BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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 No. 18-07-012

JOINT APPLICANTS' CONSOLIDATED REPLY TO ORA'S AND THE JOINT CONSUMERS' PROTESTS TO APPLICATION FOR REVIEW OF WIRELESS TRANSFER NOTIFICATION

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I. INTRODUCTION

Pursuant to Rule 2.6(e) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) (collectively referred to as "Sprint Wireless") and T-Mobile USA, Inc. ("T-Mobile") (collectively referred to as the "Joint Applicants"), respectfully submit this Consolidated Reply to the Protest submitted by Office of Ratepayer Advocates ("ORA") and the Joint Protest submitted by The Greenlining Institute ("Greenlining") and The Utility Reform Network's ("TURN") (collectively referred to as "Joint Consumers").

In brief, ORA and the Joint Consumers (referred to collectively as the "Protestors") essentially suggest that the Commission ignore its long-standing determination in D.95-10-032 to forbear from imposing the requirements of Section 854 in the context of a wireless transfer of control notification. Instead, they suggest that the transfer of Sprint Wireless to T-Mobile should be subject to an exhaustive review by this Commission using Section 854(b) and (c) criteria – or similarly detailed criteria – as a "framework". Among other things, the Protestors suggest that

the Commission subject the Sprint Wireless transfer to an expansive and detailed list of criteria, schedule public participation hearings and/or consider evidentiary hearings, and require the submission or creation of massive amounts of California-specific data about New T-Mobile. They also propose the imposition of California commitments on the Joint Applicants.

As discussed more thoroughly below, the Joint Applicants respectfully submit that those suggestions should be rejected by the Commission for numerous reasons including but not limited to the following:

- The Protestors' attempt to compel the type of review that may be appropriate for *approving* the transfer of a legacy landline carrier or a dominant cable provider has no application to this request to *review* a wireless transfer notification as a practical matter or under existing law. (See Sections II and III, *infra*.).

- The Protests ignore that in the absence of this transaction, neither T-Mobile nor Sprint Wireless individually can bring the same level of benefits that New T-Mobile will bring to consumers – e.g., a robust, nationwide world-class 5G network, fiber like speeds that enable exciting and innovative uses on a broader basis, a bona fide alternative to traditional in-home broadband providers, improved broadband and retails services for rural Americans, create more American jobs, etc., – in this timeframe, if ever. (See Sections IV.A. and V, *infra*.).

- The combination of T-Mobile and Sprint Wireless will intensify competition in the wireless market in which AT&T and Verizon continue to hold over two-thirds of the market despite aggressive competition from the Joint Applicants over many years. (See Sections IV.B. and VIII, *infra*).

- The transaction solves the most intractable problems standing in the way of T-Mobile and Sprint in building a superior, nationwide 5G network—the right mix of spectrum and cell site resources needed to deliver 5G capacity and services faster than any other wireless provider in the world; problem which are openly described in the Joint Application. (See Section IV.C., *infra*).

- New T-Mobile will at most arguably comparable in size with respect to market share, but by most measures, will still be dwarfed by, each of the two major wireless providers. (See Section III, *infra*).

- T-Mobile has a proven track record here in California, and throughout the country, of being a competitive innovator upon which it has staked its entire brand and identity. It also has a proven track record of implementing successful consumer integrations in the context of mergers. (See Section VI, *infra*).

- The Protestors' requests for hearings, additional process, additional information and commitments ignore the significant amount of information already provided in the Joint Application (and via the 676-page PIS), which will result in an unnecessary expenditure of the time and resources otherwise required to complete this review. (See Sections IX – XII, *infra*).

T-Mobile and Sprint Wireless are widely-recognized for being disruptive consumer-focused carriers yet the Protests seem to be premised on the notion that New T-Mobile will abandon their very identities following the transaction. All of the information provided, as well as years of real world experience with both in California and throughout the country, confirm that is not the case.[1] Thus, the Joint Applicants respectfully request that the review of the Wireless Transfer Notification be completed as expeditiously as possible to ensure that California consumers reap the many benefits of the underlying merger without any unintended impediments.

II. THE TRANSFER OF SPRINT WIRELESS IS SUBJECT TO D.95-10-032 - NOT SECTION 854 - AND SHOULD BE REVIEWED BY THE COMMISSION ACCORDINGLY

The Protestors acknowledge that a wireless transfer is subject to the the review process set forth in D.95-10-032 but instead suggest that given changed circumstances in the wireless marketplace since the adoption of the Decision, its dictates should be ignored.[2] Indeed, ORA

[1] *See e.g.,* Declaration of John Legere, Chief Executive Officer, T-Mobile US, Inc., Appx. A, at ¶¶ 13-16.

[2] *See e.g.*, ORA Protest at pp. 2-3 and Joint Consumers' Protest at pp. 6-8. In brief, the Protestor's each assert that changed circumstances in the telecommunications marketplace, including the growth of the wireless industry, warrants ignoring the dictates of D.95-10-032. The Protestors, however, are silent on whether those same changed circumstances should also lead to a reexamination of the very criteria they now suggest should be used to review this Application. Those criteria were first adopted by the Legislature in 1951 and have, with limited non-substantive amendments made in 1995, remained the same since then. As all the stakeholders are well aware, in 1951 and for many years thereafter, the telecommunications marketplace consisted almost entirely of monopoly landline carriers. Wireless technology, cell phones and competition for monopoly landline services played no role in the telecommunications marketplace at the time as they did not exist. Moreover, the $500 million threshold set in 1951 is the equivalent of over $4.8 billion today. *See* http://www.in2013dollars.com/1951-dollars-

explicitly notes that Sections 854(b) and (c) do not apply to this application but then submits a list of similar criteria that should be considered in this proceeding.[3] The Joint Consumers implicity acknowledge that Sections 854(b) and (c) do not apply yet they promote the use of those criteria as a framework.[4] Neither suggestion is warranted by this Joint Application.

