commission* (1971) 5 Cal.3d 370, 377.
[5] D.06-02-003, p. 23.
[6] *Id.*, §§ 854(c)(1)-(8).
[7] *Id.*, § 854(e); D.10-10-01, pp. 11, 16.

III. THE PROPOSED MERGER WOULD HARM COMPETITION

The Commission cannot authorize the proposed merger unless it finds that the merger would not adversely affect competition.[8] Federal antitrust law provides a framework to analyze competitive effects of a merger. The DOJ and FTC's Horizontal Merger Guidelines "describe the principal analytical techniques and the main types of evidence on which the Agencies rely to predict whether a horizontal merger may substantially lessen competition."[9] Based on the Guidelines, courts and agencies first define the relevant markets and then examine the merger's competitive effects on those markets.[10]

The relevant product markets include all goods which are "reasonably interchangeable" with a product.[11] Products are reasonably interchangeable if consumers view those products as substitutes for each other and would switch among those products in response to a change in price.[12] Submarkets can be product markets for antitrust purposes.[13] The DOJ and FCC developed the "hypothetical monopolist" test to determine whether submarkets are distinct product markets.[14] Under this test, agencies ask whether a hypothetical firm that is the only seller of a product could profitably impose a small but significant non-transitory increase in price on that product.[15] If the increase would cause buyers to switch to alternative products, those products are deemed part of the relevant product market.[16]

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[8] Pub. Util. Code § 854(b)(3).
[9] Exh. Jt Appl.-15, p. 1.
[10] *Id.*, p. 7.
[11] *United States v. E.I. Du Pont de Nemours & Co*., 351 U.S. 377, 395 (1956).
[12] *Apple v. Psystar,* 586 F. Supp. 2d 1190, 1196 (2008).
[13] *Brown Shoe Co. v. Unites States,* 370 U.S. 294, 325 (1962).
[14] Exh. Jt Appl.-15, p. 7.
[15] *Id.*, p. 8.
[16] *Id*.

The DOJ and FCC have defined the relevant geographic markets for wireless services as local while also recognizing the importance of considering a national market.[17] Courts and agencies look for "the area or areas to which a potential buyer may potentially look for the goods or services he seeks."[18] From the consumer perspective, local areas may be considered relevant geographic markets for mobile wireless telecommunications services. The Cellular Market Areas ("CMAs") identified by the FCC and used to license mobile wireless telecommunications services providers often estimate the areas within which customers have the same competitive choices.[19]

Antitrust agencies and courts use the Herfindahl-Hirschman Index ("HHI") as the standard to calculate the competitive impact of mergers.[20] Antitrust agencies generally classify markets into three types: unconcentrated, moderately concentrated and highly concentrated.[21] Highly concentrated markets have HHIs of 2,500 or more.[22] The DOJ presumes that an HHI

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[17] Exh. CWA-1, p. 12.
[18] *U.S. v. Grinnell Corp*., 384 U.S. 563, 588 (1966).
[19] Exh. CWA-1, p. 12.
[20] Exh. Jt Appl-15, p. 18; *United States v. Anthem, Inc*., 855 F.3d 345, 349 (D.C. Cir.), *cert. dismissed*, 137 S. Ct. 2250, 198 L. Ed. 2d 676 (2017); *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd*., 778 F.3d 775, 788 (9th Cir. 2015); *FTC v. H.J. Heinz Co., 246 F.3d 708*, 715–16 (D.C. Cir. 2001); *Fed. Trade Comm'n v. Tronox Ltd*., No. 1:18-CV-01622 (TNM), 2018 WL 4353660, at *13 (D.D.C. Sept. 12, 2018) (merger would increase HHI from 2,320 to 3,046; since the merger "would increase the HHI score by well over 200 points, and because it would result in a highly concentrated market, the proposed transaction is presumptively anticompetitive under the Merger Guidelines"); *United States v. Energy Sols., Inc*., 265 F. Supp. 3d 415, 440 (D. Del. 2017) (government can establish a prima facie case of anticompetitive effects by showing that the merger would produce a firm controlling an undue percentage of the relevant market and result in a significant increase in market concentration); *United States v. Aetna Inc*., 240 F. Supp. 3d 1, 43 (D.D.C. 2017); *Fed. Trade Comm'n v. Sysco Corp*., 113 F. Supp. 3d 1, 52 (D.D.C. 2015) (noting that a merger that results in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power).
[21] *Id*., p. 19.
[22] *Id*.

increase of more than 200 points in a highly concentrated market likely enhances market power.[23]

Despite standard practice of agencies and courts applying the Horizontal Merger Guidelines in deciding whether a merger is lawful, T-Mobile and Sprint provided no HHI calculations for the proposed merger's relevant markets. However, CWA and the Public Advocates Office provided evidence that, when considering the national and relevant local markets, the proposed merger raises serious competitive concerns. The merger would significantly increase concentration in the already highly concentrated mobile telephony/broadband and prepaid wireless retail markets and massively exceed the spectrum screen. The merger would also eliminate fierce competition between two companies whose customers view their products and services as close substitutes. The proposed merger would harm competition and, therefore, the Commission cannot lawfully authorize it.

A. The Merger Would Adversely Affect Competition by Increasing Concentration in the Already Highly Concentrated Mobile Telephony/Broadband Market

The merger would impact a combined mobile telephony and mobile broadband services market. This market is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks.[24] Mobile telephony/broadband services is a relevant antitrust market.[25]

Mobile wireless services allow customers to make calls, check email, send texts, access social media and other applications, and search the Internet when they are outside of the home or

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[23] *Id.*
[24] CWA-1, p. 5.
[25] *Id.*

moving between locations, without interruption.[26] More than 75% of Americans own a smartphone.[27] Wireless providers promote voice and data services as a package and most consumers buy voice and data services in a single wireless plan.[28] Since fixed wireless services and wireline services are not mobile, consumers do not regard them as reasonable substitutes for mobile wireless services.[29] Public Wi-Fi is regarded as less secure than a cellular network.[30] Thus, customers place great value on mobile wireless services.[31]

The national market for mobile telephony/broadband services is highly concentrated.[32] In 2017, the four nationwide service providers accounted for 99% of the $179.1 billion in wireless service revenues.[33] Based on the 2017 revenues for the four providers and the companies' wireless connections as of the second quarter of 2018, CWA calculated pre-merger and post-merger HHIs. CWA found that the wireless market is a highly concentrated market, with a pre-merger HHI of 2,762 for wireless connections and 2,811 for wireless revenues. CWA further found that the merger would increase the HHI for wireless connections by 519 points and the HHI for wireless revenue services by 432 points.[34] Thus, the merger is presumptively anticompetitive[35] on a national level.

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[26] *Id*.
[27] *Id.*
[28] *Id.*
[29] *Id*., p. 6.
[30] *Id.*
[31] *Id.,* p. 5.
[32] *Id*., p. 12.; Exh. Pub Adv-2, p. 19.
[33] Exh. CWA-1, p. 12.
[34] *Id*., p. 13.
[35] Exh. Jt. Appl.-15, § 5.3.

Many individual California local markets, including major metropolitan markets, are highly concentrated too.[36] T-Mobile, Sprint and their wholesale partners have significant market share in specific geographic areas. For example, 56% of wireless customers in Los Angeles and 46% in Sacramento report having cellular service from a Sprint or T-Mobile-owned company or wholesale partner.[37] According to the FCC, as of year-end 2017 the weighted average HHI for mobile wireless services was 3,106, and in virtually every local market analyzed by the FCC, the HHI exceeds the DOJ's threshold of 2,500 for a "highly concentrated market."[38] The Public Advocates Office determined the HHI changes that would result from the proposed merger in 45 of California's 58 counties (or 76%) would exceed the DOJ's 200-point threshold.[39] Thus, for the vast majority of local California markets, the merger would be presumed to enhance market power.[40]

Using proprietary FCC data Free Press, a consumer organization, calculated national and local HHIs. Free Press found that the "data confirms just how concentrated the U.S. wireless market is, both at the national-level and at the [CMA] level." Free Press noted that applying the DOJ's screen for a post-merger HHI reveals how "troubling the summary data are."[41] Even more problematic, according to Free Press, are the HHIs in large urban areas, including the Los Angeles CMA, highlighting "the importance of T-Mobile and Sprint to price-sensitive customers

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[36] Exh. CWA-1, p. 14.
[37] *Id*.
[38] *Id.*
[39] Exh. Pub Adv-2, p. 46, Table 5.
[40] *Id.*; Exh. Jt. Appl.-15, § 5.3.
[41] Exh. CWA-1, p. 15, quoting Free Press Reply Comments, WT Docket No. 18-197, Oct. 31, 2018 at 8-14.

– a segment that is disproportionately made up of lower-income people and persons of color, both of which groups are disproportionately located in large, urban U.S. markets."[42]

Record evidence shows that the merger would substantially increase concentration in the already highly concentrated mobile telephony/broadband market. Therefore, the merger is presumptively anticompetitive and the Commission cannot lawfully authorize it.

