

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
Sprint Communications Company L.P.
(U-5112) and T-Mobile USA, Inc., a
Delaware Corporation, For Approval of
Transfer of Control of Sprint
Communications Company L.P. Pursuant
to California Public Utilities Code Section
854(a).

A.18-07-011

And Related Matter.

A.18-07-012

**COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE PROPOSED DECISION**

MICHELLE SCHAEFER

Attorney

Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave
San Francisco, CA 94012
Telephone: 415-703-2722
Email: michelle.schaefer@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) submits these comments on the Proposed Decision (PD) Granting Application (A.) 18-07-011 and A.18-07-012 and Approving Wireless Transfer Subject to Conditions.¹ The PD grants the joint application of Sprint Communications Company L.P. (Sprint) and T-Mobile

¹ On the evening of March 31, 2020, T-Mobile sent a letter via email to the service list for A.18-07-011 et al stating that it planned to close the Joint Applicants' merger on the morning of April 1, 2020, despite the fact that this Commission has not yet issued a final decision on the status of the merger in California. Late in the afternoon of March 30, 2020, the Joint Applicants filed a motion with the Commission to withdraw Sprint’s Wireline application. Sprint also filed an Advice Letter seeking withdrawal of its Certificate of Public Convenience and Necessity and seeking to remove itself from the Commission’s authority. These actions undermine the authority of the Commission over entities under its jurisdiction, contrary to PU Code section 854(c)(7). Due to the Joint Applicants' timing of the noted filings, the Public Advocates is unable to respond fully to these filings in these comments, although they are relevant to the Commission's PD. The Public Advocates will file a separate formal response to the Joint Applicants' attempts to undermine this proceeding and the Commission's jurisdiction.

USA, Inc. (T-Mobile), together herein referred to as the Joint Applicants, for approval of transfer of control of Sprint to T-Mobile and places conditions upon the merged entity, New T-Mobile.² The PD errs in granting this application.

First, the PD fails to make a finding, as required under California Public Utilities Code (PU Code) Sections 854(b), that the merger will not adversely affect competition in California. The evidentiary record in this proceeding shows that the proposed merger is anti-competitive, will adversely affect competition, and is not in the public interest. The PD implies through Finding of Fact (FOF) 12 that the post-merger levels of market concentration in 18 California Cellular Market Areas (CMA) is “presumptively anti-competitive”³ without ever expressly making a finding as to whether approval of the merger will adversely affect competition, as required per Section 854(b)(3). The evidence overwhelmingly shows that Californians will be harmed by the anti-competitive effects of this proposed merger, which will cause higher prices for consumers of wireless services and consolidate the wireless market to unprecedented levels.

Second, the conditions proposed to mitigate the anti-competitive effects of the merger are insufficient and are not enforceable. The proposed conditions, as currently drafted, fail to hold New T-Mobile to the various promises made by T-Mobile on the record of this proceeding, particularly regarding deployment and performance of fifth generation (5G) wireless networks. The PD does not establish consequences or specify remedies if New T-Mobile fails to meet the conditions set by the approval decision. California consumers must be protected if New T-Mobile fails to meet the conditions that supposedly remedy the harm to the public interest or to competition caused by the approval of this merger.

In light of these errors, the Commission should either deny the merger or revise the PD as recommended in Appendix A.

² Proposed Decision Granting Application and Approving Wireless Transfer Subject to Conditions, A.18-07-011 et al, March 11, 2020 (PD).

³ PD at 40, FOF 12.

II. DISCUSSION

A. The Commission's Review of the Proposed Transaction

The Commission's standard of review in merger transactions is whether the proposed transaction is, on balance, in the public interest.⁴ PU Code Sections 854(b) and 854(c) set forth factors of what decisionmakers must consider when determining if a proposed merger provides a net benefit to the public interest of California.⁵ T-Mobile must prove by a preponderance of the evidence that the requirements of PU Code Sections 854(b), 854(c), and 854(d) are met.⁶

Pursuant to Section 854(b), the Commission must make certain affirmative findings prior to approving a transaction.⁷ Section 854(b)(1) requires the Commission to find that the approval of a transaction will "provide short-term and long-term economic benefits to ratepayers." Section 854(b)(3) requires the Commission to make a finding that competition will not be adversely affected by the approval of the proposed transaction; part of this analysis requires the Commission to request an advisory opinion from the California State Attorney General (AG) "regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result."⁸

Section 854(c) requires the Commission to consider eight different criteria to determine if, on balance, the proposed acquisition is in the public interest.² The

⁴ PD at 31.