As acknowledged by all parties, in 1995 the Commission exempted wireless transactions from pre-approval under Public Utilities Code Section 854 while also establishing alternate notice requirements for certain limited exceptions including the transfer of ownership of a wireless provider.[5] For such transfers, the Commission required 30-day advance notice to the Communications Division because it "wish[ed] to retain the ability [a] to ensure that the participants in an ownership transfer have complied fully with our rules and regulations" and if necessary, [b] to seek additional information in that specific regard.[6] That decision still stands.

In order to promote transparency, encourage public participation, and expedite the process for the timely review of their notification, the Joint Applicants filed the instant Application with the Commission instead of submitting notification via a letter to the

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in-2017. To suggest that the Commission continue to rely on those criteria while rejecting the wireless exemptions adopted in D.95-10-032 seems inconsistent.

[3] *See* ORA Protest at pp. 3, 5-6; *see* also Section III, *infra*.

[4] *See* Joint Consumers' Protest at p. 8. The Joint Consumers suggest that exhaustive review is *required* "pursuant to the Commission's exercise of its clear and broad authority to protect California wireless consumers." *Id.* at p. 7 (*see also* citations in n. 21). Although the Joint Applicants do not take issue with the general notion that the Commission has broad authority to protect consumers from identified harm, that does not translate to imposing the criteria required under Section 854(b) and (c) on the review of a wireless transfer notification.

[5] *See* Application for Review at p. 1, n. 1; *see also In re Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications*, D. 95-10-032, 1995 Cal. PUC LEXIS 888 at **25, 30 and 46 (the "Exemption Decision").

[6] *Id*. at *31.

Communications Division.[7] The Joint Applicants recognize that filing an application with the Commission to open a formal docket subject to the Commission's Rules instead of submitting a letter to the Communiations Divsion is a novel procedural approach[8] but continue to believe that in the context of this wireless transfer, it more effectively promotes the engagement of all potential stakeholders as well as the timely conclusion of the required Commission review.[9]

The criteria suggested by the Protestors, however, are neither mandated nor warranted by the instant Application. As noted above, review of a wireless transfer notification is designed "to ensure that the participants in an ownership transfer have complied fully with our rules and regulations." In this case, Sprint Wireless and T-Mobile (through its operating subisidiaries) have long provided innovative, competitive and quality mobile service to millions of California consumers while complying with the Commission's rules and regulations.[10] The transfer of control does nothing to alter that reality. Moreover, the exemptions provided in D.95-10-032 were predicated on the explicit finding that subjecting wireless transfers to the requirements of

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[7] ORA suggests that the Joint Applicants were trying to circumvent the Commission's ability to review its wireless transfer notification by limiting review to 30 days from the filing of the Application. *See* ORA Protest at p. 7. That was never the intention, and it is simply not the case. In fact, and as noted above, the Joint Applicants filed the Application to ensure that its notification was widely available, that interested stakeholders would have a ready-made forum to provide comments, and to otherwise avoid any delay that might result from the Communications Division receiving a notification letter that could necessitate staff having to fashion an appropriate vehicle for public comment and consideration (e.g., application like this one submitted under Rule 2.6). Contrary to the assertions of ORA, the Joint Applicants have never suggested that either the Commission or other stakeholders were somehow limited to providing input within 30 days of the filing.

[8] The Joint Applicants recognize that other wireless transfers have been appropriately and successfully reviewed through the use of a notification letter to the Communications Division. For example, the indirect transfers of control of MetroPCS to T-Mobile and Cricket to AT&T were both accomplished using that process. In addition, the transfer of Sprint Wireless to Softbank also utilized the notification letter process.

[9] The notification letter process does not necessarily require any public notice, provide an established mechanism for receiving input from other parties like ORA and the Joint Consumers, or create a procedural framework for reviewing the Notification.

[10] *See e.g.*, Joint Application at Confidential Exhibit A and Exhibits K & L.

Article 6 of the Public Utilities Code, including Section 854, was "not necessary in the public interest."[11] In constrast, the criteria suggested by the Protestors are predicated on the opposite concept; i.e., that subjecting such transfers to the criteria is necessary to protect the public interest. Although there is no doubt that the wireless marketplace has changed since 1995, the rationale underlying the exemption has not changed and no subsequent Commission decision has held otherwise.

Thus, the Joint Applicants respectfully submit that the application for review of the wireless transfer notification be treated accordingly.

III. THE PROCESS USED IN THE AT&T/T-MOBILE INVESTIGATION IS NOT APPLICABLE

ORA suggests that the Commission should essentially duplicate in this proceeding the process used to manage the proposed AT&T/T-Mobile transaction.[12] Setting aside any potential question of whether the process used in that investigation was appropriate in that context, or would ultimately have been found to be lawful,[13] the current situation is clearly distinguishable.