B. The Merger Would Adversely Affect Competition by Increasing Concentration in the Already Highly Concentrated Prepaid Wireless Retail Market

The mobile wireless marketplace includes prepaid and postpaid plans. Prepaid plans differ from postpaid plans in several ways. For example, prepaid plans are often marketed under a different brand name (such as Boost Mobile, MetroPCS and Cricket Wireless), are sold in different stores, have different contractual terms (e.g. do not require a credit check or an annual plan) and offer different handset options.[43]

The prepaid services market is already highly concentrated (pre-merger HHI is 3,037) and the merger would increase concentration by more than 1,400 points (seven times the DOJ's 200-point threshold).[44] Therefore, the merger would be presumed to enhance market power.[45]

Price sensitive low- and moderate-income consumers typically purchase prepaid wireless plans.[46] T-Mobile's MetroPCS, Sprint's Boost and Virgin Mobile prepaid brands, and their wholesale partners serve ***60% of the prepaid market***.[47] Nearly one-third of these customers have annual incomes below $25,000.[48] "Post-merger, the new T-Mobile's low- and moderate-income

[42] *Id.*, quoting Free Press Reply Comments, WT Docket No. 18-197, Oct. 31, 2018 at 12-13.
[43] *Id.*, p. 6.
[44] *Id.*, p. 15; Exh. Pub Adv-2, p. 64.
[45] Exh. Jt Appl.-15, p. 19.
[46] Exh. CWA-1, p. 17.
[47] *Id.*, citing Petition to Deny of DISH Network submitted to FCC, August 27, 2018, pp. 75-76.
[48] *Id.*, citing Free Press Petition to Deny submitted to FCC, August 27, 2018, p. 69, Fig. 10.

prepaid customers, many of whom depend on their smartphones for broadband access, could be priced out of the wireless market."[49]

Record evidence shows that the merger would substantially increase concentration in the already highly concentrated prepaid wireless retail market. Therefore, the merger is presumptively anticompetitive, and the Commission cannot lawfully authorize it.

C. The Merger Would Adversely Affect Competition by Substantially Increasing Spectrum Concentration

According to the FCC, "the state of control over the spectrum input is a relevant factor in its competitive analysis."[50] Sprint's economic experts explained in an article why concentration in spectrum ownership has "significant implications for competition in the provision of wireless service":

> First, spectrum is an essential input for wireless carriers. Carriers with limited spectrum holdings have limited capacities and are, for that reason, handicapped in competing for wireless subscribers. Second, because there are significant scale economies in the provision of wireless services, a carrier with small spectrum holdings, and a commensurately small share of subscribers, can be expected to have higher costs per subscriber than a carrier with large spectrum holdings and a large subscriber share. This cost disadvantage reinforces the effect of the competitive disadvantage that results directly from the carrier's smaller capacity.[51]

When reviewing proposed mergers, the FCC conducts an initial spectrum screen to identify markets in which spectrum holdings changes may be a concern.[52] The initial screen counts

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[49] *Id.*
[50] *Id.*, p. 18, quoting *In re Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order*, 29 FCC Rcd 6133, 6143 ¶ 17 (2014).
[51] *Id.*, pp. 18-19, quoting Stanley M. Besen, Stephen D. Kletter, Serge X. Moresi, Steven C. Salop & John R. Woodbury, *An Economic Analysis of the AT&T-T-Mobile USA Wireless Merger*, 9 JOURNAL OF COMPETITION LAW & ECONOMICS 23, 31 (2013).
[52] *Id.*, p. 19.

spectrum that is suitable and available in the near term for the provision of mobile telephony/broadband services.[53] The screen is triggered when a wireless provider would hold approximately one-third or more of the spectrum.[54]

There is 715.5 MHz of spectrum that is suitable and available in the near term for the provision of mobile telephony/broadband services.[55] This results in a maximum screen of 238.5 MHz.[56] The proposed merger "would massively exceed the spectrum screen."[57] New T-Mobile would exceed the spectrum screen in 52 of California's 58 counties.[58] 99.2% of California's population (nearly 37 million people) live in those counties where New T-Mobile would exceed the spectrum screen.[59] Further, the spectrum holdings of New T-Mobile (almost 300 MHz on average) would vastly exceed the holdings of other wireless carriers. New T-Mobile would hold nearly three times as much spectrum per subscriber as Verizon, and more than twice as much spectrum per subscriber as AT&T.[60]

T-Mobile and Sprint fail to explain why they require so much spectrum, even to deploy the promised 5G services, and how such a large aggregation of spectrum can be reconciled with their position that there will be robust competition in both current generation and 5G mobile wireless services. The merger would adversely affect competition by substantially increasing spectrum concentration. Therefore, the Commission cannot lawfully authorize the merger.

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[53] *Id.*
[54] *Id.*, citing In re Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6133, 6156 ¶ 44 (2014).)
[55] *Id.*, p. 19.
[56] *Id.*
[57] *Id.*
[58] *Id.*, pp. 19, 96, 99.
[59] *Id.*, p. 20.
[60] *Id.*

D. The Merger Would Lead to Unilateral Competitive Impacts by Eliminating Head-to-Head Competition Between Close Competitors

When a merger involves direct competitors (viewed in terms of products or services), the primary competitive concern is often that the merger would lead to higher prices. According to the Horizontal Merger Guidelines, "[t]he extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects."[61] "[T]he more the buyers of products sold by one merging firm consider products sold by the other merging firm to be their next choice," the greater the unilateral price effects.[62]

The Guidelines provide that "documentary and testimonial evidence, win/loss reports and evidence from discount approval processes, customer switching patterns, and customer surveys" are useful for evaluating "the extent of direct competition between the products sold by the merging firms."[63] The Guidelines describe three types of economic evidence that are particularly relevant to unilateral effects analyses: (1) diversion ratios (i.e. the percentage of customers who would respond to a price increase by one merging party by switching to the other merging party), (2) "gross upward pricing pressure," and (3) merger simulation models.[64] According to the applicants' economist, "porting data provide a useful indicator of the degree of substitution between providers."[65] The FCC agrees.[66]

The record shows that T-Mobile and Sprint engage in fierce, head-to-head competition. The record also shows that T-Mobile's and Sprint's customers view the companies as each

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[61] Exh. Jt Appl-15, p. 20.
[62] *Id.*; Exh. CWA-1, p. 28.
[63] Exh. Jt Appl-15, p. 20.
[64] *Id.*
[65] Exh. CWA-14, p. 10.
[66] *Id.*

other's closest competitors. This is evidence that the proposed merger would result in significant unilateral price effects.

1. T-Mobile and Sprint Engage in Extensive Head-to-Head Competition

Record evidence demonstrates intense competition between Sprint and T-Mobile through, for example, pricing, promotions, service and handset offerings.[67] To compete, both companies have also invested in and upgraded their networks to attract and retain customers (often each other's customers).[68] Customers have directly benefitted from this competition. The merger would eliminate this head-to-head competition, along with the accompanying customer benefits.

Head-to-head competition between T-Mobile and Sprint is undeniable. In June 2015, T-Mobile launched Jump On Demand, a smartphone leasing program where customers could upgrade their smartphones up to three times a year. Jump was advertised as cheaper than other carrier leasing programs, including Sprint's.[69] In response, in September 2015, Sprint launched an iPhone leasing plan that started at $1 per month and, two months later, unveiled a limited-time promotion offering 50% off to T-Mobile, Verizon, and AT&T customers.[70]

In August 2016, within minutes of each other, T-Mobile and Sprint announced unlimited data plans (T-Mobile One and Unlimited Freedom). Sprint's then CEO Marcelo Claure and T-Mobile's CEO John Legere took to Twitter to accuse each other of mimicry.[71] A week or so later, Sprint launched Unlimited Freedom Premium, an unlimited HD streaming and data offer. The press release announcing the offer compared the plan to T-Mobile One.[72] Days later, T-

[67] Exh. CWA-1, p. 20.
[68] *Id.*, pp. 20-21.
[69] *Id.*, p. 21.
[70] *Id.*
[71] *Id.*, p. 22.
[72] *Id.*

Mobile announced a premium-tier unlimited plan (T-Mobile One Plus), giving customers unlimited HD video streaming, unlimited LTE hotspot use and unlimited data.[73]

In September 2016, ahead of the iPhone 7 launch, T-Mobile offered a free 32GB iPhone 7 to new and existing customers trading in an iPhone 6.[74] That same day, Sprint offered a 256 GB iPhone 7s for the price of the 128 GB model online.[75]

In February 2017, T-Mobile added unlimited HD video streaming to its basic unlimited plan.[76] In response, Sprint offered an unlimited data plan that included unlimited HD video streaming, but priced less than its Unlimited Freedom Premium plan.[77] Sprint also offered a promotion for five lines of unlimited data, talk and text for $90 a month, claiming it was a "better value than Verizon, AT&T and T-Mobile."[78]

In June 2017, Sprint began offering a free year of unlimited data to customers of T-Mobile, Verizon and AT&T.[79]

In August 2017, T-Mobile launched a plan geared toward seniors, called the T-Mobile One Unlimited 55+.[80] The following year, Sprint rolled out its senior plan.[81]