⁵ PD at 31.

⁶ PU Code Section 854(f).

⁷ PD at 31-32.

⁸ PD at 32. Section 854(b)(2), however, does not apply in this proceeding because the Commission does not have ratemaking authority over wireless carriers. *See* PD at 32.

² The PD incorrectly states that these criteria *should* be reviewed by the Commission. The language of PU Code Section 854(c) is: "Before authorizing the merger ... of any ... telephone corporation organized and doing business in this state, ... the commission *shall* consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest." Emphasis added.

conditions that are ultimately adopted by the Commission must actively “prevent significant adverse consequences which may result [from the transaction’s approval].”¹⁰

B. The Proposed Decision Errs in Approving the Merger Because the Evidence in The Record Demonstrates That The Merger Is Not In The Public Interest.

The evidentiary record demonstrates that the proposed merger will adversely affect competition and harm California consumers. The Joint Applicants have the burden to prove the elements of Sections 854(b) and 854(c).¹¹ The Joint Applicants have failed to produce evidence showing that the merger will not adversely affect competition in California.

In addition, the PD fails to comply with PU Code Section 854(b), which requires the Commission to make an affirmative finding that the approval of the merger will not adversely affect competition.¹² The PD defers and relies heavily on approvals of this merger from “[t]hree units of the federal government”¹³ while recognizing its own “serious reservations about the competitive effects of the Merger here in California.”¹⁴

The PD fails to acknowledge the evidentiary record in this proceeding, which shows that the merger is anti-competitive and not in the public interest. Furthermore, the PD fails to acknowledge the findings presented in the California AG’s Advisory Opinion,¹⁵ an element of Section 854(b)(3). The AG found that “T-Mobile’s acquisition of Sprint will likely harm competition in 18 specific California markets for retail mobile

¹⁰ PU Code Section 854(c)(8).

¹¹ See PU Code Section 854(f).

¹² PU Code 854(b)(3).

¹³ PD at 35. The United States Department of Justice and the Federal Communications Commission approved the transaction. PD at 33. The Federal District Court of the Southern District of New York found in favor of the Joint Applicants in the antitrust lawsuit filed to block the acquisition by several State Attorneys General. PD at 34.

¹⁴ PD at 35.

¹⁵ See generally, PD at AG Advisory Opinion (AG Advisory Opinion).

wireless telecommunications services (RMWTS), resulting in higher prices and fewer choices for California consumers.”¹⁶

1. The Merger is Presumptively Anti-Competitive.

The evidence in the record for this proceeding shows that the proposed merger is presumptively anti-competitive.¹⁷ The PD makes a finding that “[t]he transaction will increase market concentration throughout California.”¹⁸ According to the Department of Justice’s (DOJ) Horizontal Merger Guidelines (HMG), agencies reviewing mergers may use the Herfindahl-Hirschman Index (HHI) to determine the level of market concentration that will occur from the proposed combination of firms.¹⁹ The HMG states that a post-merger HHI increase of more than 200 points in a market is “presumptively anti-competitive” and that a post-merger HHI of more 2,500 or more presumptively creates a highly-consolidated market.²⁰ The PD finds “post-merger HHI will exceed 2,500, a level that is presumptively anti-competitive” in the largest Cellular Market Areas (CMA) in California.²¹

Both the PD and the AG’s Advisory Opinion to this Commission find that 18 of California’s 31 CMAs will have highly-consolidated markets if the merger is approved.²² Ninety-four percent of Californians live in these 18 CMAs. In each of the 18 CMAs listed in FOF 12, New T-Mobile will have more than 30% of the total market share for wireless retail services, more than a 450 point increase in the HHI index, and more than 3390 points in the HHI index post-merger.²³ With such high levels of market

¹⁶ AG Advisory Opinion at 1.