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[11] *See e.g., Exemption Decision, supra,* 1995 Cal. PUC LEXIS 888 at *43, COL 18 ("Subject to the exceptions contained in O.P. 3 below, CMRS providers should be exempt from the provisions of Article 6 of Chapter 4 of the Public Utilities Code in order to further streamline regulation and promote competition and because the application of these provisions to CMRS providers is not necessary in the public interest.").

[12] ORA Protest at pp. 2, 5-7.

[13] For example, the OII in that proceeding acknowledged that the purpose of the investigation was not to approve but to *"investigate, gather, and analyze information"* and noted that only the FCC could approve the merger on a national level. *See Order Instituting Investigation on AT&T Acquisition of T-Mobile* (the "*AT&T/T-Mobile OII*")(June 9, 2011), 2011 Cal. PUC Lexis 348 at *3 ("The purpose of this Investigation is to investigate, gather, and analyze information relevant to the proposed merger to determine the specific impact of the merger on California…") and at *14 ("Moreover, a number of issues can only be decided by the FCC, including whether to approve the AT&T and T-Mobile merger on a national basis.").

However, the Commission also noted that the investigation would "analyze what, if any, conditions related to the California-specific effects of the merger may be appropriate, and whether additional Commission action is warranted."). *See id*. at *4. The Commission's authority, however, is

For example, AT&T, the acquiring company in that proceeding, was the major ILEC in the state as well and one of the two largest providers of wireless service in the state.[14] In contrast, T-Mobile, the party acquiring control of Sprint Wireless through the described transaction in this proceeding, is not an ILEC or a CLEC or a NDIEC. Indeed, T-Mobile is not currrently even affiliated with any landline carriers here or elsewhere in the country. While serving as the the third largest wireless carrier in the country, T-Mobile is, as discussed in the PIS, only a fraction of the size of the two major wireless providers.[15]

In addition, AT&T was a significant provider of backhaul services to wireless carriers at the time of the proposed merger; a situation which the Joint Applicants believe to be true today. T-Mobile, however, does not provide backhaul services to wireless providers and Sprint Wireline, a CLEC/NDIEC with nominal California operations, also does not provide such services here in California. Thus, the Commission's concern with ILECs providing backhaul to affiliated wireless carriers is not applicable here.[16]

Furthermore, the proposed combination of AT&T and T-Mobile would have created, according to the OII, a wireless carrier with over 47% of the California market,[17] by far the largest carrier in the state at the time, while leaving Sprint Wireless as the remaining third

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circumscribed by existing federal law. *See, e.g.*, Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(3).

[14] *See Order Instituting Investigation on AT&T Acquisition of T-Mobile* (the "*AT&T/T-Mobile OII*")(June 9, 2011), 2011 Cal. PUC Lexis 348 at * 2.

[15] *See* Joint Application at p. 28, n. 77.

[16] *See In re Investigation into the State of Competition among Telecommunications Providers*, D.16-12-025; 2016 Cal. PUC Lexis 683 at **171-172 (noting concern with ILECs providing backhaul to affiliated wireless carriers and noting that even now, "…cable and other providers of backhaul supply about 15-20 percent of that market, still leaving one legacy carrier supplying backhaul to a majority of cell towers statewide").

[17] *See OII* at *12, n. 9.

provider with a limited market share of approximately 15%. The combination of T-Mobile and Sprint Wireless, however, will create a wireless company that is at most arguably comparable in size with respect to market share but by most measures still dwarfed by, each of the leading providers, i.e., AT&T and Verizon Wireless.[18] Moreover, as discussed at length in the PIS, AT&T and Verizon Wireless have numerous other market advantages over T-Mobile and Sprint Wireless individually and combined.[19] In other words, there is no question of creating an entity that arguably controls the majority, or almost the majority, of the market.[20] Instead, this transaction will create a provider that, based on its proven history and massive investment as a pro-consumer brand, will remain an innovator in the market place and now be in a position to put additional competitive pressures on, among others, the two indisputably dominant wireless providers in the market on all fronts.

The Joint Applicants further note that the utility of the Commission's inquiry in the ATT/T-Mobile OII was never fully subject to legal or practical scrutiny as the transaction was ultimately withdrawn. In any event, regardless of whether the process utilized in the OII was appropriate for that transaction, it does not provide a useful or a practical template for the instant proceeding.

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[18] *See, e.g.,* PIS at p. 85 (Per the FCC's 20th Mobile Wireless Competition Report, Verizon has a 36.8% market share, AT&T has a 32.8% market share, T-Mobile and Sprint Wireless combined would have a 28.7% market share). The numbers are even more striking if other metrics (e.g., EBITDA, revenue, etc.) are use. *See also* PIS at pp. 86-87.

[19] *Id.* at pp. 85-94 (describing Verizon and AT&T advantages with respect to networks, capital, acquisition of spectrum, etc.).

[20] *See id.* at p. 85 (Per the FCC's 20th Mobile Wireless Competition Report, AT&T and Verizon have a combined 70% of market share).

IV. THE UNDERLYING TRANSACTION HAS NUMEROUS BENEFITS FOR CONSUMERS AND WILL PROMOTE COMPETITION IN THE TELECOMMUNIATIONS MARKET

Even if the Commission determined it was obligated to make an express determination that the transfer of control was in the public interest, which Joint Applicants do not believe is required by D.95-10-032, Joint Applicants submit that the transfer is consistent with the public interest and will otherwise intensify competition in the wireless marketplace and beyond.

