

**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-C) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).

Application 18-07-011

In the Matter of the Joint Application of Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation for Review of Wireless Transfer Notification per Commission Decision 95-10-032

Application 18-07-012

**JOINT APPLICANTS' REPLY COMMENTS TO INTERVENORS' OPENING
COMMENTS ON PROPOSED DECISION**

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JOINT APPLICANTS' REPLY COMMENTS TO INTERVENORS' OPENING COMMENTS ON PROPOSED DECISION

Pursuant to California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”) 14.3, Sprint Communications Company L.P. (“Sprint Wireline”), Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C)¹ (together, the “Sprint Wireless CA Entities”) and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively referred to as the “Joint Applicants”), respectfully submit these Joint Reply Comments to the opening comments filed by Cal PA, TURN, Greenlining and CETF (the “Intervenors”) on April 1, 2020.

I. INTRODUCTION

Intervenors continue to insist that the merger be denied, depriving Californians of the transformative benefits and advantages that New T-Mobile (“NTM”) will bring to California.² In support of that position, Intervenors do little more than regurgitate the same arguments they have made throughout the proceeding, none of which is supported by the record or the law. (See Section II.A. below.) In addition, Intervenors’ efforts to impose over 40 additional obligations on Joint Applicants wholly ignore the Commission’s jurisdictional limitations over wireless transfers.³ These proposed additional obligations are also generally infeasible, unsupported by the record, anti-competitive, unfair, unduly onerous, and inappropriate to the extent they go beyond the voluntary commitments made during the course of this proceeding. (See Section III below.)

¹ Virgin Mobile USA, L.P. changed its entity name to Assurance Wireless USA, L.P. as of March 16, 2020. *See* Virgin Mobile Advice Letter 36 (Mar. 16, 2020).

² Cal PA, TURN and CWA each explicitly challenge the ultimate conclusion of the PD that the merger is in the public interest and should move forward. Cal PA Opening Comments at 18, TURN Opening Comments at 15, CWA Opening Comments at 16. Indeed, Intervenors suggest that even with their proposed modifications, the merger would still not be in the public interest. *See e.g.*, Cal PA Opening Comments, Appendix A at proposed COL 4 (“The conditions imposed herein ameliorate some of the harms of the merger.”).

³ As Joint Applicants have explained previously in great depth, the Commission does not have the authority to approve or deny the Merger or to impose conditions as a prerequisite to granting such approval under federal law and the Commission’s own precedent. *See e.g.*, Joint Applicants Opening Comments at Sections II and III. Intervenors do not offer any authority to the contrary and, to the extent they address the issue at all, they do little more than restate their position - first articulated at the PHC in July 2018 – suggesting that the categorical wireless exemption from 854 approval adopted in D.95-10-032 should simply be ignored in light of changed circumstances. *See* TURN Comments at 2-3; *see also* PHC Transcript (Sep. 13, 2018) at 6-7, 14-18. That argument is no more persuasive now than it was when it was first articulated and completely ignores state and federal law, as well as Commission practice. *See e.g.*, Joint Applicants Opening Comments at Sections II and III.

In brief, Joint Applicants respectfully urge the Commission to reject Intervenors proposed conditions and revise the PD consistent with Joint Applicants Opening Comments and redline of the Findings of Fact, Conclusions of Law and Ordering Paragraphs in the PD, as modified by these Reply Comments.⁴

II. INTERVENORS OPENING COMMENTS MERELY REGURGITATE EARLIER ARGUMENTS

Intervenors arguments in their Opening Comments are the same they have made throughout the proceeding and are contrary to the record and the law. For example, Cal PA tirelessly repeats its claim that T-Mobile has failed to prove that the merger is necessary because Sprint is a “failing” firm,⁵ despite acknowledging in its comments that the federal district court for the Southern District of New York found that Sprint is a weakened competitor that “does not have a sustainable long-term competitive strategy and will in fact cease to be a truly national MNO.”⁶ The record evidence also shows that Cal PA’s oft-repeated claim that “5G deployment advancements are not merger specific”⁷ is false⁸ Indeed, it is undisputed as a matter of engineering, not just opinion, that each standalone network would have had limited coverage, capacity, speed, signal quality, and lesser consistency than NTM’s network due to their limited spectrum and site assets.⁹

Cal PA’s economic arguments are also largely repetitive of the arguments made by Intervenors in earlier rounds of briefing. Without citation, Cal PA incorrectly asserts that “[t]he PD fails to acknowledge [both] the evidentiary record in this proceeding” and “the findings presented in the California AG’s Advisory Opinion.”¹⁰ The PD, however, appropriately weighed the economic record and finds, among other things, that:

⁴ Joint Applicants have attached some further proposed modifications to OPs, 4, 6, 8, 15-16, 22 and 28-31. See Attachment A. For ease of reference, Joint Applicants have provided an updated comprehensive redline of the Findings of Fact, Conclusions of Law and Ordering Paragraphs, that includes these further modifications, as Attachment B.

⁵ Cal PA Opening Comments at 12. Moreover, the justification for the merger was never premised on the fact that Sprint was a “failing” firm.

⁶ Cal PA Opening Comments at 13 (citing PD at 37, quoting district court Slip Opinion at 100, 102). The district court’s opinion can be found at <http://www.courtlistener.com/recap/gov.uscourts.nysd.517350/gov.uscourts.nysd.517350.40.9.0.pdf>; see also Joint Applicants Wireless Reply Brief at 48-51.

⁷ Cal PA Opening Comments at 10.

⁸ See Joint Applicants Wireless Opening Brief at 17-25; see also Joint Applicants Wireless Reply Brief at 13-16.

⁹ *Id.*

¹⁰ Cal PA Opening Comments at 4. See also Joint Applicants Opening Comments at Section IV (explaining why it is improper and inappropriate to rely on the AG’s Opinion in any event). Cal PA also conveniently fails to note that the AG settled with Joint Applicants on March 11, 2020. As part of the terms of that settlement, the CA AG

- The nationwide nature of mobile wireless pricing allays concerns raised about market concentration in particularly highly concentrated CMAs in California;¹¹
- Collusion between NTM and Verizon and AT&T is unlikely given T-Mobile’s economic incentive to utilize its increased capacity to expand market share and T-Mobile’s history as an aggressive, disruptive competitor against its larger competitors;¹²
- Sprint is unlikely to remain competitive as a nationwide mobile wireless carrier in the long term; and¹³
- Notwithstanding short-term challenges, DISH will eventually compete in the nationwide mobile wireless market given the conditions imposed on the transaction.¹⁴

Other Intervenors exhibit a similar pattern of repeating their prior positions. For example, CWA reasserts that the merger would result in the loss of 3,000 CA jobs,¹⁵ a claim that the record simply does not support.¹⁶ Greenlining repeats its argument that the CETF MOU does not adequately address communities of color,¹⁷ but fails to acknowledge the record evidence of numerous provisions in the CETF MOU designed to help low-income and other disadvantaged communities.¹⁸ Also, Greenlining repeats its argument that the CETF MOU leaves too much discretion to NTM regarding how to satisfy its obligations,¹⁹ an argument that has been refuted at length.²⁰

“acknowledges the value of promptly commencing delivery of the consumer benefits of the Merger, as modified by the commitments that T-Mobile has made to the FCC, the DOJ, in this Agreement, and to other entities.” See link at: <https://oag.ca.gov/system/files/attachments/press-docs/CA%20Settlement%20Agreement%20%283.9%20fully%20executed%29.pdf>

¹¹ *Id.* at 36.