¹⁷ See AG Advisory Opinion at 12. The AG’s Advisory Opinion finds the merger to be anti-competitive at a national level and not solely in California. For the purposes of this Commission’s review, however, the analysis must remain focused on the effects of the proposed merger on California. Section 854(b)(3).

¹⁸ PD at 40, Finding of Fact (FOF) 11.

¹⁹ See Jt. Appl.-15, Horizontal Merger Guidelines (HMG).

²⁰ See HMG. AG Advisory Opinion at 12.

²¹ PD at 40, FOF 12.

²² AG Advisory Opinion at 10; PD at 40, FOF 12.

²³ AG Advisory Opinion at 13-14.

concentration for 94 percent of California’s population, the proposed merger is, on its face, anti-competitive.²⁴

Even if the merger were not presumptively anti-competitive by virtue of its increase in market concentration using the HHI, analyses using other types of evidence listed in the HMG also suggest that the proposed merger is likely to result in adverse competitive effects.²⁵ One type of evidence agencies can rely on to show adverse effects of competition from a proposed merger are “historical events, or ‘natural experiments,’ that are informative regarding the competitive effects of the merger.”²⁶ The Organization for Economic Cooperation and Development (OECD) “routinely compiles and publishes reports comparing conditions for various industries in OECD member countries” and, in 2014, “published a report on Wireless Market Structures and Network Sharing.”²⁷ In its report, the OECD “found that for countries that had dropped from *four national carriers to three*, the result was higher prices for consumers, deteriorating service quality, and reduced innovation.”²⁸

Another factor for agencies to consider is “whether the merging firms have been ... substantial head-to-head competitors.”²⁹ T-Mobile’s main competitor in the facilities-based wireless market has been Sprint. A significant portion of T-Mobile’s growth has been “primarily at the expense of Sprint.”³⁰ T-Mobile’s revenues began surging in 2013, surpassing Sprint’s revenues sometime in 2015, seemingly at the expense of Sprint’s revenues, which have steadily declined since 2013.³¹ As the AG Advisory Opinion notes,

²⁴ PD at 40, FOF 12. *See also* Pub Adv-11C at 80, lns. 18-19.

²⁵ *See* HMG at Section 2, Evidence of Adverse Competitive Effects.

²⁶ HMG at Section 2.1.2.

²⁷ *See* Pub Adv-02 at 22, lns. 7-11.

²⁸ Pub Adv-02 at 22, lns. 16-18 (emphasis added).

²⁹ HMG at 2.1.4.

³⁰ Pub Adv-02 at 77, lns. 6-10.

³¹ Pub Adv-02 at 78, Figure 9.

“[a]pproximately 40% of the customers who switch away from T-Mobile switch to Sprint, and around 50% of the customers who switch away from Sprint switch to T-Mobile.”³² This fact offers additional evidence that the two providers compete in “substantial head-to-head competition,” even more so than with the other two national providers. AT&T and Verizon have maintained market shares far above both T-Mobile and Sprint, indicating that it is Sprint and T-Mobile that actively compete with one another, not those two providers competing with AT&T and Verizon, who have a larger market share than either Sprint or T-Mobile.³³

Agencies should also consider “whether a merger may lessen competition by eliminating a ‘maverick’ firm, i.e., a firm that plays a disruptive role in the market to benefit customers.”³⁴ T-Mobile has been the strongest maverick in the wireless retail market since it created its signature “uncarrier” strategy, its “dedication to innovation and consumer-friendly offerings,” which was implemented after the 2011 failure of being acquired by AT&T.³⁵ T-Mobile’s “uncarrier” strategy introduced unlimited data plans, no contract plans, and increased customer ability to upgrade their devices.³⁶ Sprint, too, has been considered a maverick with a positive effect on the wireless retail market. Sprint first announced its unlimited data plan offerings in 2008, was the first wireless retail carrier to market with a 4G capable device, and is rapidly evolving the in-home broadband space with its ‘5G mobile smart hub.’”³⁷ Both AT&T and Verizon now offer unlimited data plans with increases in 4G data use on those plans, typically in response to T-Mobile or Sprint raising the limits of gigabytes that can be used at 4G speed on their respective unlimited plans.³⁸ Both Sprint and T-Mobile act as significant disruptors for

³² AG Advisory Opinion at 20.