A. Consumer Benefits

As thoroughly documented in the Joint Application and the PIS, New T-Mobile will deliver myriad compelling benefits to consumers in California and across the country. These benefits simply would not be achievable in this time frame, if ever, without this Transaction. These benefits include, but are not limited to:[21]

- Higher data rates to more customers in more places than the standalone networks;
- Greater capacity than the standalone networks which will allow the ability to (a) deploy 5G services rapidly without compromising the quality of services for existing subscribers; (b) provide more competitive offerings in the marketplace; and (c) compete directly against more traditional broadband providers;
- A plan to migrate Sprint Wireless customers to the existing T-Mobile network within three years based on best practices from prior technology migrations, including the almost immediate conversion of approximately 20 million Sprint Wireless customers with compatible handsets;
- A network with fiber-like data speeds that will enable real-time interactivity and, among other things, transform the way Californians live, work, travel, and play, by being able to connect to an enormous variety of IoT applications and the full spectrum of connected devices;
- Bona fide wireless alternative to conventional in-home wired broadband services;
- Better services and high-speed broadband for rural areas;
- Establish 600 or more stores, and up to 5 new technologically advanced Customer Experience Centers located to serve small towns and rural communities; and
- Thousands of additional American jobs.

[21] *See e.g.*, Joint Application at Section VII.

Although the Joint Applicants have already noted that state-specific data is not generally available, there is no reasonable basis to expect that California, one the most technologically-advanced areas in the country with tens of millions of wireless consumers, would somehow not enjoy these same benefits.

B. Promoting Competition

As also discussed in greater detail in the Joint Application and the PIS, the merger of T-Mobile and Sprint Wireless will also intensify competition and enhance consumer welfare, particularly with respect to the deployment of 5G and the attendant benefits of the combined network.[22] Among other things, the Combined Company will:

- Be a strengthened maverick with the network, scale, and incentives to take on the market leaders, Verizon and AT&T, causing a virtual cycle of greater investment and enhanced competition.
- Have significant incentives to compete aggressively for customers to fill the capacity created by New T-Mobile's 5G network.[23]
- Provide a *bona fide* alternative to traditional in-home broadband providers for cord-cutters and non-cord-cutters alike.[24]

C. The Transaction Addresses Challenges Faced by Both T-Mobile and Sprint Wireless

The Transaction also addresses some of the most intractable problems standing in the way of T-Mobile and Sprint Wireless in building a superior, nationwide 5 G network – the right mix of spectrum and cell site resources. Moreover, although T-Mobile's Un-carrier strategy has successfully promoted T-Mobile's competitive presence in the marketplace, it alone is not

[22] *See* generally Joint Application at Section IX; *see* PIS at Section IV.

[23] This additional capacity will also decrease the marginal cost of each gigabyte of data. *See* Joint Application at p. 30, n. 86.

[24] As discussed in the Joint Application, the wireless space is increasingly populated by competitors beyond the traditionally recognized four nationwide wireless providers, making it implausible that the merger will reduce competition. *See* Joint Application at Section IX.

enough to overcome the scale and spectrum advantages of Verizon and AT&T, especially in the 5G era. While T-Mobile has gained some market share, those gains have amounted to only a few percentage points after five years of continuous aggressive implementation of its Un-carrier strategy.[25] In fact, despite the market success by the smaller companies over the past few years, the share of wireless revenue controlled by AT&T and Verizon Wireless has not decreased at all.[26] In addition, T-Mobile must allocate the largely fixed costs of its network over less than half of the subscriber base of AT&T or Verizon, so T-Mobile's costs-per-subscriber are substantially higher.[27]

Moreover, Sprint Wireless has lost market share despite its aggressive competitive actions and price moves. While Sprint Wireless held a 15.5 percent share of mobile wireless service sales in 2013, its share had dropped to 13.4 percent by 2016.[28] As outlined by the declarations of Sprint executives in the PIS, these decreases have a very real practical impact on Sprint Wireless's competitive strength.[29] Sprint Wireless also faces serious, mutually reinforcing challenges that limit its ability to improve its competitive prospects. To attract and

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[25] As noted before, much of that gain is attributable to its successful acquisition and integration of MetroPCS, rather than taking share through organic gains in the marketplace. *See* PIS at p. 98; *see* PIS, Declaration of John Legere, Chief Executive Officer, T-Mobile US, Inc., Appx. A, at ¶7.

[26] *Twentieth Mobile Wireless Competition Report*, 32 FCC Rcd at 8988, Table II.C.1.

[27] *See* PIS at p. 99; Sievert Decl. at ¶9.

[28] *Twentieth Mobile Wireless Competition Report*, 32 FCC Rcd at 8988, Table II.C.1.

[29] Sprint Wireless's loss of subscribers has steadily dwindled the base of customers across which it could distribute costs, exacerbating its scale disadvantages compared to larger competitors. In addition, Sprint Wireless's historically poor perceived network performance and other challenges have led to high levels of customer churn and will continue to make it difficult for Sprint Wireless to attract and retain customers as a standalone company. *See* e.g., PIS at p. 96, Declaration of Brandon "Dow" Draper, Chief Commercial Officer, Sprint Corporation, at ¶14; *see also* PIS at p. 94, Declaration of John C. Saw, Chief Technology Officer, Sprint Corporation, Brandon "Dow" Draper, Chief Commercial Officer, Sprint Corporation, at ¶9.

retain customers, it must invest heavily in its network and other capabilities. Yet, to support those investments it must throttle back on the aggressiveness of its promotions, which failed to achieve a fundamental shift in Sprint Wireless's ability to attract and retain customers.[30]

The Transaction, however, addresses these (and other network-related) challenges and otherwise will intensify competition overall.[31] The bottom line is that the augmented competitive strength of New T-Mobile will unmistakably benefit the very customers whose interests the Protesters seek to protect. Indeed, any impediment to the timely consummation of the Transaction could hamper the Combined Companies' ability to, among other things, compete head-to-head with AT&T and Verizon and otherwise bring the benefits of 5G to consumers in California and elsewhere. Such a development would clearly be "adverse to the public interest."