In September 2017, T-Mobile began to give Netflix for free to subscribers of its unlimited family plans.[82] Two months later, Sprint added Hulu for free to its unlimited plans.[83]

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[73] *Id.*
[74] *Id.*
[75] *Id.*, pp. 22-23.
[76] *Id.*, p. 23.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*, p. 24.
[82] *Id.*
[83] *Id.*

"Analysts read these efforts as competitively-driven attempts to differentiate by providing content."[84]

In October 2017, ahead of the iPhone X launch, Sprint offered discounts on iPhone Xs to new and existing customers who traded in eligible smartphones.[85] T-Mobile quickly followed with a similar promotion.[86]

In April 2018, T-Mobile launched T-Mobile One Military, shaving $15 off plan costs for service members and additional discounts for each line and undercutting Sprint's military plan.[87] Three months later, Sprint offered a 50% discount on military family phone lines.[88]

Boost Mobile and MetroPCS also compete extensively. In June 2015, Boost Mobile offered to cut plan costs by 50% for customers who switched from either MetroPCS or Cricket Wireless.[89] The following month, MetroPCS promoted plans with unlimited calling, messaging and data roaming in Mexico. MetroPCS distinguished its plans from Boost Mobile's which did not offer data roaming services in Mexico.[90]

In January 2016, MetroPCS offered Sprint, Boost Mobile and Virgin Mobile customers the option to switch for 22 to 50% off.[91] Sprint owned Boost Mobile and Virgin Mobile, and the press release announcing the promotion took direct aim at the offerings of Sprint and its prepaid brands.[92] Two months later, Boost Mobile launched a limited-time offer of two lines of unlimited

[84] *Id*.
[85] *Id*.
[86] *Id*.
[87] *Id*., pp. 24-25.
[88] *Id*., p. 25.
[89] *Id*.
[90] *Id*.
[91] *Id*.
[92] *Id*.

talk, text and data for $60 a month. Advertisements included statements like “2X More Data than MetroPCS” and “Save up to 25% compared to MetroPCS.”[93]

In May 2017, Boost Mobile launched its “Project Switch” campaign, an effort to convince wireless customers to switch to Boost.[94] The campaign claimed that customers switching to Boost would receive unlimited high-speed data, while MetroPCS customers were capped at 2 GB of high-speed data.[95]

In August 2017, MetroPCS launched a two-line unlimited data plan for $75, with the first line priced at $50 and the second at $25.[96] Analysts viewed this as undercutting Boost Mobile’s unlimited data plan, which offered $50 for the first line and $30 for the second line.[97] Two weeks later, Boost Mobile dropped the price for additional lines to $25 a month.[98]

In September 2017, Boost Mobile announced plans to bundle taxes and fees into plan costs. Analysts viewed the change as motivated by T-Mobile, which announced earlier in the year that it would bundle costs for its newest plans.[99] The effort put Boost Mobile on a level playing field with MetroPCS, which had reportedly bundled costs since 2010.[100]

In October 2017, MetroPCS started offering four lines of unlimited data for $100. That same week, Boost Mobile started offering five lines of unlimited data for $100.[101]

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[93] *Id.*, p. 26.
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*, pp. 26-27.
[100] *Id.*, p. 27.
[101] *Id.*

In February 2018, Boost Mobile ran a promotion called "Switch Off MetroPCS," giving two months of free service to MetroPCS customers who switched to Boost.[102] In April, Boost Mobile offered a free month of service for new customers who brought their own device to the carrier. That same month, MetroPCS announced that new customers would receive two months of free service.[103]

The proposed merger would put an end to T-Mobile and Sprint's rivalry and the consumer benefits that go along with it, such as competitive pricing, promotions, service and handset offerings.

2. T-Mobile's and Sprint's Customers View the Companies as Each Other's Closest Competitors

The proposed merger would incent New T-Mobile to raise product prices if "a non-trivial fraction" of T-Mobile's or Sprint's customers view the other's products and services as their second choice, and view the products and services of AT&T and Verizon as more distant choices.[104] The merger would likely cause anticompetitive effects if there is significant substitution between T-Mobile and Sprint by a substantial share of customers.[105] The greater the number of Sprint customers who view T-Mobile as their second choice (and vice versa), the greater the likely competitive harm.[106]

FCC staff, during the AT&T/T-Mobile merger, found that many Sprint and T-Mobile customers saw the other as their second choice. FCC staff concluded that, if AT&T and T-Mobile merged, Sprint would likely raise prices because it "may have a particular advantage in

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[102] *Id.*
[103] *Id.*
[104] *Id.*, p. 28.
[105] *Id.*, p. 29.
[106] *Id.*, pp. 28-29.

attracting T-Mobile's customers: retail subscribers view Sprint services as closer substitutes for T-Mobile's services than Verizon and AT&T's services."[107] The Local Number Portability ("LNP") database, which tracks the movement of customers' phone numbers, confirms that Sprint's and T-Mobile's customers view these companies as each other's closest competitors.[108] Using FCC LNP data, DISH found that "[t]he porting data…proves that this is not just a simple 4-to-3 merger. The two merging parties are each other's closest competitors."[109] Free Press reached a similar conclusion in its analysis of the LNP data, noting that the data confirms "that this merger would have an outsized impact on customers whose purchasing decisions are based primarily on price."[110] Further, "[t]he economic evidence presented in the record suggests, and subsequent data derived from the LNP database confirms that the loss of Sprint (along with its pre-paid brands Boost and Virgin) as an independent competitor would give post-merger T-Mobile a unilateral incentive to raise prices and otherwise exercise market power."[111]

The unilateral competitive effects of the proposed merger would decrease competition and increase prices for consumers. The Brattle Group economists estimate that the merger would increase prices as much as 15.5% on the new T-Mobile's prepaid plans and as much as 9.1% for postpaid plans.[112]

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[107] *Id.*, p. 29, quoting *AT&T/T-Mobile Staff Analysis and Findings*, ¶ 83.
[108] *Id.*
[109] *Id.*, pp. 29-30, quoting DISH Reply Comments, FCC WT Docket No. 18-197, pp. 2, 12-18 (October 31, 2018).
[110] *Id.*, p. 30, quoting Free Press, WT Docket No. 18-197, pp. 2, 18-31.
[111] *Id.*
[112] *Id*., p. 30, citing DISH Reply Comments, FCC WT Docket No. 18-197 at 2 and 12-18 (October 31, 2018 (also filed in NY PSC Case 18-C-0396).

E. The Record Does Not Support T-Mobile and Sprint's Argument that New Market Entrants Make it Impossible for the Merger to Reduce Competition

Pointing to Comcast, Charter, DISH, TracFone and Google, T-Mobile and Sprint argue that "the wireless space is increasingly populated by competitors beyond the traditionally recognized four nationwide wireless providers, making it impossible that the merger will reduce competition."[113] This argument fails for two reasons. First, the record does not show that consumers view Comcast, Charter, DISH, TracFone or Google as an effective substitute for the big four wireless companies (Verizon, AT&E, T-Mobile and Sprint). Second, the record does not show that Comcast, Charter, DISH, TracFone or Google operates as a constraint on pricing or other competitive decisions by Verizon, AT&T, T-Mobile or Sprint.

Comcast's Xfinity Mobile is part of a bundled service, relies on Verizon's network for wireless service, offers few handset options, and its "unlimited" plan shifts to reduced speeds after 20 GB of cellular data usage.[114] Xfinity Mobile has a wireless subscribership of only 781,000 customers (less than 2% the size of Sprint).[115] Xfinity Mobile is "designed to support the core cable business."[116]

Charter has just begun to offer wireless cell service. Charter's service is bundled service, relies on Verizon's network, and is available to Charter subscribers only.[117] According to its CEO, Charter expects the new wireless service "to drive more sales of our core products and to create longer customer lives."[118] One industry observer writes:

[113] *Id.*, quoting Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032, Application No. A1807012, at 30-31 (filed July 13, 2018).
[114] CWA-1, p. 7.
[115] *Id.*
[116] *Id.*
[117] *Id.,* p. 8.
[118] *Id*.