³³ Pub Adv-02 at 80, Figure 10.

³⁴ HMG at 2.1.5.

³⁵ Pub Adv-03 at 34, lns. 1-4.

³⁶ Pub Adv-03 at 34-35.

³⁷ Pub Adv-03 at 35-36.

³⁸ Pub Adv-03 at 36, lns. 5-9.

how the nation's two largest wireless retail carriers, AT&T and Verizon, operate their businesses.

These three factors, in conjunction with the drastic increases in market concentration as measured by a significant increase in the HHI in California, show that the proposed merger is presumptively anti-competitive no matter how it is analyzed. The weight of the evidence shows that the proposed merger is anti-competitive and, as such, the Commission is required to make this requisite finding of fact.

2. The Joint Applicants Fail to Show by A Preponderance Of The Evidence That Anti-Competitive Harms Stemming From The Drastic Increase In Market Power Will Not Occur.

The Joint Applicants do not prove by a preponderance of the evidence that approval of the merger will not adversely affect competition in California, per PU Code Section 854(b)(3), and as required by PU Code Section 854(f).³⁹ The PD declares, while citing T-Mobile's own expert witness in this proceeding, Dr. Bresnahan:

Post-Merger, New T-Mobile might continue its pattern of aggressive competition but, as its own witness admitted on the stand, in a world where for years to come--and perhaps forever--there are only two other national competitors, it could be tempted to collude with Verizon and AT&T.⁴⁰

The possibility of collusion that T-Mobile's witness describes above is a type of coordinated effect specifically warned against as the type of behavior agencies need to actively prevent when examining the effects of a merger, according to the HMG.⁴¹ The AG Advisory Opinion also warns that the Joint "Applicants have repeatedly attempted to 'signal' – or interpret perceived signals from – other [Mobile Network Operators] MNOs

³⁹ PU Code Section 854(f) requires "The ... corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of proving by a preponderance of the evidence that the requirements of subdivisions (b), [and] (c) are met." Subdivision (d) is not in dispute.

⁴⁰ PD at 34.

⁴¹ HMG at 7.2.

regarding their competitive intentions” that are “meant to facilitate coordinated interactions among the MNOs [demonstrating their] awareness of the market’s susceptibility to coordination.”⁴²

The Advisory Opinion also warns that executives from T-Mobile’s controlling shareholder, Deutsche Telekom, and an executive from Sprint have made statements that show this merger is being pursued to achieve anti-competitive ends. One executive from Deutsche Telekom stated that “if [T-Mobile] can’t get 4-3 consolidation [in the wireless market then] the industry is headed for commoditization,” which would cause the price of wireless services to decrease, and that Deutsche Telekom “should limit their exposure in the US” if this commoditization occurs.⁴³ Deutsche Telekom executives further insisted that “one of the potential benefits of a merger between Sprint and T-Mobile would be ‘market repair.’”⁴⁴ Sprint’s executive, Roger Solé-Rafols, “suggested in a pre-litigation text exchange with Sprint’s [Chief Executive Officer] that the merger would result in a consolidated market that would generate a *five-dollar increase in average revenue per user* for the three remaining firms in the market.”⁴⁵ These statements indicate that both T-Mobile and Sprint seek an anti-competitive benefit via an increase of prices in the national wireless retail market.

3. The Joint Applicants Fail to Prove by A Preponderance of The Evidence That Fifth Generation Networks Will Be Deployed More Quickly And With Greater Capacity With The Approval Of The Merger Than Without.

In an attempt to alleviate the adverse impact on competition in the California market, the Joint Applicants rely heavily on the proposed merger’s alleged ability to deploy a Fifth Generation (5G) network that is better than what the two entities could provide separately. The Joint Applicants assert that their combined deployment of 5G is

⁴² AG Advisory Opinion at 21 (internal citations removed).

⁴³ AG Advisory Opinion at 23.

⁴⁴ AG Advisory Opinion at 23.