V. THE DEPLOYMENT OF THE COMBINED COMPANIES' 5G NETWORK IS CRITICAL TO THE TRANSACTION

ORA implies that the benefits associated with the buildout of the 5G network are suspect because "there is evidence to suggest that Sprint Wireless and T-Mobile will deploy 5G networks even if the proposed merger does not occur."[32] That statement, however, reflects a fundamental misunderstanding of the Joint Application and the benefits of the underlying transaction which will result in the transfer of Sprint Wireless to T-Mobile.

As an initial matter, the Joint Applicants have been clear that they both intend to deploy 5G networks on their own. They have been public about those plans and ORA's comment that

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[30] See PIS at p. 96.

[31] *See e.g.*, PIS at pp.101-102. The Joint Applicants also note that although ORA , and the Joint Consumers in particular, devote a considerable amount of their protests to suggesting that the creation of the New T-Mobile *could* result in "public interest harms" (e.g., immediate price hikes, future diversity procurement efforts, 911/E911 availability), those "harms" are based on nothing more than conjecture. *See* ORA Protest at pp. 9-12; Joint Consumer Protest at pp. 17-23; *see also*, Section VII.B, *infra*.

[32] ORA Protest at pp. 13-14.

"there is evidence to suggest" improperly implies that somehow the Joint Applicants have tried to hide that fact. However, whether each of the companies has such plans is completely beside the point.

Indeed, as discussed in detail in the Joint Application and in the PIS, the ability to combine the complementary spectrum and cell site assets of T-Mobile and Sprint Wireless to build the a world-leading nationwide 5G network is the reason for the transaction and essential to the financial future of the combined company. It will allow New T-Mobile to, among other things, deliver unprecedented services to consumers and increasingly disrupt the wireless industry. For example, aggregating the two companies' spectrum and site inventories will dramatically increase capacity, reduce costs, and provide the right portfolio of spectrum bands to enable a rapid transition path from LTE to 5G. The benefits to consumers – many of which are summarized above (see Section IV.A – would simply not arise but for the merger as neither company has enough or the right combination of spectrum or cell site resources to deliver the enormous gains in capacity that New T-Mobile will be able to provide in the near and far term.[33]

ORA's suggestion that either T-Mobile or Sprint Wireless could independently accomplish what New T-Mobile will be able to accomplish on this type of timeframe, if ever, is simply inconsistent with all available information.

VI. T-MOBILE HAS A PROVEN TRACK RECORD AS AN INNOVATOR AND EXPERIENCE WITH SUCCESSFUL INTEGRATION

As recognized by ORA, T-Mobile has a proven track record of being a maverick in the industry and introducing novel initiatives to the wireless market.[34] Its "Un-carrier" brand is

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[33] *See* PIS at pp. 41- 47; Ray Decl. at ¶¶39-42. *See also* Joint Application at Section VIII (detailed discussion of how the merger addresses challenges T-Mobile and Sprint Wireless face individually).

[34] See ORA Protest at p. 10, n. 29. Sprint Wireless is also well-regarded as an innovative force in the

well-recognized by consumers, competitors and regulators alike. Moreover, T-Mobile has a tremendous amount of investment and value in its brand and what it represents here in California and across the nation.

T-Mobile also has significant experience in seamlessly integrating other wireless carriers in a manner similar to that planned here as reflected by the successful merger with MetroPCS approximately five years ago.[35] Nothing less is expected here.

In fact, by combining the two companies, T-Mobile and Sprint Wireless will be able to more effectively build on T-Mobile's long history of providing innovative and consumer-friendly wireless services and products. This same philosophy will be necessary for New T-Mobile to succeed in the ever-changing wireless marketplace, which in turn stands to benefit consumers on a larger scale. Those factors should be taken into account as the Commission reviews this wireless transfer notification.

VII. THE APPLICATION PROVIDES SUFFICIENT INFORMATION TO REVIEW THE TRANSFER NOTIFICATION

The Protestors assert that additional information must be provided on a wide-ranging host of topics covering the entire spectrum of wireless operations in order for the Commission to review the Application. They fail, however, to articulate any compelling reason for gathering such information and overlook the massive amounts of information contained in the Application, the approximately 700-page PIS, the confidential exhibits to the Application[36] or other publicly

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wireless marketplace.

[35] *See e.g.,* Joint Application at p. 3, n. 9 (highlighting that MetroPCS customers were migrated to the T-Mobile network even more quickly than anticipated, merger synergies exceeded expectations, spectrum refarming was expedited, MetroPCS customers enjoyed expanded coverage and better service, MetroPCS's customer base has doubled since the merger and the number of employees has also increased substantially).

[36] The Joint Applicants note that they have already entered into non-disclosure agreements with both

available sources. Moreover, the Protestors disregard the fact that the Joint Applicants are known quantities in California who already provide services to millions of Californians throughout and across the diverse California marketplace.