> The cable companies have found that the more services that a customer purchases from a single company, the less likely that customer is to switch to a different service provider, even if they are unhappy with one or more of the service elements within the bundle. At least for now, Comcast's Xfinity Mobile and the impending Charter offering is more about preserving their wireline business than competing in the wireless business.[119]

T-Mobile and Sprint suggest that Comcast and Charter have broader ambitions but provide no evidence that Comcast or Charter constrain (or would constrain in the future) T-Mobile or Sprint's pricing or other competitive decisions. In fact, in February 2018, just a few months before the proposed merger was announced, T-Mobile's CEO called Comcast's wireless service "very irrelevant" and Charter's wireless service "irrelevant squared."[120]

DISH has amassed significant spectrum in recent years but the company faces "an uphill climb to wireless relevance."[121] Some of DISH's spectrum is one-way, meaning it can be used for downloading but not for uploading data, making calls or sending text messages.[122] DISH's infrastructure also pales in comparison to the big four wireless carriers.[123] While DISH plans to invest in wireless projects and 5G in the future, it's currently focused on supporting Internet of Things applications.[124]

Google has had its Project Fi for about three years.[125] The service switches between cellular networks (Sprint, T-Mobile and U.S. Cellular) and Wi-Fi networks when available,

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[119] *Id*., citing The Capitol Forum, *Sprint/T-Mobile: Despite Changes in Administration, Competitive Landscape, and Market Dynamics, Clearance Prospects Remain Highly Challenging*, at 5 (May 16, 2017).
[120] *Id*., citing Daniel Frankel, *T-Mobile's Legere: Charter's wireless service will be 'irrelevant squared'*, FIERCEVIDEO (Feb. 8, 2018).
[121] *Id*., p. 9, citing The Capitol Forum, *T-Mobile/Sprint: Dish Faces Uphill Climb to Wireless Relevance Even If It Buys Divested Assets, Industry Experts Say* (July 12, 2018).
[122] Exh. CWA-1, p. 9.
[123] *Id.*
[124] *Id*.
[125] *Id*.

offers a potentially lower-priced service for data usage, and works on a select number of phones.[126] Apple iPhones and most other major phone brands are not compatible with Project Fi.[127] Project Fi is a mobile virtual network operator that moves customers onto Wi-Fi to protect them from cellular data costs.[128] This feature is less useful now that the big four have unlimited cellular data plans.[129] According to one industry analyst,

> [Project] Fi has the challenge of being a product that might appeal to more techie users but commercially is of more interest to price-sensitive lower-use customers. Collectively, those Wi-Fi-first propositions have approximately 3 million users in the US – challenged by that niche pricing position, often limited device support, and marketing spend dwarfed by the big 4.[130]

Finally, T-Mobile and Sprint argue that TracFone "is exerting huge competitive pressure on traditional wireless competitors" because it is "the largest MVNO in the United States and the fifth largest wireless carrier by subscribership."[131] The applicants' argument is unsupported. MVNOs depend upon facilities-based carriers' networks but the network provider can change or end the relationship when it suits them. Therefore, the competitive significance of MVNOs is limited.[132] FCC staff wrote:

> These firms [MVNOs] purchase service at wholesale rates from facilities-based providers. Unless the firms selling wholesale services (often the nationwide providers) have an ability and incentive to expand output after the proposed transaction, as we find unlikely, it is also unlikely that they would set wholesale rates at a level that would allow resellers to create significant new competition in retail services. Commission rules do not require facilities-based providers to offer services for resale.[133]

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[126] *Id*.
[127] *Id*., p. 10.
[128] *Id*.
[129] *Id*.
[130] *Id*.
[131] *Id.*
[132] *Id*., p. 11.
[133] *Id.*, citing *AT&T/T-Mobile Staff Analysis and Findings* ¶ 69 n. 202.

Further, FCC staff, "would not expect resellers and MVNOs to be able to counteract or deter a competitive problem in retail mobile wireless services through expansion, whether on their own or in conjunction with expansion or new competition by other firms."[134] Since New T-Mobile would have more than 60% of the retail prepaid market (including MVNOs),[135] it's reasonable that prepaid business could be an important part of New T-Mobile's overall business, incentivizing New T-Mobile to focus on that segment and de-incentivizing it to provide wholesale service to a competitor.[136] "Indeed, this was one of Sprint's major theories in the AT&T/T-Mobile merger, where Sprint was both a customer of and a competitor to the merging parties."[137] T-Mobile and Sprint's argument that the proposed merger would allow TracFone to create new competition is unsupported.

Record evidence does not show that consumers view Comcast, Charter, DISH, TracFone or Google as substitutes for Verizon, AT&E, T-Mobile or Sprint, or that Comcast, Charter, DISH, TracFone or Google constrains pricing or other competitive decisions by the big four. Therefore, T-Mobile and Sprint's argument that increased competition with Comcast, Charter, DISH, TracFone and Google prohibits competitive effects from the merger fails.

IV. THE MERGER WOULD HARM (NOT BENEFIT) CALIFORNIA RATEPAYERS; THE MERGER IS NOT IN THE PUBLIC INTEREST

To authorize a proposed merger, the Commission must find that the merger would benefit

[134] *Id*.
[135] Exh. CWA-1, p. 11.
[136] *Id*.
[137] *Id*., citing Sprint Complaint ¶ 7 ("as a result of the significant increase in market concentration resulting from the merger, AT&T and Verizon, both unilaterally and in coordination, would have the increased ability and incentive to directly raise the costs that their rivals must incur for backhaul and roaming").

ratepayers economically in the short- and long-term.[138] The Commission must also find that the merger is in the public interest.[139] To determine whether the proposed merger is in the public interest, the Commission must consider whether the merger would maintain or improve the quality of service, is fair and reasonable to utility employees, and would benefit the state and local economies and communities served by the resulting public utility, among other factors.[140] The Commission should not consider the purported benefits of a merger if they are "vague, speculative, or otherwise cannot be verified by reasonable means."[141]

T-Mobile and Sprint speculate that a new, bigger company (i.e. New T-Mobile) would take advantage of economies of scale, leading to significant efficiency gains that would benefit ratepayers. Quite the contrary, the record shows that the proposed merger would cause economic ***harm*** to California ratepayers by eliminating jobs and raising prices. The merger is not in the public interest.

T-Mobile and Sprint claim that the proposed merger is necessary to bring California "a World-Class Nationwide 5G Network," "fiber-like data speeds," competitive "in-home wired broadband products," and "high-speed broadband for rural areas."[142] T-Mobile and Sprint have failed to show, however, that these claimed benefits are verifiable and attributable to the merger. Rather, both companies are already improving their networks, including rolling out 5G services, and would continue to effectively compete as standalone companies.

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[138] Pub. Util. Code § 854(b)(1).
[139] *Id.*, § 854(c).
[140] *Id.*, §§ 854(c)(1)-(8).
[141] Exh. Jt Appl-15, p. 7.
[142] Exh. CWA-1, p. 31, quoting T-Mobile and Sprint Application, p. 13.

A. The Proposed Merger Would Eliminate Jobs Which is Unfair and Unreasonable for T-Mobile and Sprint Employees, Harms California Ratepayers and is Not in the Public Interest

1. The Merger Would Eliminate Jobs, Not Create Them

T-Mobile and Sprint claim that the merger would be "jobs positive on Day One."[143] According to the applicants, New T-Mobile "plans" to open 600 stores, generating 5,000 retail jobs in the U.S. by 2021.[144] The applicants also "anticipate" the merger would create 1,800 network jobs and 5,600 customer care center jobs in the U.S.[145] While T-Mobile and Sprint may "anticipate" job creation as a result of the merger, there is no record evidence that increased employment is merger-specific. Rather, evidence shows that the separate companies had aggressive growth plans absent the merger. Furthermore, even if New T-Mobile would create jobs, the post-merger reality for employees who work for authorized dealer stores or contractors ("direct external employees")[146] is dismal and the applicants completely fail to account for the massive job losses that would occur when dealer stores close as a result of the merger. Indeed, record evidence shows that the merger would ***eliminate more than 3,000 California jobs*** from retail store closures.

a. The Applicants' Claimed Job Creation is Not Attributable to the Merger

T-Mobile and Sprint claim that their plans to increase employment are specific to the proposed merger.[147] However, record evidence shows that both companies had aggressive

[143] Exh. Jt Appl.-2, p. 36.
[144] *Id.*
[145] *Id.,* pp. 36-37.
[146] "Direct external employees" are employees who work for authorized dealers or contractors. In contrast, "Direct internal employees" are the company's payroll employees.
[147] Exh. Jt Appl.-2, pp. 36-37.

growth plans absent the proposed merger. Therefore, the applicants' claimed job creation is not attributable to the merger.

In fiscal year 2017, T-Mobile opened 2,800 stores (1,500 T-Mobile stores and 1,300 MetroPCS stores).[148] In 2018, T-Mobile focused on growing its store footprint in rural areas and "greenfield markets," places where the company has network coverage but no stores.[149] In March 2018, T-Mobile opened a 1,200-worker call center in South Carolina.[150] In May 2018, T-Mobile stated that its future growth would focus on rural and suburban areas.[151] In July 2018, T-Mobile's announcements of six store openings in the Dallas area and 10 in the Orlando area indicated that the company continued its aggressive expansion, even in markets where it already has a significant presence.[152] In August 2018, T-Mobile announced that its customer call center operations would focus on live representatives and would avoid automation, suggesting that T-Mobile would continue to expand its call center staff.[153]

In December 2016, Sprint pledged to create 5,000 jobs in the U.S. by the end of 2017, primarily by reshoring call center positions.[154] In fiscal year 2017, Sprint opened 1,300 stores (500 Sprint stores and 800 Boost Mobile stores) and planned to continue its retail expansion.[155] In March 2018, Sprint announced it would open 600 Sprint stores and 850 Boost Mobile stores

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[148] Exh. CWA-1, p. 50.
[149] *Id*.
[150] *Id*.
[151] *Id*.
[152] *Id*.
[153] *Id*.
[154] *Id*., p. 51.
[155] *Id*.