⁴⁵ AG Advisory Opinion at 23 (emphasis added).

an efficiency gain beyond each company's separate, planned and in progress 5G deployments, and that this efficiency gain will allow them to lower prices and thus spur competition with Verizon and AT&T. However, New T-Mobile's deployment of 5G is not inherently technologically better than the separate, independent deployments of T-Mobile and Sprint. Therefore, 5G deployment advancements are not merger specific, as described immediately below. Furthermore, as the PD notes,⁴⁶ New T-Mobile could be tempted to collude with AT&T and Verizon on prices rather than compete, after the expiration of its commitments. The PD ignores record evidence entered into this proceeding and erroneously asserts that Intervenors did not directly contest the Joint Applicants argument that "merged company will be able to provide greater coverage and more reliable service than the two companies could provide if they remained separate."⁴⁷

The Public Advocates Office provided evidence contesting New T-Mobile's argument that a merger is required to ensure greater coverage and capacity.⁴⁸ The PD takes "official notice" of T-Mobile's recent advertising campaign showcasing how its 5G network is already available in some markets, demonstrating that the 5G expansion claims are not merger-specific.⁴⁹ However, the Public Advocates Office provided ample evidence showing that the claims of 5G expansion are not merger specific because "Sprint and T-Mobile independently will have adequate spectrum capacity to deploy 5G service and will be able to deploy it in a time frame that will meet the projected adoption figures."⁵⁰ As the Public Advocates Office witness Mr. Reed states, "stand-alone T-Mobile would have similar coverage to post-merger New T-Mobile."⁵¹ He also testified that "the mid-band 5G coverage [that T-Mobile's expert witness] Mr. Ray's

⁴⁶ See PD at 34.

⁴⁷ PD at 28.

⁴⁸ See Opening Brief of the Public Advocates Office [Public], 18-07-011 et all, filed Apr. 26, 2019, Attachment B at 29-39 (Supplemental Declaration of Mr. Cameron Reed).

⁴⁹ PD at 29.

⁵⁰ Pub Adv-05 at 22, lns. 7-9.

⁵¹ Supplemental Declaration of Mr. Cameron Reed at 29, lns. 12-13.

maps illustrate for New T-Mobile will not materialize.”⁵² Mr. Reed also provided evidence showing that his “analysis of maximum potential capacity [demonstrates] that, on paper, the [Joint Applicants] have overstated the increases in capacity that [will be] a direct result of combining Sprint and T-Mobile’s assets” if the merger were approved.⁵³

California’s public safety systems will be harmed if this transaction is approved. Evidence presented by the Public Advocates Office also shows that “the proposed merger will reduce cellular infrastructure redundancy in California,” which will not improve capacity and will actually harm public safety by reducing the number of operational cell towers, deployable cell sites, and generators in California.⁵⁴ The AG’s Advisory Opinion notes how the DOJ concluded that “[a]ny efficiencies generated by this merger are unlikely to offset the likely competitive effects on American consumers in the retail wireless service market”⁵⁵ The record is clear that the Joint Applicants have exaggerated the increases to service coverage and speed as a result of the merger and that any potential benefits that do materialize will not adequately offset the reduction in competition, the harm to public safety, and subsequent increase in price.

4. The PD Commits Error by Accepting The Representation That DISH’s Entrance Into The Market As The Fourth Carrier Will Ameliorate The Anti-Competitive Harms By Allowing The Joint Applicants To Merge.

The PD relies heavily on the Joint Settlement Agreement that transfers many of Sprint’s and T-Mobile’s assets to DISH in order to launch DISH as the “new” fourth competitive carrier to replace Sprint. Even with the presumption of the DOJ’s settlement that gives DISH considerable assets from the proposed merging entities, the evidence in this proceeding does not prove that DISH will achieve the status as a fourth competitor if

⁵² Supplemental Declaration of Mr. Cameron Reed at 33, lns. 15-16.

⁵³ Supplemental Declaration of Mr. Cameron Reed at 36, lns. 2-5.

⁵⁴ Pub Adv-06 at 38, lns. 8-9.