Instead, the Protestors seem concerned that Sprint Wireless and T-Mobile will somehow abandon the precise innovative, pro-consumer practices upon which they have built their companies rather than addressing a deficiency in the Joint Application itself. In any event, the Joint Applicants submit that the Protestors' demands are unwarranted and will only lead to unnecessary delay.[37]

A. ORA Protest

ORA's Protest identifies a number of areas where it asserts further information is necessary but it is unclear why or how that information is required to complete this review. As an initial matter, ORA asserts that it intends to seek significant amounts of information about the Joint Applicant's broadband services.[38] Leaving aside questions relating to the extent of the Commission's jurisdiction, or lack thereof, over those services,[39] such information is readily available to ORA. The Joint Applicants submit CA-specific broadband coverage and subscriber

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Greenlining and TURN in order to make sure they had the same materials available to them as are otherwise provided to the Commission under seal. To that end, the confidential exhibits to the Joint Application were provided to each of the Joint Consumers upon execution of the NDA.

[37] Moreover, the Joint Applicants note that they are in the process of preparing responses to data requests from the FCC and are willing to provide copies to the Commission and other parties provided the appropriate confidentiality protections are in place.

[38] ORA Protest at p. 3.

[39] *See e.g.*, *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶431 (2015) (which "reaffirm[ed] the Commission's longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes."); *see also* Restoring *Internet Freedom,* WC Docket No. 17-108, Declaratory Ruling, Report and Order, 33 FCC Rcd 311, 199 (2018) ("it is well-settled that Internet access is a jurisdictionally interstate service").

data by census tract to the Commission on an annual basis and, as far as they are aware, that confidential information is available to ORA. In addition, the FCC makes broadband coverage maps available on its website. Finally, the Joint Application and the PIS contain detailed information on the expected capacity, output and spectrum depth of the anticipated 5G network. A detailed and confidential California-specific map of the spectrum depth has also been provided.

ORA also includes a lengthy list of issues it suggests the Commission should consider in the context of the Joint Application.[40] These include everything from innovation – something ORA acknowledges the Joint Applicants have consistently brought to the wireless marketplace – to prices – an area that is clearly preempted by Section 332 of the federal Communications Act of 1934, as amended – to migration and integration – an area thoroughly discussed in the Joint Application and one where T-Mobile exceeded its own goals after the 2013 merger with MetroPCS. The Joint Applicants do not see any appropriate purpose that would be served by the inquiries suggested by ORA. This Joint Application is not – and should not be – an occasion for the wholesale examination of every conceivable operational aspect of these long-standing carriers or otherwise obligate them to make business decisions before it is appropriate or lawful to do so. That is not required even where carriers seek new certification to operate in the state.

Finally, and perhaps most surprisingly, ORA suggests that the "large debt balances" carried by the merging companies "may indicate trouble for New T-Mobile."[41] ORA even goes so far as to say without any substantiation that the debt "may impact its ability to make the investments necessary to provide safe and reliable services in California." It then uses its

[40] ORA Protest at pp. 9-12.

[41] ORA Protest at p. 13.

unsubstantiated statements to suggest that the Commission should undergo what looks like a financial audit of New T-Mobile. Not only are such statements unfounded, they are completely inconsistent with the companies' (publicly available) SEC filings. In addition, the statements are completely out of synch with the financial requirements associated with any acquiring company or entity seeking any type of certification or review. This effort by ORA to raise the specter of a "debt issue" simply does not warrant further consideration.

B. Joint Consumers' Protest

The Joint Consumers similarly include a lengthy discussion of areas where they believe the Joint Application is deficient. This is simply not the case.

For example, the Joint Consumers criticize the lack of California-specific data regarding expected synergies, rural coverage, store openings and jobs[42] but ignore the significant amounts of data provided in the Joint Application including confidential California-specific maps reflecting spectrum depth, confidential California-specific metrics of the Sprint and T-Mobile wireless operating companies, and California-specific spectrum aggregation by county. Beyond this, Joint Consumer do not appreciate that certain information does not exist on a state-specific basis or otherwise depends on decisions that can only be made post-merger. Moreover, as noted above, there is no basis for suggesting that the consumer benefits described on a nationwide basis would be less applicable to California.

The Joint Consumers acknowledge that T-Mobile and Sprint Wireless provide wireless services to a substantial percentage of low-income customers but then speculate that perhaps they will "eliminate" affordable service offerings and create a "third AT&T/Verizon".[43] In other

[42] *See* Joint Consumer's Protest at pp. 11-12.

[43] *See* Joint Consumer's Protest at p. 12.

words, the Joint Consumers suggest that New T-Mobile will abandon its "Un-carrier" practices – the very key to its success – and otherwise abandon its consumers, low-income or otherwise. The suggestion is not credible and is entirely inconsistent with T-Mobile's track record[44] as well as the multiple declarations submitted by T-Mobile executives and expert economists as part of the PIS. It is difficult to imagine what additional information could be provided that would somehow better reflect the fundamental character of the anticipated New T-Mobile.[45]

Finally, the Joint Consumers assert that the Joint Application is somehow deficient because it does not satisfy their particular view on rate freezes, Lifeline, diversity procurement or E911 obligations.[46] In essence, they seek some type of commitments regarding matters over which the Commission is expressly preempted (i.e., wireless rates), or otherwise are already governed by the Commission's General Orders (i.e., diversity procurement), frequent Commission decisions (i.e., Lifeline) or state and federal law (E911). As noted below, such commitments are not required or necessary in the context of reviewing a wireless transfer notification.[47] Returning to the standard in D.95-10-032 that governs this Application, in all of these areas Joint Applicants are in full compliance with the Commission's rules and regulations and, as neither ORA nor Joint Consumers contend to the contrary, no further information or commitments seem necessary.