by the end of year.[156] In May 2018, Sprint stated that merging with T-Mobile would not change its plans to open new stores.[157]

In sum, T-Mobile and Sprint cannot claim that the merger would result in substantial job creation. Evidence shows that, in several instances, such as retail expansion in rural areas and onshoring of customer care, the applicants' claims are based on ***pre-existing*** job growth plans. Given T-Mobile's and Sprint's individual, aggressive expansion plans, their claims of merger-specific job creation fail.

b. The Proposed Merger Would Eliminate More Than 3,000 California Jobs

CWA prepared a detailed analysis of the merger's impact on retail store closures and resulting job loss.[158] CWA found that 902 of 3,241 (28%) stores in California would close from the merger, eliminating 3,342 California jobs.[159]

In California, Sprint and T-Mobile have about 1,230 postpaid wireless services corporate and authorized retail stores.[160] This combined retail network is much larger than either Verizon's (645 stores) or AT&T's (553 stores) retail operations. The network also includes a substantial overlap in geographic locations of T-Mobile and Sprint stores.[161] Therefore, it makes sense that the proposed merger would cause a significant number of store closures.[162] According to industry analysts, store closures are a key element of the projected cost savings from the proposed

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[156] *Id*.
[157] *Id*.
[158] *Id*., pp. 101-109.
[159] *Id*., p. 52.
[160] *Id*., p. 53.
[161] *Id*.
[162] *Id*.

merger.[163] Indeed, T-Mobile CEO John Legere referred to a "rationalization" of overlapping urban retail operations and resulting job cuts in an April 2018 U.S. Senate hearing on the proposed merger.[164] T-Mobile acknowledges that the merger would result in a significant number of postpaid store closings in California but it has not determined which stores would close and "it is still evaluating plans related to any prepaid retail store locations as a result of the merger."[165] In other words, T-Mobile does not know how many stores would close as a result of the merger.

CWA used a regression model to determine the number of postpaid T-Mobile and Sprint stores likely to close post-merger. The model relies on the relationship between urban area population and the existing number of T-Mobile and Metro PCS stores.[166] The model shows that, post-merger, T-Mobile and Sprint would operate 873 – and close 357 (41%) – postpaid corporate and dealer retail stores in current T-Mobile/Sprint California markets. These closures would eliminate more than 2,864 postpaid retail positions in California.[167] However, these losses would be somewhat offset by expanded staffing at remaining stores. Therefore, the merger would result in a ***net loss of 1,707 postpaid retail jobs in California***.[168]

While T-Mobile testified that "it plans to offer **all** of the employees at T-Mobile and Sprint retail stores in California the opportunity to continue as employees of New T-Mobile,"[169] the record shows that T-Mobile's plan would not, in fact, apply to "**all**" employees who sell,

[163] *Id*., citing New Street Research "Sprint/T-Mobile Redux: Refreshing Synergies and Scenarios," at 28 (April 15, 2018).
[164] *Id.*
[165] Exh. CWA-2, p. 6.
[166] Exh. CWA-1, p. 101.
[167] *Id*., p. 54.
[168] *Id*.
[169] Exh. Jt. Appl.-2, p. 38 (emphasis in original).

service, maintain or build T-Mobile and Sprint products and services. Rather, T-Mobile's jobs "plan" would apply to direct internal employees only (i.e. ***not*** employees of authorized dealers and contractors).[170] Notably, according to T-Mobile, ***approximately 85% of T-Mobile stores are authorized dealer stores***.[171] T-Mobile's "plan" to offer jobs to current employees would apply to ***none*** of the employees at these authorized dealer stores.

Sprint and T-Mobile also have prepaid brands with separate retail operations that would also be affected by the merger. In California, MetroPCS (T-Mobile's prepaid brand) has 1,362 full-service retail locations and Boost (Sprint's primary prepaid brand) has 648 locations, virtually all of which are operated by independent authorized dealers.[172] Combined, these brands have 2,010 locations, more than three times as many as its closest competitor, AT&T's Cricket, which has only 581 full-service retail locations in California.[173]

MetroPCS and Boost retail stores are highly concentrated in areas of California, and are often located very close to each other.[174] 60% of all Boost Mobile stores in California are located less than one-third of a mile from the closest MetroPCS and 92% of Boost Mobile stores are within one mile from the closest MetroPCS.[175] According to the National Wireless Independent Dealer Association, the "new T-Mobile entity will unify their prepaid offerings under a single brand, effectively shuttering thousands of retail outlets."[176] The regression model shows that 545

[170] Tr., Vol. 4, p. 353:10-14 (Sievert).
[171] Exh. CWA-2C, p. 7.
[172] *Id.*
[173] *Id.*
[174] *Id.*, p. 55.
[175] *Id.*
[176] *Id.*

MetroPCS and Boost Mobile stores in California would close as a result of the merger, ***costing an additional 1,635 California jobs***.[177]

T-Mobile has a recent history of post-merger "rationalization" of retail operations that led to significant retail location closures, leading to significant harm to consumers and small business owners. In early 2018, T-Mobile acquired the remaining interest in Iowa Wireless Services (iWireless), a regional carrier that operated 129 company-owned stores and authorized dealers. Prior to the acquisition, iWireless had a large rural retail network that provided choice and convenience to dozens of small and isolated communities in Iowa where no other wireless carrier had retail presence. Within six months after the acquisition, T-Mobile had gutted iWireless' retail footprint, closing more than 72 % of iWireless corporate stores, including approximately 93% of retail locations operated by authorized dealers.[178] T-Mobile also shuttered the two iWireless customer call centers in the state.[179] T-Mobile's "rationalization" of retail operations left rural customers without access to a place where they could conveniently shop for mobile equipment, pay for their wireless service or receive basic customer support.

c. The Merger Would Negatively Impact Industry-Wide Wages

Recent scholarly publications find that labor markets in the U.S. are highly concentrated, workers are paid lower wages in more concentrated labor markets and collective bargaining substantially reduces downward pressure on wages from labor market concentration.[180] Therefore, scholars recommend that a proposed merger's competitive analysis include identifying the affected labor markets and analyzing the merger's impact on concentration in

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[177] *Id.*
[178] *Id.*, pp. 56-57.
[179] *Id.*
[180] *Id.*, pp. 57-59.

those labor markets.[181] "This includes calculating the pre-merger and post-merger HHI levels of these labor markets, and recognizing 'a presumption against a merger if the postmerger absolute level of concentration and/or the increase indicate too high a risk of wage suppression.'"[182] T-Mobile and Sprint failed to address the merger's impact on competition upstream in the labor markets.

Record evidence shows that the proposed merger "could substantially increase concentration in numerous local wireless industry retail labor markets, increasing the monopsony power of employers in purchasing labor power of retail wireless workers, thereby depressing workers' wages and benefits through reduced competition for labor."[183] Without the collective bargaining tool "to counter employer concentrated power, retail wireless workers would be worse off by reducing the number of national wireless retail employers from four to three."[184]

The Economic Policy Institute and Roosevelt Institute studied the labor market impact of the proposed merger on retail workers who sell wireless equipment and services. The economists found that post-merger, the annual earnings of retail wireless workers in the most expensive urban areas in the State would decline (by as much as $2,906 in Los Angeles, $2,953 in San Francisco, $2,363 in San Diego, $2,728 in San Jose and $2,319 in Sacramento on an annual basis).[185]

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[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*, pp. 58-59.
[185] *Id.*, p. 59.

d. Claims that the Merger Would Create Jobs are Undermined by T-Mobile's and Sprint's Practice of Offshoring U.S. Jobs

T-Mobile and Sprint have historically sent U.S. jobs to overseas contractors.[186] In their FCC Public Interest Statement, the applicants claimed that they would bring some jobs back from overseas but failed to provide evidence of the number of jobs each company currently offshores or how many offshore jobs would be repatriated from the merger.