⁵⁵ AG Advisory Opinion at 24 (*citing* PX1213 ¶ 5).

the merger is approved.⁵⁶ The PD accepts “the conclusion of the DOJ that creating a fourth national carrier will over time offset, at the national level, the loss of competition resulting from T-Mobile’s purchase of Sprint.⁵⁷ Despite potential penalties for DISH not using its spectrum and assets, the PD does not find that DISH will be able to replace Sprint as a fourth wireless provider that could compete like Sprint currently does with T-Mobile, AT&T, and Verizon as a facilities-based provider.⁵⁸

Furthermore, even if DISH were successful in becoming a fourth provider in the many years to come, “the entry of DISH will not be sufficient to overcome the large increase in market concentration [per the HHI] that will surely emerge if the [proposed] merger is allowed to go forward.”⁵⁹ The likelihood of DISH becoming an actual competitor to New T-Mobile, AT&T, and Verizon is uncertain at best. Furthermore, even if it was successful at becoming a fourth national carrier, the HHI for DISH would not weaken the anti-competitive effects this merger will have by removing Sprint.

5. The Joint Applicants Fail To Prove That The Merger Is Necessary Because Sprint Is A “Failing” Firm.

The Joint Applicants attempt to rely on Sprint being a weakened or failing competitor to show that the proposed merger is not anti-competitive.⁶⁰ However, as discussed above, the PD finds that Sprint is *still* a stronger competitor to the current three national wireless carriers than DISH is or likely could be.⁶¹ Record testimony also directly contradicts the claims that Sprint is a failing or weakened firm. Sprint’s executive, Mr. Draper, testified that Sprint is “a stable company. Sprint is not going

⁵⁶ PD at 34.

⁵⁷ PD at 34.

⁵⁸ See PD at 35.

⁵⁹ Pub Adv-11C at 12, lns. 4-6.

⁶⁰ AG Advisory Opinion at 18.

⁶¹ See PD at 35.

bankrupt. We are not a failing firm.”⁶² Not a single party testified at the February 2019 hearings that Sprint was a failing firm nor did any party attempt to correct or clarify Mr. Draper’s February testimony during the December 2019 evidentiary hearings. While the PD notes that the “district court found that Sprint is a weakened competitor,”⁶³ additional language in the PD, as well as statements made *on the record of this proceeding*, directly contradict the district court’s finding.

C. The PD Fails to Adopt Adequate And Enforceable Conditions That Will Hold New T-Mobile To The Promises Made In The Record To This Proceeding.

The conditions imposed by the PD are unenforceable and fail to address the competitive harms that will result from the approval of this merger.

1. 5G Deployment and Service Quality

The PD fails to provide conditions that will require New T-Mobile’s 5G deployment and service quality conditions to live up to the promises made to gain approval from this Commission. For example, commitments made in the California Emerging Technology Fund’s Memorandum of Understanding (CETF MOU), establish a 100 Mbps speed tier and a 300 Mbps speed tier for New T-Mobile’s 5G network.⁶⁴ In contrast, the PD only requires a highest speed of 100 Mbps for New T-Mobile’s 5G and LTE networks.⁶⁵ The PD also overlooks the Joint Applicant’s projections that New T-Mobile would provide average download speeds of 444 Mbps,⁶⁶ instead setting a far slower minimum speed for 5G service.

⁶² Hearing Transcript Vol. 5 at 635, lns. 14-17.

⁶³ PD at 37.

⁶⁴ See PD at Attachment 2. Section VII.C of the CETF Memo explains the metrics acceptable under the agreement.

⁶⁵ See PD at 43, OP 4 & 51, OP 30

⁶⁶ Pub Adv-06 at 20, Figure 7.

2. In-Home Broadband

The PD orders New T-Mobile to provide in-home broadband services wherever its 5G services are available,⁶⁷ but fails to consider the concerns raised by the Public Advocates Office.⁶⁸ Most importantly, “New T-Mobile has not defined *where* in-home broadband will be offered in California nor has it specified the price of its potential in-home broadband plans.⁶⁹ The Joint Applicants have only provided illustrative examples of prices offered by “existing ‘traditional in-home broadband providers.’”⁷⁰ New T-Mobile fails to even make a proposal for which service areas in California will be served by its in-home broadband plans.⁷¹ Neither does the PD specify the locations in California where New T-Mobile shall provide in-home broadband; it only states the number of Californians to whom it must make such a service available, a percentage of which must be rural.⁷² This provides no certainty to the residents of California where they will be able to purchase in-home broadband from New T-Mobile or how this condition will alleviate competitive concerns.