¹² *Id.* at 36–37.

¹³ *Id.* at 37.

¹⁴ *Id.* at 33–34.

¹⁵ CWA Opening Comments at 2, 5-8, 10.

¹⁶ See Joint Applicants Wireless Opening Brief at 86-90; see also Joint Applicants Reply Wireless Reply Brief at 76-78.

¹⁷ Greenlining Opening Comments at 6-7.

¹⁸ See Amended Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032, Exh. U (Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.) at 5-7 (describing new LifeLine and low-income adoptions, promotion and outreach for LifeLine and low-income offers, and school-based programs to reach low-income California families and promote digital inclusion).

¹⁹ Greenlining Opening Comments at 7-10.

²⁰ See Joint Applicants and CETF Reply to Responses to CETF MOU Motion at 17-18. The only new argument regarding the CETF MOU raised by Greenlining is that, because the CETF MOU is contingent upon approval of the Wireline Application, the CETF MOU will be void if Joint Applicants Motion to Withdraw the Wireline Application is granted. Greenlining Opening Comments at 9. Greenlining’s concerns are unwarranted. On April 3, 2020, T-Mobile notified CETF that it “fully intends to honor the terms of the [CETF] MOU based solely upon the consummation of the transaction,” notwithstanding the express contingencies included in the CETF MOU. See letter from David A. Miller, Exec. Vice President, General Counsel & Secretary, T-Mobile, to Sunne Wright McPeak, President and CEO, California Emerging Technology Fund (April 3, 2020).

Intervenors' proposed modification to the Finding of Fact and Conclusions of Law are premised on these discredited arguments and should be similarly rejected.²¹

III. INTERVENORS' ATTEMPTS TO IMPOSE ADDITIONAL OBLIGATIONS ON NTM ARE NOT SUPPORTED BY THE RECORD AND ARE OTHERWISE UNLAWFUL

To the extent the Commission determines that it has jurisdiction or authority over the wireless transfer justifying the imposition of any mandatory conditions (which Joint Applicants submit it does not),²² the conditions proposed by Intervenors should be rejected outright because they rely on legal, technical or factual errors, or are jurisdictionally barred on other grounds.²³ Moreover, many of the proposed additional conditions would impose onerous obligations on NTM that are not imposed on its competitors.²⁴ This type of asymmetrical regulation would constitute an abuse of discretion and presents serious equal protection and due process concerns.²⁵

Joint Applicants will not address each of the Intervenors' proposed obligations but will highlight a few below:

A. Cal PA – Proposed Revisions to OP 4: Network Build

As noted in Opening Comments, the proposed 5G network build conditions set forth in OP 4 (a) & (b) as originally proposed were consistent with the California projections used to create the corollary FCC commitments. Those commitments are subject to the FCC speed testing requirements and are based on record evidence. However, Cal PA now proposes to expand on those obligations to impose speed and coverage mandates that are not reflected by those California projections used to create the FCC commitments.²⁶ Cal PA seems to be relying on certain site-specific speed commitments in the CETF MOU and one projection in the Application. But, critically neither of those metrics are associated with any population coverage. Moreover, there is no evidence in the record to support transformation of those

²¹ See e.g., Cal PA Opening Comments, Appendix A at A-1 (proposed FoF 6 (“The transactions will adversely affect competition”); *id.* at A-6, proposed revised COL 3 (holding that the transaction is anti-competitive and not in the public interest); TURN Opening Comments, Appendix A at iii (proposed FoFs asserting that the merger will impact MVNOs and that the merger is not in the public interest); Greenlining Opening Comments, Appendix A at 1 (proposing to delete FOF 19 describing the benefits of the CETF MOU).

²² See nn. 3 and 4, *supra*.

²³ For example, the vast majority of these new proposed conditions are neither supported by findings in the decision nor by substantial record evidence, or in many instances, any record evidence. See Joint Applicants Opening Comments at n. 75.

²⁴ See, e.g., Cal PA Proposed OP 41 (performance bond); Cal PA and TURN Proposed OP 5 (in-home bb data caps and rates); Greenlining Revised OP 37 (increased diversity procurement); TURN (additional emergency relief measures beyond D.19-02-025); and CWA Proposed OP (wage and benefit guarantees).

²⁵ See Joint Applicants Opening Comments at n. 78.

²⁶ See e.g., Cal PA Opening Comments, Appendix A at A-7 (proposed OP 4, subsections a.v. and a.vi).

metrics to new obligations requiring certain “mean download speeds” based on population and a different testing and verification methodology. Cal PA’s approach would also amount to cherry picking portions of the CETF MOU. Finally, as explained in opening comments, such state mandated speed benchmarks are unlawful as they impermissibly purport to regulate service quality and coverage.²⁷

Cal PA compounds its overreaching by similarly proposing that OP 4 (c) (proposing 2030 speed benchmarks) be expanded to include coverage and speed obligations that are based on no record evidence of any sort. As Joint Applicants explained in opening comments, 2030 benchmarks are not based on any record evidence in this proceeding.²⁸ Nor do any of the FCC commitments extend this far. Moreover, these conditions are unlawful as discussed in Joint Applicants Opening Comments.²⁹ Thus, these proposed conditions should be rejected in their entirety.

B. Cal PA and TURN – Proposed Revisions to OP 5: In-Home Broadband

As discussed previously, the initial OP stipulates that “[t]here will be an affordable plan offering that is substantially less than other available in-home broadband service, with no contract, no equipment charges, no installation charges, and no surprises.”³⁰ This requirement constitutes clear rate regulation which is preempted by Section 332³¹ and impermissible regulation of broadband services which are inherently interstate services and thus within the exclusive jurisdiction of the FCC.³²

Cal PA and TURN each propose language that would exacerbate those issues by imposing minimum speed levels, data caps and, (for TURN) price limits. Such proposals are all unlawful for the reasons set forth above. Additionally, the speed level and data caps impermissibly purport to regulate

²⁷ See Joint Applicants Opening Comment at 13-14 citing *In re Apple iPhone 3G Prod. Liability Litig.*, 728 F. Supp.2d 1065, 1071 (N.D. Cal. 2010) (“where the relief sought would ‘alter the federal regulation of,’” among other things, “location and coverage,” the claims are preempted under *Bastien’s* standard).