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[44] *See e.g.,* n. 35, *supra*.

[45] *See e.g.*, PIS at p. 101 (New T-Mobile will be "compelled" to fill the new capacity by competing for customers); see also PIS at pp 59-64 (describing advantages of bona fide in-home broadband alternative especially for low-income and cost-conscious consumers).

[46] *See* Joint Consumer's Protest at pp. 17-22.

[47] The Joint Applicants note that they included a discussion of their diversity procurement and Lifeline intentions in the Joint Application and stand by each of them. *See* Joint Application at pp. 25-26.

VIII. THE TRANSACTION CAN ONLY INTENSIFY COMPETITION AND THE ANTITRUST IMPLICATIONS OF THE SPRINT WIRELESS TRANSFER ARE APPROPRIATELY AND FULLY ADDRESSED BY OTHER AGENCIES

ORA's further suggestion that the transaction raises "antitrust concerns" that should be considered by this Commission also misses the mark.[48]

There is a well-established framework under U.S. antitrust law to evaluate the competitive impact of transactions, under which authorities such as the U.S. Department of Justice and the California Attorney General are empowered to conduct a thorough review. Federal antitrust law provides authority to state attorneys general to address state-specific antitrust concerns. The parties are actively cooperating with reviews of the transaction under this framework.[49] To suggest that the Commission replicate the work of the DOJ, or otherwise try to undertake a separate antitrust analysis for California alone, would at best be duplicative, and therefore unnecessary, in this proceeding.

The Joint Application and the PIS identify and describe – in detail – how the merger will intensify competition and enhance consumer welfare, particularly with respect to the deployment of 5G and the attendant benefits of the combined network. In addition, as noted above, even after the consummation of the Transaction, New T-Mobile will be smaller than both AT&T and Verizon. The transaction will promote fair competition and bring benefits to all consumers (see Section IV) that would not be possible in this time frame, or possibly ever, if Sprint Wireless and T-Mobile remain separate. In any event, the Joint Application and the PIS already provide the

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[48] *See* ORA Protest at p. 3, n. 18.

[49] The FCC also is evaluating the merger under its 'public interest' standard that includes reviewing the transaction for harms to competition. The merger had been placed on public notice with petitions to deny and comments due August 27, 2018; oppositions due September 17, 2018 and responses on October 9, 2018. The proceeding invited full public participation and at least one of the protesters appears to be a participant.

Commission with a vast amount of information regarding the potential competitive impacts of the merger.[50]

IX. CONSOLIDATION CANNOT TRANSFORM THE NATURE OF THE UNDERLYING APPLICATIONS OR THE COMMISSION'S JURISDICTION

Both ORA and the Joint Consumers suggest that this Application to Review the Wireless Transfer Notification should be consolidated with the Application to Approve the Transfer Control of Sprint Wireline that was filed simultaneously with the Commission.[51] In essence, the Protestors assert that, because both Applications stem from the same underlying transaction, they should be considered as a single application using the same exhaustive and detailed criteria generally reserved for Section 854 (b) and (c) applications.

Consolidation, however, is not necessary or appropriate in this case. For example, Sprint Wireline and Sprint Wireless are separately regulated entities that offer wholly different services that are subject to legally and functionally distinct regulatory paradigms. In addition, the fact that both proceedings share the same Assigned Commissioner and Assigned ALJ mitigates, if not eliminates, any possible concerns regarding scheduling conflicts or information gaps for either. If anything, consolidation could be more of a complication, or a source of confusion, than a helpful administrative tool and could impede the timely consideration of each application on its own merits or, if appropriate, their consideration on different schedules.

Perhaps most importantly, consolidation cannot alter the nature of the underlying applications or the scope of the Commission's authority/jurisdiction to act on those applications.

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[50] *See e.g.*, PIS at Section IV; *see also* Joint Application at Section IX. The Joint Applicants further note that the Joint Consumers' assertion that the "unilateral competitive effects" have not been adequately addressed (*see* Joint Consumers' Protest at p. 13) is contradicted by the extensive discussions contained in the PIS. *See id.* at Section IV, D.1-2; *see also* Declaration of Peter Ewens, Executive Vice President, Corporate Strategy, T-Mobile US, Inc., Appx. D.

[51] *See* ORA Protest at p. 8-9; *see* Joint Consumers' Protest at pp. 4-6.

Although the transfer of Sprint Wireline and Sprint Wireless are the result of the same transaction, the two pending applications raise different issues regarding distinctly different segments of the telecommunications marketplace, and thus are subject to distinctly different legal precedents and review criteria; e.g., the wireless application involves a request for review of a wireless transfer notification under D.95-10-032 while the wireline application seeks approval of the transfer of control of Sprint Wireline under Section 854(a). Indeed, the differences are reflected in the respective applications and in the protests to those applications.[52] Consolidation of the dockets does not – and cannot – alter that in any way and the Joint Applicants are not aware of any instance where the Commission has "consolidated" proceedings under these circumstances. In brief, the Protestors' attempt to use "consolidation" to rewrite the Joint Applications and the law which guides consideration of each should be rejected.