The PD fails to consider the shortcomings of New T-Mobile’s in-home broadband service, and therefore ignores the possibility that New T-Mobile’s in-home broadband may not be a viable service for Californians to substitute for residential wireline broadband. In Decision (D.)16-12-025, the Commission found the data submitted for the underlying proceeding suggested that “[f]or most consumers, residential and mobile broadband services are not substitute for each other, because of higher data usage prices and lower data caps for mobile compared with residential broadband, among other reasons.”⁷³ Prices and usage caps for New T-Mobile’s in-home broadband remain

⁶⁷ PD at 44, OP 5.

⁶⁸ *See generally* Supplemental Declaration of Mr. Reed at 7-16.

⁶⁹ Supplemental Declaration of Mr. Reed at 11, Ins. 3-5.

⁷⁰ Supplemental Declaration of Mr. Reed at 11, Ins. 7-9.

⁷¹ Supplemental Declaration of Mr. Reed at 13, Ins. 6-10.

⁷² PD at 44, OP 5.

⁷³ D.16-12-025 at Finding of Fact (FOF) 7(g). *See also* Supplemental Declaration of Mr. Reed at 14, Ins. 5-7. D.16-12-025 suggests that 5G could change the substitutability analysis, and that such analysis will

unknown because no plans have been submitted for review, as noted above, and the PD does not address either pricing or data caps.⁷⁴

D. The PD Fails to Adopt Enforcement Mechanisms That Give Teeth to The Conditions Proposed.

Even in the unlikely event all conditions are met, the conditions are insufficient to overcome the harms to competition identified in this proceeding and certainly do not outweigh the overall harm to competition in California.

The Commission's Findings of Fact rely heavily on the assumption that DISH will follow through on its commitments to the FCC and DOJ.⁷⁵ However, strong evidence exists that New T-Mobile will not have sufficient incentive to comply with the conditions imposed by federal entities and that DISH will be unable to fulfill the DOJ's hopes that DISH can be a viable fourth competitor. If DISH does not become a meaningful wireless competitor or chooses not to become a wireless carrier at all, the mitigation measures the Commission relies on in finding the proposed merger is in the public interest may not materialize. The AG Advisory Opinion states that "DISH's attempt to use its FCC commitments as a proxy for its coverage requirements in California underscores the inadequacy of this remedy" because "DISH has made clear that it is not an applicant in this proceeding and is participating in the proceedings voluntarily, thus limited the ability of the Commission to impose conditions on DISH that will ensure" its deployment of sufficient and timely services in California.⁷⁶ In that event, consumers are harmed, and the proposed merger cannot be undone. Wishful thinking is not valid mitigation to demonstrated competitive harm.

The Public Advocates Office believes the PD is fundamentally in error regarding the efficacy of its proposed merger conditions. However, if the Commission's approves

need to include data caps, prices, indoor access, and backhaul adequacy for 5G services" would all need to be considered. D.16-12-025 at FOF 7(h).

⁷⁴ Supplemental Declaration of Mr. Reed at 14-15, para. 26.

⁷⁵ The PD's FOF's 14, 17, 18, and 21 all rely on New T-Mobile and/or DISH fulfilling the conditions set out by the FCC and DOJ.

⁷⁶ AG Advisory Opinion at 29.

this application, many of the conditions listed in the Ordering Paragraphs (OP) of the PD are seriously flawed in terms of capability of enforcement.

1. Enforcement

Many of the proposed conditions do not contain sufficient, if any, criteria for measuring performance as to whether or when New T-Mobile has met the condition,⁷⁷ while others are fundamentally incapable of enforcement, audit, or evaluation.⁷⁸ Some conditions have long timeframes for compliance, reducing the already small likelihood that the purported benefit will, in fact, come to fruition. Should New T-Mobile fail to fully implement the Commission's conditions, consumers are harmed. Once approved and once the companies merge, the merger cannot be reversed. Conditions are only temporary, mergers are forever.