²⁸ As a result, the percentages contained in Cal PA’s proposed OP 4(c) are necessarily arbitrary and capricious as they have no basis in any record evidence.

²⁹ See Joint Applicants Opening Comments at 12-13.

³⁰ PD at 44 (OP 5).

³¹ 47 U.S.C. § 332(c)(3)(A); see *Ball v. GTE Mobilnet of Cal.*, 81 Cal. App. 4th 529, 540 (2000); see also *Petition of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates*, 11 FCC Rcd. 796 (1995) (denying California’s request to extend state regulatory authority over cellular rates).

³² See *Restoring Internet Freedom*, 33 FCC Rcd. at 349, 431 ¶¶ 61, 202 (discussing “the deregulatory approach to information services embodied in ... the 1996 Act” and “the longstanding federal policy of nonregulation for information services”) (citations omitted); see also *Accelerating Wireless Broadband Order*, 33 FCC Rcd. at 9104 n.84.

service quality and coverage.³³ Thus, these proposed additional conditions should be disregarded in their entirety.

C. Cal PA – Proposed Revisions to OP 6: LTE Network

As Joint Applicants explain in detail in their opening comments, OP 6 as drafted relies on several legal and technical errors, including the fact that there is no record evidence addressing the decommissioning of the NTM LTE network or the feasibility of a flash cut as suggested by the OP.³⁴ Cal PA’s proposal in its opening comments would compound those errors by implementing new benchmark speeds for the LTE network through the decommissioning of NTM’s LTE network.³⁵ The Commission should reject Cal PA’s proposal.

While there is no record support for the proposition that LTE speeds should be maintained through decommissioning, there is record support for the proposition that the LTE network will not be degraded during the migration of Sprint customers to the new T-Mobile network and/or during the 5G buildout.³⁶ Accordingly, Joint Applicants have proposed alternate language for OP 6 that would provide that service for customers will not be degraded during these periods.³⁷

D. TURN - Revised OP 8: 72-Hour Battery Back Up

TURN seeks to impose additional emergency relief measures such as lifting data caps and suspending disconnections for non-payment in emergency situations.³⁸ Although T-Mobile has voluntarily offered its customers a variety of relief measures during the current COVID-19 crisis,³⁹ such additional relief measures are clearly outside the record of this proceeding and are inconsistent with the directives of D.19-08-025.⁴⁰ Mandating that NTM will be the only wireless carrier providing those relief measures would be discriminatory, unfair and unlawful.⁴¹

³³ Joint Applicants Opening Comments at n. 81. *See also In re Apple iPhone 3G Prod. Liability Litig.*, 728 F. Supp.2d 1065, 1071 (N.D. Cal. 2010) (“where the relief sought would ‘alter the federal regulation of,’” among other things, “location and coverage,” the claims are preempted under *Bastien’s* standard). *See also Accelerating Wireless Broadband Deployment Order*, 33 FCC Rcd. at 9103 n.84.

³⁴ *See* Joint Applicants Opening Comments at 14.

³⁵ *See* Cal PA Opening Comments, Appendix A at A-8-A-9.

³⁶ *See, e.g.* Hearing Ex. Jt Appl. 3C (“Ray Rebuttal Testimony”), Attachment B (Appendix B: Reply Declaration of Neville Ray) at ¶¶ 43, 52; *id.* at Attachment A (Appendix B: Declaration of Neville R. Ray) at ¶ 62.

³⁷ *See* Attachment A.

³⁸ TURN Opening Comments at 13-14, Appendix A at v.

³⁹ *See e.g.*, link at: <https://www.t-mobile.com/news/t-mobile-update-on-covid-19-response>

⁴⁰ TURN also proposes that NTM be obligated to comply with its commitment in the CETF MOU to deploy portable emergency equipment that these companies and to continue its practice of providing community support for

In their opening comments, Joint Applicants explain in detail why the PD’s 72-hour back up power requirement is unsupported by the record, unlawful, inappropriate and discriminatory.⁴² Joint Applicants further explain why the requirement as drafted is infeasible and impracticable.⁴³ However, as T-Mobile has explained in its recent comments on the Assigned Commissioner’s Ruling and Proposal in the Emergency Disaster Relief proceeding (R.18-03-011), T-Mobile has the ability to establish an overlay network in most areas impacted by an emergency or a PSPS event – even when a number of cell sites are down – using a variety of tools to provide connectivity that enables as many consumers as possible in those areas, if not all, to make voice calls, access the internet for web alerts, send or receive text messages, and receive Wireless Emergency Alerts.⁴⁴ To that end, NTM proposes an alternate revision for OP 8 that reflects NTM’s current practices and commitment to industry best practices.⁴⁵

E. TURN – Proposed Revisions to OPs 15-16: LifeLine

TURN proposes a change to OP 15 to clarify that NTM must continue to participate in the LifeLine program through Assurance.⁴⁶ This change is similar to a change proposed by Joint Applicants.⁴⁷ TURN, however, goes further and would require Assurance to “provide lower rates, more data, more minutes, and improved handsets.”⁴⁸ Such additional requirements exceed the scope of the record, and constitute impermissible rate regulation. Instead, as NTM has proposed, this OP should be modified to reflect LifeLine terms that are as good as those currently offered by Assurance, consistent with the requirements of the CETF MOU.

Like Joint Applicants, TURN also expresses concern about the application of LifeLine discounts to all retail NTM Plans, pursuant to OP 15.⁴⁹ However, as a way to address that uncertainty, NTM offers an alternative revision to OP 15 for the Commission’s consideration.⁵⁰ Specifically, the Commission could

victims of disasters. *See* TURN Opening Comments at 13-14. As noted above, NTM is fully committed to these and all provisions of the CETF MOU. *See* Section II, *supra*.

⁴¹ Greenlining’s proposal to impose a more aggressive diversity procurement goal on NTM than required under General Order 156 is similarly discriminatory. *See* Greenlining Opening Comments at 10-12.

⁴² *See* Joint Applicants Opening Comments at 14-15.

⁴³ *Id.*

⁴⁴ *See* T-Mobile Comments on the Assigned Commissioner’s Ruling and Proposal for Communication Service Provider Resiliency and Disaster Relief Requirements at 15-16 (April 3, 2020).

⁴⁵ *See* Attachment A.

⁴⁶ *See* TURN Opening Comments, Appendix A at v (OP 15).

⁴⁷ *See* Joint Applicants Opening Comments, Attachment B at 47-48 (OP 15).

⁴⁸ TURN Opening Comments, Appendix A at v (OP 15).

⁴⁹ *See* TURN Opening Comments at 14; Joint Applicants Opening Comments at 17.