T-Mobile sends many call center jobs to the Philippines, Guatemala, Honduras, India, Mexico and Canada.[187] Record evidence shows that in June 2012, T-Mobile closed seven call centers in Colorado, Florida, Kansas, Pennsylvania, Oregon and Texas, laid off 3,300 workers, sent the work to call centers in Mexico, Honduras, Guatemala, and the Philippines, and tried to deny the displaced workers federal benefits.[188]

Similarly, Sprint outsources call center work to the Philippines, Mexico, Panama, India, the Dominican Republic, Costa Rica, Guatemala and Canada.[189] Record evidence shows that in 2009, Sprint outsourced 6,000 positions and the management of its wireless network to Sweden-based Ericsson.[190] In 2013, Sprint cut 800 call center jobs.[191] In 2014, Sprint cut more than 1,400 jobs at six call centers, closed 55 retail stores and shuttered service and repair centers.[192] In 2016, Sprint closed U.S. call centers that employed 2,500 people and sent the work to the Philippines.[193]

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[186] *Id.*
[187] *Id.*, p. 60.
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*, p. 61.
[192] *Id.*
[193] *Id.*

T-Mobile and Sprint's historical practice of cutting jobs following a transaction, combined with significant offshoring of U.S. jobs raises serious questions about the credibility of their "plans" to preserve and create jobs in California.

e. Claims that the Merger Would Benefit Workers are Undermined by T-Mobile's and Sprint's Long History of Workers' Rights Violations

T-Mobile baldly asserts that it "has an impressive history of employee satisfaction…"[194] Quite the contrary, the proposed merger would combine two companies with a long history of employment law and workers' rights violations. "This history speaks volumes about the trustworthiness and corporate character of these companies."[195]

T-Mobile has been found guilty of violating U.S. labor law six times since 2015. In 2015, the National Labor Relations Board found that T-Mobile required employees, including one who filed a sexual harassment complaint, to sign an unlawful confidentiality notice prohibiting them from discussing information from employer-led investigations, and threatening discipline up to and including discharge if they engaged in those discussions.[196] In 2016, T-Mobile was found to have illegally surveilled and interrogated employees about union activity, restricted discussions about working conditions over social media and prohibited employees from sending union-related emails.[197] In 2017, the U.S. 5th Circuit Court of Appeals found that T-Mobile maintained unlawful rules forbidding workers from speaking about wages and working conditions.[198] That same year, T-Mobile was found to have unlawfully created, maintained, dominated and assisted

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[194] Exh. Jt Appl-8, p. 13.
[195] Exh. CWA-1, p. 61.
[196] *T-Mobile USA, Inc.*, JD(NY)-34-15, 2015 WL 4624356 (August 3, 2015), adopted by NLRB on September 14, 2015.
[197] *T-Mobile USA, Inc.*, JD-57-16, 2016 WL 3537770 (June 28, 2016).
[198] *T-Mobile USA, Inc. v. Nat'l Labor Relations Bd.*, 865 F.3d 265 (5th Cir. 2017).

an internal organization called T-Voice to discourage workers from forming, joining or supporting an independent union.[199] The NLRB also found that T-Mobile unlawfully prohibited employees from talking about the union during work time.[200] In 2018, the U.S. Court of Appeals for the D.C. Circuit granted the NLRB's enforcement application for T-Mobile's refusal to negotiate with CWA over a successor contract.[201]

Sprint's violations of workers' rights date back to late 1990s when Sprint fired 226 employees and closed its San Francisco Spanish language telemarketing center to avoid a union election.[202] The NLRB found Sprint to have committed more than 50 labor law violations during the organizing campaign, including interrogating employees about their union activities, requesting that employees distribute anti-union buttons, creating the impression of surveilling employees' union activities, changing working conditions because of union activities, falsifying financial records and surveilling employees. The case was subject to a tri-country labor investigation under terms of the North America Free Trade Agreement.[203] Since 2007, Sprint has been sued many times for alleged wage and hour violations affecting thousands of workers.[204] In 2009, the Department of Labor fined Sprint $120,000 and ordered the company to pay $260,000 in back wages to more than 1,000 call center employees because the company failed to pay them overtime wages.[205] In recent years, Sprint paid $14.85 million to settle three cases alleging

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[199] *T-Mobile USA, Inc.*, JD-23-17,2017 WL 1230099 (Apr. 3, 2017).
[200] *T-Mobile USA, Inc.*, 365 NLRB No. 15 (Jan. 23, 2017).
[201] *T-Mobile USA, Inc. v. Nat'l Labor Relations Bd.*, 717 F. Appx 1 (D.C. Cir. 2018).
[202] CWA-1, p. 63.
[203] *La Conexion Familiar and Sprint Corp.*, 322 NLRB No. 137 (1996).
[204] CWA-1, p. 63.
[205] *Id.*

Sprint's failure to pay workers overtime wages, reimburse them for mileage, give them adequate meal or rest breaks and compensate them for all hours worked.[206]

In short, the proposed merger is unfair and unreasonable for T-Mobile and Sprint employees. Record evidence shows that the merger would eliminate more than 3,000 California jobs, reduce the employment options available to retail wireless employees in an already concentrated retail wireless labor market and exert downward pressure on wages and other working conditions. Collective bargaining mitigates the negative impacts of labor market monopsony power, but both T-Mobile and Sprint have fought aggressively to deny their employees this legal right. The merger's employment impacts do not serve the public interest.

B. The Proposed Merger Would Increase Prices and is Not in the Public Interest

The record shows that the proposed merger would incent T-Mobile to raise product prices (see section III.D. above). This is because a "non-trivial fraction" of T-Mobile's and Sprint's customers view the other's products and services as their second choice and view the products and services of AT&T and Verizon as more distant choices.[207]

There is broad agreement (e.g., CWA, DISH, Free Press) that, based on data that tracks the movement of customers' phone numbers (i.e., porting data) consumers view T-Mobile and Sprint as each other's closest competitors and view Sprint services as the closest substitute to T-Mobile services.[208] There is also agreement that, "[t]he economic evidence presented in the record suggests, and subsequent data derived from the LNP database confirms that the loss of Sprint (along with its pre-paid brands Boost and Virgin) as an independent competitor would

[206] *Id.*
[207] *Id.*, p. 28.
[208] *Id.*, pp. 29-30, (citing DISH Reply Comments, FCC WT Docket No. 18-197, pp. 2, 12-18 (October 31, 2018); Free Press, WT Docket No. 18-197, pp. 2, 18-31).

give post-merger T-Mobile a unilateral incentive to raise prices and otherwise exercise market power."[209]

The Brattle Group economists estimate that the merger would increase prices as much as 15.5% on the new T-Mobile's prepaid plans and as much as 9.1% for postpaid plans.[210] The proposed merger would harm California ratepayers economically and is not in the public interest.

C. T-Mobile and Sprint's Claimed Merger Efficiencies and Benefits are Unsupported by the Record and Do Not Outweigh Public Interest Harm

T-Mobile and Sprint argue that the companies need to merge to bring significant benefits to California and, without the merger, the companies' futures are grim. The applicants' claims are unsupported. Evidence shows that both companies are well-situated to compete as standalone companies and neither company needs the merger to bring 5G to California.

1. T-Mobile's and Sprint's 5G Deployment Does Not Depend on the Merger; Both Companies Have Touted 5G Plans for Years and Have Invested in 5G

The record shows that neither T-Mobile nor Sprint needs the proposed merger to bring 5G to California. Both companies have planned for and invested in 5G for several years.

In 2017, T-Mobile told investors that it planned to offer the first nationwide 5G network in the United States, that this effort had been underway "for years" and that T-Mobile was making significant operational improvements and investments for 5G.[211] In December 2017, T-Mobile's CEO announced the acquisition of Layer3 TV and stated,

> Today's move is most certainly in anticipation of T-Mobile's plans to be the first to have nationwide 5G. These new 5G capabilities will bring about a converged

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[209] Exh. CWA-1, p. 29, quoting Free Press, WT Docket No. 18-197, pp. 2, 18-31.
[210] *Id*., p. 30, citing Joint Declaration of Joseph Harrington, Coleman Bazelon, Jeremy Verlinda and William Zarakas, The Brattle Group, Exhibit B, p. 10 of Petition to Deny of DISH Network submitted to FCC, August 27, 2018.
[211] *Id*., p. 32.

> marketplace at an even more rapid pace and we will be ready. Because we've been getting ready for this for years.[212]

A few months earlier, Oppenheimer analyst Timothy Horan noted that T-Mobile management "stated the company is deploying some of its 600 MHz with 5G ready equipment so when the time comes, the company can turn on 5G with modest baseband and software upgrades later in the decade."[213] In October 2018, T-Mobile's CEO John Legere reaffirmed that standalone T-Mobile will build 5G in "hundreds of cities" across the U.S. in 2018 and will have a national 5G mobile network by 2020.[214] Now, T-Mobile claims that it cannot win the race to 5G without merging with its closest competitor.

To compete, Sprint has also aggressively moved toward 5G and has made substantial capital investments to enable 5G deployment. In 2016, UBS Global Research analyst John C. Hodulik reported after a meeting with Sprint management that, "[c]urrent investments will provide a bridge to 5G, which mgmt. believes will be standardized in the 2019-20 timeframe."[215] In April 2018, Citigroup analyst Michael Rollins wrote, "Sprint appears to be banking on 5G to drive a better customer experience…"[216] In October 2018, Sprint confirmed that it was "very, very well positioned for 5G."[217]

Reports to investors since 2016 have consistently described Sprint's move to 5G. In July 2016, Sprint reported to investors that its,

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[212] *Id.*, p. 33, quoting Transcript, T-Mobile – Layer3 M&A Call, at 3 (December 13, 2017).
[213] *Id.*, quoting TMUS 3Q17 Follow-Up: Standalone Momentum Intact, Merger Announcement Imminent, Timothy Horan, Oppenheimer (October 25, 2017).
[214] *Id.*, p. 33, quoting T-Mobile, FQ3 2018 Earnings Call Transcript (October 30, 2018).
[215] *Id.*, pp. 33-34, quoting Takeaways from management meeting, John C. Hodulik, UBS Global Research (December 13, 2016).
[216] *Id.*, p. 33, quoting Wireless 1Q/18 Preview: Fear & Loathing in Wireless May Get Unexpected Relief, Michael Rollins, Citigroup (April 11, 2018).
[217] *Id.*, p. 32, quoting Transcript, Sprint Corp., Q2 2018 Earnings Call, S&P Global (October 31, 2018).