X. ORA's REIMBURSEMENT REQUEST IS PREMATURE

ORA's request for reimbursement of expert expenses needed to analyze the underlying merger in the context of the Application for Review of the Wireless Transfer Notification is at best premature.[53] The Joint Applicants acknowledge the provision in the recently adopted 2018 Budget Act and intend to comply fully with legal obligations that may be established by the Commission.[54] However, the Joint Applicants are not currently aware of any formal process at the Commission for dealing with these types of requests from ORA. Moreover, no expert expenses have apparently been incurred by ORA in the context of this proceeding at this time

[52] The Joint Consumers filed substantively identical protests in both proceedings. However, a close reading of the protests reveals that the bulk of the text is devoted to A.18-07-012 (the wireless application) with only limited references to the wireline application.

[53] *See* ORA Protest at pp. 7-8.

[54] As ORA accurately noted, this same provision has been in the budget acts for the past several years. *See* ORA Protest at p. 8, n. 25.

and it is unclear what type of review would be necessary in the context of this Application for Review of a Wireless Transfer Notification.

In addition, the Joint Applicants note that it is unclear what process the Commission will ultimately utilize to determine in this case if there are reimbursable "necessary expenses" under the Budget Act in this proceeding and, if so, how they should be reimbursed.55 At a minimum, the Joint Applicants would expect there to be some process for reviewing specific requests and raising objections where appropriate. This is an issue that is best resolved at the conclusion of this proceeding.

XI. NO HEARINGS ARE NECESSARY OR APPROPRIATE

ORA suggests that the Commission conduct public participation hearings ("PPHs") "throughout the service territories of Sprint Wireline, Sprint Wireless and T-Mobile in California to receive feedback from the public on this Proposed Transaction."56 The Joint Consumers suggest that after a "fact-finding phase," the Commission seek comments from the parties as to the need for hearings to "clarify or decide disputed issues of fact."57 No such hearings are either necessary or appropriate.

As discussed above, the Joint Application and the PIS (including the detailed declarations attached) provide all of the information necessary for the Commission to be able to fully review the wireless transfer notification and ensure that all the applicants "have complied fully with our rules and regulations." It also allows the Commission and stakeholders to develop a fulsome

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55 Joint Applicants note that, in certain prior proceedings, ORA has apparently been reimbursed for expert costs pursuant to contract. By the same token, where no contract exists, no such compensation has been ordered. *See e.g., In re Comcast/Time Warner Merger*, D.15-07-037; 2015 Cal. PUC LEXIS 457 at **39-40.

56 *See* ORA Protest at p. 14.

57 *See* Joint Consumers' Protest at p. 25.

understanding of the attendant benefits of the transfer and the underlying transaction. In addition, holding hearings in the context of this proceeding would require the expenditure of significant resources, yet result in little, if any, discernible gain over the review provided through the Application, the Protests, and this Consolidated Reply.

XII. NO COMMITMENTS ARE REQUIRED

The Protestors suggest that there may be cause to condition the approval of this transfer on the imposition of as yet unnamed California-specific commitments.[58] The Joint Protestors are aware that the Commission has imposed affirmative conditions/commitments in the context of granting Section 854 approvals. Those mergers, however, involved either legacy carriers or cable providers with exclusive franchises that provide direct service to residential consumers. That is not the case here. Indeed, wireless transfers are exempt from Section 854 and, as is abundantly clear, neither Sprint Wireless nor T-Mobile is a legacy carrier or a dominant carrier in the wireless marketplace. Moreover, the wireless marketplace is clearly competitive, offering consumers a wide of choice of providers to meet their needs and desires.[59]

Thus, there is no basis for imposing commitments in the context of the review of this wireless transfer. Indeed, to require additional commitments here would likely harm competition by handcuffing New T-Mobile in relation to the dominant wireless and cable providers discussed above. In short, imposing commitments would likely be counterproductive.

XIII. REQUEST FOR EXPEDITED REVIEW

Joint Applicants respectfully reiterate their request that the Commission review this Joint Application on an expedited basis. As noted above, the indirect transfer of control of Sprint

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[58] *See* ORA Protest at p. 1; *see* Joint Consumers' Protest at pp. 23-24.

[59] *See e.g.*, nn. 24 and 26, *supra*.

Wireless to T-Mobile, as well as the underlying Transaction, will bring a myriad of benefits to consumers here in California and throughout the country. It will not have any negative impact on the operations, rates, terms or conditions of service. Moreover, Sprint Wireless will continue to operate under its respective current wireless registrations and without the need to obtain any further authority or certifications from the Commission. Accordingly, Joint Applicants believe that the information presented is sufficient to permit the Commission to complete its review of the proposed transfers of control on an expedited basis and well before the DOJ and FCC complete their review in any event. This would be consistent with ORA's request to provide the DOJ/FCC with input based on the Commission's review of the Joint Application.[60]

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[60] *See* ORA Protest at p. 7.

XIV. CONCLUSION

For the reasons stated above and in the Joint Application, the Joint Applicants respectfully request that the Commission complete its review of the wireless transfer notification on an expedited basis consistent with the procedural schedule set forth in the Joint Application. In the meantime, the Joint Applicants look forward to continuing to work cooperatively with the Commission, ORA and the Joint Consumers.

Respectfully submitted this 27th day of August, 2018 in San Francisco, California.

/s/

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