⁵⁰ *See* Attachment A.

extend the Boost pilot to all non-Assurance NTM brands and plans.⁵¹ This would provide certainty as the Commission has already established the terms of the Boost pilot (e.g., a \$15.00 discount) through a rigorous rulemaking process. Further, this alternative path forward would scale the footprint of the Boost Pilot and allow the Commission to gather further information about the viability of LifeLine alternatives that can increase the connectivity of California’s most vulnerable populations.

To the extent that the Commission wishes to pursue this path, it should also make a corresponding change in OP 16 to allow all pilot customers to count towards the 300,000 new LifeLine customer requirement. Such a change is critical because, to the extent that the Commission expands the Boost pilot program to additional brands and plans, a substantial percentage of new LifeLine customers who may otherwise have enrolled in LifeLine through Assurance will likely be drawn to the pilot. Under these constraints, adding 300,000 new LifeLine customers through only the traditional Assurance LifeLine model over the course of the next few years would be tremendously difficult, if not impossible, to achieve.

F. CWA – Revised OP 25: Jobs

T-Mobile has been clear that it stands behind its no net-job losses voluntary commitments as well as its intention to open up a Customer Experience Center in Kingsburg, which will bring with it approximately 1,000 new jobs.⁵² However, as noted in Joint Applicants Opening Comments, the initial language of OP 25 would have materially modified both of these plans and was well outside the Commission’s jurisdiction as a matter of California and federal law and is completely unsupported by the record.⁵³

CWA’s suggestion that the initial language of the OP be modified to include “direct external” employees (*i.e.*, employees of independent dealers) is similarly infirm. The proposed modification to the OP directly conflicts with the unrefuted evidence that NTM has no control over such individuals; they are employees of separate, independently run businesses.⁵⁴ Similarly, CPUC has no jurisdiction to mandate that these businesses maintain any particular number of employees. The record simply does not support any such proposal as a matter of law or fact.

⁵¹ Given the idiosyncrasy of the iFoster pilot, NTM could only likely extend the non-iFoster dimensions of the pilot to other NTM brands and plans.

⁵² See Joint Applicants Post-Hearing Wireless Opening Brief at 86-88; Hearing Ex. Jt Appl. 2 (“Sievert Rebuttal Testimony”) at 38; see also *Kingsburg Area in California’s Central Valley Selected as Location for New T-Mobile Customer Experience Center* (Apr. 3, 2019), <https://www.t-mobile.com/news/customer-experience-center-kingsburg-california>

⁵³ Joint Applicants Opening Comments at Section VI.G.

⁵⁴ See *e.g.*, Hearing Tr. at 353:1-354:6 (Sievert cross).

Moreover, CWA goes even further and proposes that the PD be modified to guarantee wages, impose Commission oversight into negotiations with CWA, and engage with employee matters arising from the COVID-19 crisis.⁵⁵ None of these proposals is even remotely “cognate and germane” to the Commission’s jurisdiction in general and certainly not in the context of reviewing a wireless transfer.⁵⁶ Each should be rejected in its entirety.

G. Cal PA – Revised OPs 28-31: Speed Testing.

In their Opening Comments, Joint Applicants explain that the record does not support the PD’s proposed third set of speed tests on the NTM network and the use of that test to measure compliance with the buildout requirements in OP 4. Their Opening Comments further explain that these drive tests are duplicative and wholly unnecessary at best; and at worst, they are extremely problematic and could interfere with NTM’s FCC commitments.⁵⁷ Cal PA seeks to compound those issues by imposing additional obligations that require Commission staff to conduct CalSPEED tests annually,⁵⁸ “subject [NTM] to immediate Commission enforcement”⁵⁹ and to otherwise expand the mapping requirement to include the increased download speeds that are contained in Cal PA’s proposed revised OP 4, as discussed above.⁶⁰ The Commission should reject Cal PA’s revised ordering paragraphs related to speed testing for all the reasons stated in Joint Applicants Opening Comments.

Joint Applicants maintain that their compliance with OP 4 must be measured by the FCC drive test results since the OP 4 speed benchmarks are the California projections used to create the corollary FCC commitments and are otherwise subject to the rigorous testing required by the FCC.⁶¹ However, in recognition of the Commission’s reliance on CalSPEED tests as a tool for assessing carriers’ data performance, Joint Applicants have proposed alternate revisions to OPs 28-31 that would (i) retain CalSPEED as one measuring tool with the costs of that testing to be borne by T-Mobile; (ii) permit staff to use CalSPEED to challenge the results of the FCC drive tests (with a requirement for the parties to meet and confer if there are conflicting results); and (iii) require T-Mobile to meet with Commission staff to

⁵⁵ See CWA Opening Comments at 18-19.

⁵⁶ See Joint Applicants Opening Comments at n. 102.

⁵⁷ See Joint Applicants Opening Comments at 18-19.

⁵⁸ See Cal PA Opening Comments, Attachment A at A-14 (OP 29).

⁵⁹ *Id.* at A-15 (OP 29).

⁶⁰ *Id.* at A-15 (OP 30).

⁶¹ See *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, FCC 99-103, 34 FCC Rcd. 10578 ¶¶ 31 (2019); see also *id.*, Appendix G, Attachment 1 at Sections IV and V (verification and enforcement of FCC buildout commitments).

consult regarding the FCC drive tests prior to concluding its consultation with the FCC on the design of the drive test.⁶² Joint Applicants submit that this alternate proposal strikes a reasonable balance between its needs for nationwide consistency in measurement and methodology tied to its FCC build out commitments, and the PD's proposed reliance on CalSPEED.

H. Cal PA – New Proposed OP 41: Performance Bond

Although each of Cal PA's proposed additional obligations should be rejected for the reasons discussed above and in Joint Applicants Opening Comments, its proposal to impose a "performance bond" on NTM is particularly inappropriate. Cal PA is essentially asking the Commission to require a bond of hundreds of millions of dollars - an unprecedented suggestion in the first place - for a company that is set to bring unparalleled benefits to Californians by, among other things, investing billions of dollars in its network. Moreover, there is nothing in the record, or in T-Mobile's performance over the past 18 years providing service in California, to suggest that a performance bond is warranted or necessary. As confirmed by this proceeding, T-Mobile is the third largest wireless carrier in the country with significant resources, massive investments in the state, and millions of California consumers; it is not the type of fly-by-night provider that performance bonds are intended to protect against. In addition, the Commission already requires wireless carriers to provide performance bonds under D.13-05-035; an obligation which T-Mobile has consistently satisfied since its inception. To impose such an obligation on NTM would not only be unfair and unwarranted, it would be anti-competitive. Finally, NTM is unaware of any merger before this Commission which imposed such an onerous condition. Cal PA's proposal is nothing short of a collateral attack on the merger itself and should be wholly rejected.