> densification and optimization plan is also building the foundation for 5G as all carriers more densify their networks to leverage the high-frequency spectrum bands planned for 5G. In fact, we recently provided live over-the-air demonstrations of our 5G capabilities using millimetric band radius to deliver 4K streaming of soccer content and virtual reality exhibits at 2 stadiums hosting the Copa America tournament in June.[218]

In May 2017, Sprint reported to investors that when it,

> look[s] at what is coming, where 5G is going and based on the latest 3GPP standard, we are certain that we have the right spectrum, right? I mean, having the vast amount of 2.5 spectrum, as we call, the new low-band of 5G, I think we're very, very well positioned in terms of continuing to densify our network. We don't need any more low-band spectrum. We have sufficient national coverage with the low-band spectrum that we have, and we did a lot of studying before we decided not to participate in the auction. So even though prices came wherever they came, we feel that we made the right decision. And we're focused right now in terms of continuing to densify our network and continue to provide our customers with a better experience. So we feel quite good in terms of that we made the right decision. We'd rather invest our money in densifying our network and optimizing our network rather than buying new spectrum that really is not going to be available until 2019 or 2020.[219]

In a February 2018 earnings statement, Sprint executive chairman (then CEO) Raul Marcelo Claure stated that he was "very confident in Sprint's future based on the competitive advantage that we will have with the deployment of 5G on our 2.5Ghz spectrum" and "[t]his latest development will put Sprint at the forefront of technology and innovation on par with other leading carriers in the world."[220] Mr. Claure went on to state, "[w]hile our network is much improved, we believe our Nex-Gen Network will truly differentiate Sprint over the next couple of years due to our strong spectrum assets that enable Sprint to be the leader in the true mobile 5G."[221] Mr. Claure exclaimed that he could not "wait to once and for all be able to sell the

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[218] *Id.*, p. 34, quoting Sprint, FQ1 2017 Earnings Call Transcript, p. 5 (July 25, 2016).
[219] *Id.*, quoting Sprint FQ1 2017 Earnings Call Transcript, p. 11 (May 3, 2017).
[220] Exh. CWA-10 (It appears that S&P/CIQ's headers contain errors related to the time period, however the transcript text is correct and reflects the proper time period).
[221] *Id.*

produce that is best in the industry with competitive coverage, the fastest speed, and the highest capacity."[222] Sprint's report to investors in August 2018 was,

> [I]n parallel with the 4G LTE network enhancement, we're actively preparing for 5G. We continue to partner across the global 2.5 gigahertz or Band 41 ecosystem, including SoftBank, Qualcomm, China Mobile and others towards rolling out massive MIMO and rapidly developing the 5G in our standards to make . . . 2.5 gigahertz a key band in the global 5G deployment.[223]

In October 2018, Sprint CEO Michael Combes stated that Sprint is far along in its network build for 5G, with plans to launch in the first half of 2019.[224]

Now, Sprint claims that it needs to merge with its closest competitor to compete in 5G. Sprint's claim is unsupported. A May 17, 2018 Kansas City Business Journal article reported that Sprint "management has stressed that its 5G investment plans will be the same whether or not the proposed transaction takes place."[225] At a December 2018 UBS Investor Conference, Sprint CFO Andrew Mark Davis revealed that the company was positioning itself in case the merger does not happen: "We just tapped the market for an extra $1.1 billion on the term loan B. And as part of that, we put an amendment in place, the documentation to help us further upsize spectrum notes in the event that we did have to contemplate a standalone life. "[226]

In short, T-Mobile's and Sprint's claims that they need the merger to deploy 5G directly conflict with their reports to investors and their investments in 5G deployment. The companies'

[222] *Id.*
[223] Exh. CWA-1, pp. 34-35, quoting Sprint, FQ1 2018 Earnings Call Transcript, p. 5 (August 1, 2018).
[224] *Id.*, p. 35.
[225] *Id.*, quoting How Sprint's new CEO plans to keep pressing forward during merger talks, Elise Reuter, Kansas City Business Journal (May 17, 2018).
[226] *Id*., quoting Transcript, UBS Investment Bank Company Conference Presentation, at 14 (December 3, 2018).

about-face in this proceeding is unsupported by the record. and should be "greeted with skepticism."[227]

2. The Record Does Not Support T-Mobile and Sprint's Attempt to Justify the Anticompetitive Merger with Alleged Poor Long-term Viability

Attempting to justify a merger that is presumptively anticompetitive and would end the intense rivalry between two close competitors, T-Mobile and Sprint paint a bleak picture of their prospects (especially Sprint's) as standalone companies. The reality – including recent financial results that postdate the filing of the merger application and statements by the companies' executives – is starkly different. Evidence shows that both companies are well-situated to compete as standalone companies and neither T-Mobile nor Sprint would exit the market if the merger is not authorized.

Sprint continues to invest significantly in its network. In October 2018, Raymond James' Ric Prentiss observed the growth in Sprint's network "capex" while assuring investors that the company plans to continue to make such investments:

> With an ~$400M sequential growth in network capex, Sprint noted it is not slowing down on its network improvement plans even with the pending merger. Sprint now has more than 15K outdoor small cells, including 7K strand mounts with cable companies (i.e., partnership with Altice). Moreover, Sprint's 2.5GHz spectrum is now on 2/3rds of its 35K macro sites, up from just 50% last year, and is expected to reach all of its sites by FYE18.[228]

Other analysts recently highlighted Sprint's "transformation" and how its revenues have reached an "inflection" point similar to other wireless carriers. In August 2018, an analyst reported:

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[227] *Id*., quoting Sprint Petition to Deny Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at 97 (May 31, 2011).

[228] *Id*., p. 36, quoting Increasing TP to $8 as Guidance Increased and Risk/Reward of Potential Merger Still Attractive, Ric Prentiss, Raymond James & Associates (August 2, 2018).

> Solid C2Q Results as Focus Stays on Revenue & EBITDA Improvements with Stable Subscribers…Sprint remains focused on driving its network transformation…Capex ramped 45% q/q, and Sprint's network transformation continues despite the announced merger with T-Mobile.[229]

Another analyst reported, "Sprint joins wireless carrier service revenue inflection party this Q…"[230] Morgan Stanley's Simon Flannery applauded Sprint's financial report for the quarter ending September 30, 2018:

> Sprint's F2Q18 results demonstrated meaningful financial progress, as the company 1) grew wireless service revenue for the first time in almost five years (ahead of its year-end target), 2) generated its highest F2Q EBITDA in twelve years with wireless cash EBITDA margins +350 bps Y/Y, and 3) generated net income for the 4th consecutive quarter and operative income for the 11th consecutive quarter. . . On a standalone basis, Sprint would expect another 1-2 years of elevated capex as it deploys its 2.5 Ghz spectrum.[231]

In short, Sprint's strategy of improving its network has begun to pay dividends.

Analysts' reports on standalone T-Mobile are similarly positive. For example, in May 2018, Jonathan Atkins from RBS Capital Markets reported: "Strong Standalone Subscriber Momentum: Regardless of the completion of the Sprint merger, we believe near-term subscriber growth prospects for standalone T-Mobile remain strong…"[232] Other analysts recently reported that, "1Q18 results demonstrated TMUS can continue to succeed as a standalone,"[233] "[o]n a standalone basis, we see the company de-levering to 2.5x by year-end (absent any spectrum

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[229] *Id*., quoting Solid C2Q Results as Focus Stays on Revenue & EBITDA Improvements with Stable Subscribers, Phil Cusick, J.P. Morgan & Co. (August 1, 2018).
[230] *Id*., pp. 36-37, quoting Sprint joins wireless carrier service revenue inflection party this Q, David Barden, Bank of America/Merrill Lynch (August 1, 2018).
[231] *Id*., p. 37, quoting Simon Flannery, Morgan Stanley, Profitability Focus Pays Off (October 31, 2018).
[232] *Id*., quoting 1Q18 Review and Model Update, RBC Capital Markets, Jonathan Atkin (May 2, 2018).
[233] *Id*., quoting Better Results Remind Investors of Strong Standalone Prospects, SunTrust Robinson Humphrey, Greg P. Miller (May 1, 2018).

purchases),"[234] and "[p]erhaps more importantly, mgmt. clarified drivers of their pro forma forecasts that paint a much rosier picture of the standalone businesses than we (and others) had feared."[235]

Indeed, T-Mobile and Sprint have conveyed to investors that the companies have great prospects. In its October 31, 2018 earnings release, Sprint CEO Michel Combes reported that Sprint "reached a major milestone by delivering year-over-year growth in wireless service revenue for the first time in nearly five years, and earlier than our commitments to reach this milestone…" and that Sprint's "strategy of balancing growth and profitability while we increase network investments and add digital capabilities continues to drive solid financial results."[236] Sprint CFO Andrew Mark Davis also reported to investors that the company positioned itself to be a successful standalone company by getting "an extra $1.1 billion on the term loan B" and "documentation to help us further upsize spectrum notes."[237] In February 2019, Sprint COO confirmed that, on a standalone basis, Sprint "will be a competitor. Sprint will launch 5G."[238]

Meanwhile, T-Mobile CEO John Legree reported another record-breaking quarter in October 30, 2018: "T-Mobile delivered ANOTHER record-breaking quarter! We continue to drive our business beyond expectations and despite the work underway to close the merger, we

[234] *Id*., quoting Solid Quarter with Small Beats on Postpaid Adds, EBITDA, J.P. Morgan, Phil Cusick (August 1, 2018).
[235] *Id*., p. 38, quoting TMUS: 1Q18 Quick Take: Good Results; Clarity On Pro Forma Forecast; More Juice for Standalone Scenario; New Street Research, Jonathan Chaplin (May 1, 2018).
[236] Exh. CWA-11 (It appears that S&P/CIQ's headers contain errors related to the time period, however the transcript text is correct and reflects the proper time period).
[237] Exh. CWA-12.
[238] Tr., Vol. 5, p. 686:6-7, 21-24 (Draper).

delivered our best financials ever in Q3."[239] An August 2018 press release highlighted T-Mobile's "advancements in network technology":

> T-Mobile continues to increase and expand the speed and capacity of our network to better serve our customers. Our advancements in network technology and our spectrum resources ensure we can continue to increase the capabilities of our network as the industry moves towards 5G . . .
>
> Introducing 5G across 600 MHz and millimeter wave spectrum. In addition to building out 5G on 600 MHz, T-Mobile intends to bring 5G to 30 cities in 2018 using both 600 MHz and millimeter wave spectrum. The network will harness 4G and 5G bandwidths simultaneously (dual connectivity) and will be ready for the introduction of the first 5G smartphones in 2019.[240]

Standard & Poor's Capital IQ also shows that standalone T-Mobile and standalone Sprint are positioned to maximize their individual resources and remain effective competitors. Standard & Poor's collects, among other things, projections for future company results, including estimates for total revenues and EBITDA (Earnings Before Interest Taxes Depreciation and Amortization).[241] EBITDA is a measure used to compare companies' relative performance by "normalizing" variable factors including debt service, tax issues, acquisition charges and other firm-specific factors.[242]

When the median estimates of total revenues and EBITDA for future standalone T-Mobile and future standalone Sprint are compared, T-Mobile is projected to reap steadily increasing total revenues through 2023 (about 5.9% annual increases) and Sprint is projected to have essentially flat revenue growth (about 0.7% annual increases).[243] This is no surprise since

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[239] Exh. CWA-1, quoting "T-Mobile Delivers Its Best Financials Ever and Strong Customer Growth in Q3", T-Mobile (October 30, 2018).
[240] *Id.*, pp. 38-39.
[241] *Id.*, p. 39.
[242] *Id.*
[243] *Id.*

T-Mobile has had a significant growth spurt and Sprint has just "joined the inflection party."[244] Importantly, Sprint's EBITDA is projected to steadily rise in step with T-Mobile.[245] In fact, as a percentage of total revenues (or operating margin), Sprint's margins are projected to be consistently higher than T-Mobile's and rise more quickly than T-Mobile's (30.2% for Sprint and 27.8% for T-Mobile in 2017, and 43.0% for Sprint and 30.2% for T-Mobile in 2022).[246]

Similarly, Sprint is ahead of T-Mobile in capital expenditure projections. Sprint is projected to invest between $5 billion and $6 billion through the company's fiscal 2019.[247] This translates to a "capital intensity" (capital spending as a proportion of total revenues) of 15.3% to 18.3% in 2019.[248] T-Mobile's capital spending was projected to be $5.3 billion in 2018, a capital intensity of 12.3%.[249] In other words, Sprint is expected to invest much more of its revenues on transitioning to 5G.[250] Moreover, on a standalone basis, both T-Mobile and Sprint are positioned to maximize their resources and remain effective competitors during and after the switch to 5G.[251]

In sum, T-Mobile and Sprint's attempt to justify a merger that is presumptively anticompetitive and will end the intense rivalry between two close competitors with claims of poor long-term viability utterly fails. Record evidence, including recent financial results that postdate the filing of the merger application and statements by the companies' executives, shows

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[244] *Id.*, p. 40, quoting Sprint Joins the wireless carrier service revenue inflection party this Q, David Barden, Bank of America/Merrill Lynch (August 1, 2018).
[245] *Id.*, pp. 40-41.
[246] *Id.*
[247] *Id.*, p. 41.
[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.*, p. 42.

that both companies are well-situated to compete as standalone companies and neither T-Mobile nor Sprint would exit the market if the merger is not authorized.

3. The Record does Not Support T-Mobile and Sprint's Claim that the Merger Would Bring New Competition to the Cable Broadband Market

T-Mobile and Sprint argue that the proposed merger would benefit consumers by disrupting cable and bundled video service providers in ways that the standalone companies cannot today. The applicants' claim is unsupported.

New Street Research's July 2018 analysis of fixed wireless broadband substitution for wireline broadband revealed that, while fixed wireless substitution is real and will threaten wireline broadband providers, typical consumers use far more data than projected wireless carriers' data caps.[252] While 5G will likely lead to higher data caps, New Street finds that, while New T-Mobile "may well raise data caps as a tool to take share" "[w]e doubt they will be able to increase data caps sufficiently to materially change the size of the wireless-only market..."[253] New Street concludes that New T-Mobile is "unlikely to gain material share in the broadband market with a fixed wireless broadband product. Simply put, this would be a poor use of their newfound capacity. They are far more likely to use their capacity to take share in the mobile market."[254]

There is no record evidence to support T-Mobile and Sprint's claim that the proposed merger would benefit consumers by bringing new competition to the cable broadband market.

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[252] *Id*., p. 47.
[253] *Id*., p. 48, quoting Jonathon Chaplin, "The Threat to Broadband from Wireless Substitution," New Street Research (July 23, 2018).
[254] *Id*.

4. The Record does Not Support T-Mobile and Sprint's Claim that the Merger is Necessary to Bring Improved Service to Rural California

T-Mobile and Sprint claim that the proposed merger would vastly improve service in rural California. The applicants' claim is unsupported and contradicts the record which shows that for much of rural California, the merger would provide little network benefit.

T-Mobile has 30 to 52 MHz of low-band bandwidth and 40 to 90 MHz of mid-band bandwidth in California.[255] Sprint has 10 to 14 MHz of low-band bandwidth and 97.5 to 196.5 MHz of mid-band bandwidth in California.[256] T-Mobile and Sprint "have ample licensed spectrum throughout all of the state – urban and rural."[257] As a result, while "5G may well be beneficial to rural areas in certain circumstances," the "practical effect of integrating the two Joint Applicants' licensed spectrum in areas that already have substantial unused licenses spectrum will be minimal."[258]

This is easily seen when comparing the companies' low-band and mid-band spectrum holdings in a densely populated area (Los Angeles County) with the holdings in a rural area (Mono County). The "population of Mono County is roughly 14 one-hundredths of 1% of that for Los Angeles."[259] Yet, T-Mobile's and Sprint's total holdings in Mono County are 138 MHz and 131.5 MHz,[260] and T-Mobile's and Sprint's total holdings in Los Angeles County are 128 MHz and 131.5 MHz.[261] "The idea that Sprint and T-Mobile need to merge in order to have the capacity needed to serve rural areas – when each of them has more than ample spectrum to serve

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[255] Exh Pub Adv-2, p. 156.
[256] *Id.*
[257] *Id.*, p. 157.
[258] *Id.*, pp. 158-159.
[259] *Id.*, p. 160.
[260] *Id.*, pp. 159-160.
[261] *Id.*, p. 160.

rural areas – cannot withstand scrutiny."[262] Moreover, "whatever economic barriers prevail for rural deployment for conventional wireless technologies will be no different for 5G. In short, 5G is not a magic bullet that can bring wireless service – and particularly wireless broadband – to areas that cannot be economically served today."[263]

In sum, the record does not support findings that the proposed merger would benefit ratepayers economically in the short- and long-term or is in the public interest. Rather, the record shows that the merger would eliminate jobs and raise prices, and that T-Mobile and Sprint's claimed efficiencies and benefits from the merger are speculative and unverifiable. The merger would cause economic harm to ratepayers, is not in the public interest and cannot lawfully be authorized by the Commission.

V. CONCLUSION

The proposed merger would eliminate thousands of California jobs, adversely affect competition and raise prices for consumers, with no countervailing verifiable, merger-specific benefits. The merger is not in the public interest and the Commission cannot lawfully authorize it as currently structured. To protect the public interest in quality jobs, the Commission must require the applicants to make verifiable, enforceable commitments that no T-Mobile or Sprint employee (including those of dealers and contractors) loses a job as a result of the transaction, to return all overseas customer call center jobs to the U.S., and to commit to complete neutrality in allowing employees to form a union of their own choosing free from any interference by the New T-Mobile.

[262] *Id.*
[263] Exh Pub Adv-2, p. 166.

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Respectfully submitted,

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