IV. CONCLUSION

Joint Applicants respectfully suggest that the PD be revised consistent with their Opening Comments and the redline of the Findings of Fact, Conclusions of Law and Ordering Paragraphs found in Attachment B (as modified by Appendix A attached to these Reply Comments) and that the Wireless Notification be closed accordingly.

⁶² See Attachment A.

Respectfully submitted this 9th day of April, 2020.

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Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile
USA, L.P. (U-4327-C)

ATTACHMENT A

**Additional Proposed Modifications to Proposed Decision Ordering
Paragraphs**

Joint Applicants Revised Modifications to Ordering Paragraphs

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

C. NETWORK RELIABILITY AND EMERGENCY PREPAREDNESS

8. ~~No later than October 1, 2020,~~ New T-Mobile shall use industry best efforts to deploy, maintain and operate its network in such a fashion as to enable its broadband service (at levels at least as fast as the minimum advertised downstream and upstream speeds T Mobile reflected in its then most recent Federal Communications Commission (FCC) Form 477 submission (or in each future reporting method as the FCC may adopt), basic web browsing, and voice and text services, and basic web browsing, to continue to be available to users in its coverage areas (as reflected in the most recent same FCC Form 477 coverage deployment data submission) ~~for at least 72 hours following~~ during an emergency event or Public Safety Power Shutoff to the extent feasible.

E. CALIFORNIA LIFELINE

15. ~~New T-Mobile (through the Assurance brand it will acquire through this merger or any other authorized subsidiary and all its subsidiaries), shall participate in the California LifeLine program indefinitely and at least through 2024, on terms that are at least as good as those currently offered by Assurance. New T-Mobile's other subsidiaries and brands (excluding Assurance Wireless) shall also participate in the Boost (or Metro) Pilot and for as long as they operate in California and offer service plans to consumers, shall make all their retail service plans eligible for the California LifeLine Program's discounts. New T-Mobile can accomplish this objective by utilizing the existing Virgin Mobile USA, L.P. (Virgin) model, the Boost (or Metro) Mobile pilot model, and/or any future models discounts provided under that pilot to the extent that New T-Mobile is authorized by to do so by the Program in a Commission Decision.~~

16. New T-Mobile shall use good faith efforts to add at least 300,000 new LifeLine and Boost Pilot customers over the next five years. ~~These customers will be in addition to those already participating in LifeLine through an existing pilot,~~

~~a. New T-Mobile shall enroll LifeLine customers that were not enrolled in the California LifeLine program or Boost Pilot in the previous month.~~

~~ba. New T-Mobile shall train and monitor employees adequately to ensure they only enroll new LifeLine customers who are eligible.~~

~~eb. New T-Mobile shall offer LifeLine Boost Pilot sign-ups at all New T-Mobile (and subsidiaries) physical stores.~~

...

22. With respect to the Pilot Programs approved in Decision 19-04-021, New T-Mobile shall:

a. Use best efforts to sSecure any necessary approvals from the Federal Communications Commission and

Department of Justice to maintain ~~transfer~~ the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture ~~its existing participants from Sprint Spectrum to New T-Mobile.~~

- b. Within 60 days of the effective date of the Commission Decision ~~approving the merger~~, submit an Advice Letter to the Commission requesting transfer of the California LifeLine Pilot Program from Sprint Spectrum to New T-Mobile or a different T-Mobile brand.
- c. Assume operation of the California LifeLine Pilot Program (whether with the MetroPCS brand or a different New T-Mobile brand) for as long as the CPUC continues to add and maintain Project Members within the Pilot Program, under the same terms and conditions approved in Decision 19-04-021.
- d. Work with the California LifeLine team and Boost's existing Pilot team to transition the California LifeLine Pilot Program from Sprint to New T-Mobile as soon as the ~~Merger d~~Decision is adopted ~~approved~~, maintaining continuity with the processes and procedures developed by the existing pilots.
- e. Provide new handsets to all existing and active pilot participants whose current handsets will not be compatible with New T-Mobile's network, at no cost to the consumer or the California LifeLine Program.
- f. Seek approval from the CPUC of the handset models that it would like to provide to iFoster pilot participants, to ensure that the new handsets are comparable to the pilot participants' existing handsets.

H. CALSPEED TESTING

28. ~~Unless otherwise agreed to by Staff, interpolated CalSPEED drive tests results of LTE and 5G service created by CPUC Staff or its contractors shall provide the basis upon which~~ T-Mobile shall demonstrate compliance with the minimum speeds required in OP 4 within nine months of the third and sixth anniversaries of the closing date of the merger ~~these conditions is determined.~~

- a. Compliance may be demonstrated by T-Mobile using the results of FCC drive tests, CalSPEED drive tests and/or any other industry-recognized network testing metrics. To the extent Staff determines appropriate, it may within 60 days of receipt, challenge such demonstration using any of the testing results discussed above.
- b. Staff and T-Mobile shall meet and confer to discuss their respective compliance findings and attempt to resolve any issues to the extent possible. Staff and T-Mobile shall provide the Commission with a report regarding the results, those meets and confers and identify any outstanding disagreements with respect to compliance.

29. Annually or at such other frequency as Staff determines appropriate, CPUC may perform CalSPEED drive tests of the New T-Mobile ~~and Dish~~ networks from 2020 through 2030~~26~~. New T-Mobile's shall reimburse CPUC for the reasonable costs of such drive tests.

- a. Staff shall determine New T-Mobile costs by allocating pro-rata the costs of CalSPEED testing and analysis that the T-Mobile ~~and Dish~~ networks bear to the total number of networks tested, plus the reasonable cost of

mobile devices and service subscriptions deemed necessary by Staff.

- b. Testing shall be performed at 4000 locations (including those in urban, rural and tribal areas), or such other number of test locations that Staff deems appropriate. Staff shall consult with New T-Mobile on the distribution of these test locations.
- c. Staff shall review its test code/methodology with New T-Mobile prior to commencing its testing.

30. CPUC shall provide New T-Mobile with statewide mapping of the test point results and interpolations of up/down speeds and latency and perform geographic coverage analysis of areas and population with available download speeds at or above 50 Mbps and 100 Mbps for both urban and rural areas. New T-Mobile shall reimburse CPUC for the reasonable cost of such. T-Mobile's obligation to pay for all costs in OPs 29 and 30 shall not exceed \$1 million annually.

31. As New T-Mobile is required by the FCC to submit drive test results within nine months of the third and sixth anniversaries of the closing date of the merger, New T-Mobile shall meet with Staff to consult regarding the drive test methods and specification it proposes to use prior to concluding its consultation with the FCC on design of the drive test and, within 30 days of the submission to the FCC, shall provide the Staff CPUC with the California portion of this data when submitted to the FCC, as well as any testing data provided by New T-Mobile to California Emerging Technology Fund.

ATTACHMENT B

Updated Comprehensive Reline of the Findings of Fact, Conclusions of Law and Ordering Paragraphs

Findings of Fact

1. Voice and data are transmitted wirelessly using discrete portions of the electromagnetic spectrum.

2. T-Mobile owns a substantial amount of low-band spectrum, a small amount of mid-band spectrum; and limited amounts of high-band, mmWave spectrum in certain geographic areas.

3. Sprint owns very little low-band spectrum, large amounts of mid-band spectrum, and no high-band spectrum.

4. High-band spectrum carries large amounts of data over short distances.

5. Mid-band spectrum carries moderate amounts of data over moderate distances.

6. Low-band spectrum carries small amounts of data over long distances.

7. Efficient operation of a 5G wireless network covering both urban and rural areas requires a combination of low-, medium-, and high-band spectrum.

8. A statewide wireless network requires tens of thousands of widely distributed cell towers.

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

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

11. The Transaction will increase market concentration throughout California.

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

Commented [JA1]: No record support for “tens of thousands.”

Commented [JA2]: No record support for statement. T-Mobile identified number of Sprint cell sites it intends to maintain. Hearing Ex. 3-C at 19:7-10 (Ray Rebuttal).

Commented [JA3]: See Joint Applicants Opening Comments at Section IV.

~~anti-competitive.~~

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

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

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

16. T-Mobile agreed to use good faith efforts to increase the number of LifeLine customers pursuant to the terms of the Memorandum of Understanding between New T-Mobile and CETF.

17. DISH may will acquire towers, radios, spectrum and other assets from New T-Mobile Sprint to enable it to become a wireless network provider.

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

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

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

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

Commented [JA4]: Consistent with CETF MOU; Assurance is the current LL brand.

Commented [JA5]: Consistent with the terms of the CETF MOU, Section III. See PD at Attachment 2.

Commented [JA6]: The PFJ does not require DISH to acquire these assets; provides them with the option. See e.g., PFJ § C.1; see also PD at Attachment 4.

Commented [JA7]: Consistent with PFJ; the divestiture is post-closing so any assets will come from NTM.

Commented [JA8]: Consistent with PFJ.

PROPOSED DECISION

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

23. Per a Tier 1 Advice Letter dated March 30, 2020, Sprint Wireline relinquished its Certificate of Public Safety and Convenience (“CPCN”) on the basis that it had transitioned all of its voice customers to VoIP and that all of its remaining services offered in California were exclusively information services and/or jurisdictionally interstate service.

Commented [JA9]: See Joint Applicants Opening Comments at Section II.B.

24. On March 30, 2020, Sprint Wireline and T-Mobile filed a joint Motion to Withdraw the Application for Transfer of Control of Sprint Communications to T-Mobile under Public Utilities Code Section 854(a).

Commented [JA10]: See Joint Applicants Opening Comments at Section II.B.

Conclusions of Law

1. The Joint Application of Sprint Communications Company L.P. (U5112C) and T-Mobile USA, Inc., a Delaware Corporation, for Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Transaction is subject to review under Public Utilities Code Section 854(a) is moot and no longer required as Sprint Wireline is no longer subject to Section 854, (b) and (c) and D.95-10-032.

Commented [JA11]: See Joint Applicants Opening Comments at Section II.B.

2. The Commission’s review of the transfer of control of the Sprint Wireless Entities is complete T Mobile USA’s wireless affiliates T Mobile West LLC (U3056C) and Metro PCS, California LLC (U3070C) are parties to the Transaction.

Commented [JA12]: See Joint Applicants Opening Comments at Section I and II.A.

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

Commented [JA13]: See Joint Applicants Opening Comments at Section I and II.A.

PROPOSED DECISION

4. With the conditions enumerated in the ordering paragraphs hereof, the consolidated proceeding is closed. Transaction should be approved.

Commented [JA14]: See Joint Applicants Opening Comments at Section I and II.A.

ORDER

IT IS ORDERED that:

1. The Motion to Withdraw the Joint Application of Sprint

Commented [JA15]: See Joint Applicants Opening Comments at Sections I-III.

Communications Company L.P. (U5112C) and T-Mobile USA, Inc., a Delaware Corporation, for Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a) is granted; approved, and the Joint Application of Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation, for Review of Wireless Transfer Notification per Commission Decision 95-10-032 is completed, subject to the conditions in the Ordering Paragraphs below.

A. FEDERAL and OTHER COMMITMENTS

2. New T-Mobile shall provide to California Public Utilities Commission any California specific data in updates documents or reports it provides to the Federal Communication Commission (FCC) or Department of Justice (DOJ) implementation of the conditions within the FCC Order and the Proposed Final Judgment simultaneously with the provision of such material to the FCC or DOJ.

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

B. 5G and LTE NETWORKS

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

a. By year end 2023, New T-Mobile shall provide 5G service to at least the percentage of California population indicated below:

- i. 91.0% with access to service with download speeds of at least 50 Mbps;
- ii. 86.0% with access to service with download speeds of at least 100 Mbps;
- iii. 81.0% of rural population with access to service with download speeds of at least 50 Mbps; and
- iv. 79.0% of rural population with access to service with download speeds of at least 100 Mbps.

b. By year end 2026, New T-Mobile shall provide:

- i. 99.0% of California population with access to service with download speeds of at least 100 Mbps;
- ii. 94.0% of California rural population with access to service with download speeds of at least 50 Mbps; and
- iii. 85.0% of California rural population with access to service with download speeds of at least 100 Mbps.

~~e. By year end 2030, New T-Mobile shall provide:~~

- ~~i. 96.0% of California rural population with access to service with download speeds of at least 50 Mbps; and~~
- ~~ii. 90.0% of California rural population with access to service with download speeds of at least 100 Mbps.~~

~~d. Such coverage shall be maintained at least until year end 2031.~~

Commented [JA16]: See Joint Applicants Opening Comments at Section VI.A.

PROPOSED DECISION

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

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

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

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

Commented [JA17]: See Joint Applicants Opening Comments at Section VI.B.

Commented [JA18]: See Joint Applicants Opening Comments at Section VI.B.

Commented [JA19]: See Joint Applicants Reply Comments at Section III.C.; see also Joint Applicants Opening Comments at Section VI.C.

PROPOSED DECISION

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

C. NETWORK RELIABILITY AND EMERGENCY PREPAREDNESS

8. ~~No later than October 1, 2020, New T-Mobile shall use industry best efforts to deploy, maintain and operate its network in such a fashion as to enable its broadband service (at levels at least as fast as the minimum advertised downstream and upstream speeds T-Mobile reflected in its then most recent Federal Communications Commission (FCC) Form 477 submission (or in each future reporting method as the FCC may adopt), voice and text services, and basic web browsing, to continue to be available to users in its coverage areas (as reflected in the most recent same FCC Form 477 coverage deployment data submission) for at least 72 hours following during an emergency event or Public Safety Power Shutoff to the extent feasible.~~

Commented [JA20]: See Joint Applicants Reply Comments at Section IV.D.; see also Joint Applicants Opening Comments at Section VI.D.

9. ~~This requirement will remain in place until any future backup power requirements are developed by CPUC in Rulemaking 18-03-011, or any subsequent proceeding, on the timetable and subject to the other requirements developed in that proceeding.~~

Commented [JA21]: See Joint Applicants Opening Comments at Section VI.D.

D. PERMANENT OPERATIONS AT FAIRGROUNDS

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

Commented [JA22]: No record support for "permanent"; based on CETF Commitment.

PROPOSED DECISION

11. The wireless networks shall provide robust connectivity for Fairground users and administrators, provided that New T-Mobile shall not be required to add cell sites in addition to those specified in the CETF MOU. ~~adequate to support the capacity and speed needed during an emergency by a response and evacuation center.~~

Commented [JA23]: See Joint Applicants Opening Comments at Section VI.E.

12. The fairgrounds will be selected from the ones on the list attached to the CETF MOU that currently have with coverage below 25 Mbps, as determined by the California Office of Emergency Services (OES). Priority consideration shall be given to the rural Fairgrounds most frequently used in the last decade to stage wildfire, flooding, and other emergency responses, and support recovery activities. Priority consideration also shall be given to rural Fairgrounds for which the County Fair Board (in consultation with OES, County Board of Supervisors and other local stakeholders) has developed a plan for digital inclusion and other economic development activities when the site is not being used for emergency response and recovery.

Commented [JA24]: See Joint Applicants Opening Comments at Section VI.E.

13. The 10 Fairgrounds shall be selected by New T-Mobile after consultation with CETF, the Rural Regional Consortia, OES and Staff.

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

E. CALIFORNIA LIFELINE

15. New T-Mobile (through the Assurance brand it will acquire through this merger or any other authorized subsidiary and all its subsidiaries), shall participate in the California LifeLine program indefinitely and at least through 2024, on terms that are at least as good as those currently offered by Assurance.

Commented [JA25]: See Joint Applicants Reply Comments at Section III.E.; see also Joint Applicants Opening Comments at Section VI.F.

PROPOSED DECISION

~~New T-Mobile's other brands (excluding Assurance Wireless) shall also participate in the Boost (or Metro) Pilot and for as long as they operate in California and offer service plans to consumers, shall make all their retail service plans eligible for the California LifeLine Program's discounts. New T-Mobile can accomplish this objective by utilizing the existing Virgin Mobile USA, L.P. (Virgin) model, the Boost (or Metro) Mobile pilot model, and/or any future models discounts provided under that pilot to the extent that New T-Mobile is authorized by to do so by the Program in a Commission Decision.~~

16. New T-Mobile shall use good faith efforts to add at least 300,000 new LifeLine customers over the next five years. ~~These customers will be in addition to those already participating in LifeLine through an existing pilot,~~

a. ~~New T-Mobile shall enroll LifeLine customers that were not enrolled in the California LifeLine program or Boost Pilot in the previous month.~~

~~ba.~~ New T-Mobile shall train and monitor employees adequately to ensure they only enroll new LifeLine customers who are eligible.

~~eb.~~ New T-Mobile shall offer LifeLine Boost Pilot sign-ups at all New T-Mobile (and subsidiaries) physical stores.

17. New T-Mobile shall submit an Implementation Plan to the Communications Division's Director within 60 days of the effective date of the Commission Decision ~~approving the merger.~~ This Implementation Plan shall include components including by way of example but not limitation the following:

- a. network transition.
- b. handset distribution.
- c. consumer education.
- d. applicable changes in consumers' accounts.

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PROPOSED DECISION

- e. applicable advice letter considerations.

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Commented [JA26]: See Joint Applicants Reply Comments at Section III.E

Commented [JA27]: Modified to track CETF MOU.

Commented [JA28]: See Joint Applicants Opening Comments at Sections II-III.

f. applicable activities related to the California LifeLine Administrator.

g. draft content for the consumer education materials.

18. New T-Mobile (and its subsidiaries) shall conduct outreach to inform consumers about the California LifeLine Program consistent with the Strategic Plan provided for in the CETF MOU at Section III.B. and could include, among other via the following methods, the following at a minimum:

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

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

20. New T-Mobile shall provide documentation of the outreach required above a sample of customer bills (to show the required outreach message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the CPUC to send staff to audit compliance into California stores/~~call centers~~ at any time while the stores/~~call centers~~ are open to the public.

21. All Assurance LifeLine customers with incompatible handsets will be migrated on the same timeframe as the non-LifeLine legacy Sprint customers to the New T-Mobile network. New T-Mobile shall distribute handsets that are compatible with the New T-Mobile network, and comparable to the consumer's existing handset such that the consumer does not experience

Commented [JA29]: Consistent with CETF MOU

Commented [JA30]: To conform to OP 15 and the fact that call centers are not open to the public.

Commented [JA31]: See Joint Applicants Opening Comments at Section VI.F.

a loss in service, to all active California LifeLine participants receiving cell phone services from Virgin, through Assurance, whose handsets belong to either of the following categories, at the time of migration:

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

22. With respect to the Pilot Programs approved in Decision 19-04-021,

New T-Mobile shall:

- a. ~~Use best efforts to s~~Secure any necessary approvals from the Federal Communications Commission and Department of Justice to maintain ~~transfer~~ the Boost customer base currently receiving service under the California LifeLine Pilot Program and avoid their transfer to DISH under the terms of the divestiture its existing participants from Sprint Spectrum to New T-Mobile.
- b. Within 60 days of the effective date of the Commission Decision approving the merger, submit an Advice Letter to the Commission requesting transfer of the California LifeLine Pilot Program from Sprint Spectrum to New T-Mobile or a different T-Mobile brand.
- c. Assume operation of the California LifeLine Pilot Program (whether with the MetroPCS brand or a different New T-Mobile brand) for as long as the CPUC continues to add and maintain Project Members within the Pilot Program, under the same terms and conditions approved in Decision 19-04-021.
- d. Work with the California LifeLine team and Boost's existing Pilot team to transition the California LifeLine Pilot Program from Sprint to New T-Mobile as soon as the Merger dDecision is adopted approved, maintaining continuity with the processes and procedures developed by the existing pilots.
- e. Provide new handsets to all existing and active pilot participants whose current handsets will not be

Commented [JA32]: See Joint Applicants Opening Comments at Section VI.J.

Commented [JA33]: See Joint Applicants Opening Comments at Sections II-III.

Commented [JA34]: See Joint Applicants Opening Comments at Sections II-III.

compatible with New T-Mobile's network, at no cost to the consumer or the California LifeLine Program.

- f. Seek approval from the CPUC of the handset models that it would like to provide to iFoster pilot participants, to ensure that the new handsets are comparable to the pilot participants' existing handsets.

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

24. Within 90 days of the effective date of this ~~the Commission Decision approving the merger~~, Metro PCS (or whichever T-Mobile brand will replace Boost in the pilot program) shall provide staff with an example of the notice it intends to provide to existing Boost Pilot customers regarding the transition to MetroPCS a sample of customer bills (to show the required message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the CPUC to send staff to audit compliance with Boost Pilot program into California stores/call centers at any time while the stores/call centers are open to the public.

F. JOB CREATION

23. New T-Mobile shall have a net increase in jobs in California, such that at least the same number of full time and full-time equivalent New T-Mobile employees in the State of California at three years after the close of the transaction ~~shall be at least 1,000 greater than the total number of full-time and full-time equivalent employees of~~ as Sprint, Assurance Wireless and T-Mobile have in the State of California as of the date of the Transaction closing.

Commented [JA35]: iFoster program participants receive a phone subsidized by the CPUC—not the case for other current Pilot program (Boost Pilot CARE program), where customers bring their own devices.

Commented [JA36]: See Joint Applicants Opening Comments at Section II.A.

Commented [JA37]: As written, this appears to be a copy of OP 19. Modified to make it more applicable to Boost Pilot.

Commented [JA38]: See Joint Applicants Opening Comments at Section VI.G.

24. New T-Mobile shall hire approximately at least 1,000 new employees at its planned Kingsburg customer experience center in Fresno County.

Commented [JA39]: See Joint Applicants Opening Comments at Section VI.G.

G. EDUCATIONAL BROADBAND SPECTRUM (EBS)

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

Commented [JA40]: See Joint Applicants Opening Comments at Section VI.J.

H. CALSPEED TESTING

28. ~~Unless otherwise agreed to by Staff, interpolated CalSPEED drive tests results of LTE and 5G service created by CPUC Staff or its contractors shall provide the basis upon which T-Mobile shall demonstrate compliance with the minimum speeds required in OP 4 within nine months of the third and sixth anniversaries of the closing date of the merger these conditions is determined.~~

Commented [JA41]: See Joint Applicants Reply Comments at Section III.G.; see also Joint Applicants Opening Comments at Section VI.H.

- a. Compliance may be demonstrated by T-Mobile using the results of FCC drive tests, CalSPEED drive tests and/or any other industry-recognized network testing metrics. To the extent Staff determines reasonably appropriate, it may within 60 days of receipt, challenge such demonstration using any of the testing results discussed above.
- b. Staff and T-Mobile shall meet and confer to discuss their respective compliance findings and shall attempt in good faith to

resolve any issues to the extent possible. Staff and T-Mobile shall provide the Commission with a report regarding the results, those meets and confers and identify any outstanding disagreements with respect to compliance.

29. Annually or at such other frequency as Staff determines appropriate, CPUC may perform CalSPEED drive tests of the New T-Mobile ~~and Dish~~ networks from 2020 through 2030~~26~~. New T-Mobile's shall reimburse CPUC for the reasonable costs of such drive tests.

- a. Staff shall determine New T-Mobile costs by allocating pro-rata the costs of CalSPEED testing and analysis that the T-Mobile and Dish networks bear to the total number of networks tested, plus the reasonable cost of mobile devices and service subscriptions deemed necessary by Staff.
- b. Testing shall be performed at 4000 locations (including those in urban, rural and tribal areas), or such other number of test locations that Staff deems appropriate. Staff shall consult with New T-Mobile on the distribution of these test locations.
- c. Staff shall review its test code/methodology with New T-Mobile prior to commencing its testing

30. CPUC shall provide New T-Mobile with statewide mapping of the test point results and interpolations of up/down speeds and latency and perform geographic coverage analysis of areas and population with available download speeds at or above 50 Mbps and 100 Mbps for both urban and rural areas. New T-Mobile shall reimburse CPUC for the reasonable cost of such. T-Mobile's obligation to pay for all costs in OPs 29 and 30 shall not exceed \$1 million annually

31. As New T-Mobile is required by the FCC to submit drive test results within nine months of the third and sixth anniversaries of the closing date of the

Commented [JA42]: See Joint Applicants Reply Comments at Section III.G.; see also Joint Applicants Opening Comments at Section VI.H.

Commented [JA43]: See Joint Applicants Reply Comments at Section III.G.; see also Joint Applicants Opening Comments at Section VI.H.

Commented [JA44]: See Joint Applicants Reply Comments at Section III.G.; see also Joint Applicants Opening Comments at Section VI.H.

merger, New T-Mobile shall meet with Staff to consult regarding the drive test methods and specification it proposes to use prior to concluding its consultation with the FCC on design of the drive test and, within 30 days of the submission to the FCC, shall provide the Staff CPUC with the California portion of this data when submitted to the FCC, as well as any testing data provided by New T-Mobile to California Emerging Technology Fund.

I. DIVERSITY

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

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

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

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

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

37. New T-Mobile shall **strive to** substantially increase, over the next three years, its diverse supplier spending in California. It shall establish specific goals in this area, including goals for the use of minority-owned banking, accounting, other financial, and legal services companies. New T-Mobile's goal for five years following the merger shall be to meet or exceed the CPUC's General Order 156 goal of 21.5% annual diversity spending.

Commented [JA45]: See Joint Applicants Opening Comments at Section VI.J.

J. ENSURING COMPLIANCE

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

Commented [JA46]: See Joint Applicants Opening Comments at Section VII.

~~39. **The Compliance Monitor will make semi-annual findings on merger compliance and/or lack of compliance. For the instances where the New T-Mobile is out of compliance, the Compliance Monitor will recommend a penalty to bring T-Mobile into compliance and forward his findings and recommendation to the Director of the Commission's Communications Division**~~

Commented [JA47]: See Joint Applicants Opening Comments at Section VII.

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and the Attorney General. The Attorney General may enforce this Order either pursuant to Public Utilities Code Sections 702 and 2101, or under its independent authority, and such enforcement actions would not interfere with the Commission's authority but would be complimentary. The CPUC shall develop a citation program that can be utilized to impose penalties on New T Mobile for violations of the terms of this decision.

40. ~~Baseline~~ Annual Report. Following completion of the Merger, New T-Mobile shall provide an annual report on its compliance with the Ordering Paragraphs in this Decision. ~~the following information to CPUC annually in the 4th calendar quarter of each year or on such other timetable as New T Mobile and CPUC shall agree on:~~

- ~~a. Current full time and full time equivalent employee headcount.~~
- ~~b. Transfer of LifeLine customers from Sprint to New T-Mobile.~~

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

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

Commented [JA48]: See Joint Applicants Opening Comments at Section VII.

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

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

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

42. Applications (A.) 18-07-011 is withdrawn and A.18-07-012 is are closed. This order is effective today.

Dated _____, at San Francisco, California.

Commented [JA49]: See Joint Applicants Opening Comments at Section II.B.