The PD envisions the Commission developing a citation program that “can be utilized to impose penalties on New T-Mobile for violations of the terms of this decision.”⁷⁹ The PD proposes the Commission hire a Compliance Monitor that will “review New T-Mobile's compliance with all its commitments” to the Commission, and “[recommending] a penalty to bring T-Mobile into compliance.”⁸⁰ However, the PD does not state what the potential penalties are or should be. To protect California consumers from New T-Mobile's failure to comply with the proposed conditions, the Commission's decision should condition approval on New T-Mobile to submitting to the Commission within 30 days of decision issuance and, as a prerequisite for the merger to be consummated, either a performance bond in the amount of ten (10) percent of the capital

⁷⁷ See, e.g., PD at OP 7. OP 7 requires New T-Mobile to “prioritize” deploying 5G networks in 10 unserved or underserved California areas. However, the OP fails to specific the meaning of “prioritize” or establish a deadline for deploying to those 10 areas. OP 7 also fails to require New T-Mobile to report to the Commission which areas it has selected after deployment is completed.

⁷⁸ See, e.g., PD at OP 32 and OP 35. Both OP 32 and 35 require New T-Mobile to “strive” to achieve or increase diversity of its board and workforce. However, no actual requirement to implement such diversity of its board and workforce exists. The nonexistent requirement for diversity coupled with the absence of metrics or reporting requirements in these two OPs make the conditions effectively unenforceable.

⁷⁹ PD at 53, OP 39.

⁸⁰ PD at 52, OP 38.

expenditures for 5G deployment in California⁸¹ or to deposit in an escrow account the same amount stated for the performance bond. Whether a performance bond or an escrow account is chosen, the amounts shall remain at ten (10) percent of the capital expenditure amount for the entire time frame that the conditions remain in effect. In the event New T-Mobile fails to meet any of the proposed conditions, the Commission will be able to recover the full amount of the performance bond. Disputes regarding any ambiguity contained in the conditions imposed upon New T-Mobile should be resolved in a manner most favorable to the Commission or affected customers.

2. Monitoring Compliance

There are numerous problems involved in monitoring compliance with merger conditions. Past experience shows that obtaining data from communications providers necessary to determine compliance is a continual challenge, which often results in objections to data requests, the provision of insufficient, incomplete, or untimely responses to both data requests and the submissions required by the merger conditions.⁸² In this proceeding, the Public Advocate Office had to file a motion to compel to obtain data from the Joint Applicants that it requested.⁸³ Administrative Law Judge Bemserderfer found in favor of the Public Advocates Office and ordered the Joint Applicants to provide substantive responses to the Public Advocates Office.⁸⁴ Additionally, past experience shows that annual reporting is often insufficient to ensure compliance. Finally, as time goes by and the Commissioners and staff change, compliance with the conditions of this merger decision may not be given an appropriately high priority.

⁸¹ See Pub Adv-03C at 30, Figure 13 for the total capital expenditure amount, as calculated by the Public Advocates Office per a data request response from the Joint Applicants.

⁸² See e.g., The Public Advocates Office's Motion to Compel Against Charter Communications, A.15-07-009, filed Dec. 21, 2018.

⁸³ Motion of the Public Advocates Office to Compel Responses to Data Requests, A.18-07-011 et al, filed Mar. 7, 2019.

⁸⁴ Administrative Law Judge's Ruling Granting the Motion of the Office of the Public Advocate to Compel Responses to Data Requests and Revising the Schedule of this Proceeding, A.18-07-011 et al, filed Mar. 25, 2019.

An essential component of monitoring compliance is communication with the Commission and parties involved in the transaction. New T-Mobile must be required to meet with the Commission, including the Public Advocates Office, and consumer advocates after it submits reports on merger compliance. At these meetings, all relevant New T-Mobile and DISH staff shall be present in order to discuss the reports and any follow-up tasks that the Commission or consumer advocates recommends as a result of the meeting. This meeting requirement will help to ensure compliance with the conditions imposed and will allow for the impact on the public interest to be reviewed.

III. CONCLUSION

The PD errs by accepting the findings that federal entities have made regarding the merger's impact on the national wireless market, instead of analyzing this proceedings record on the merger's effects on California. The Commission is required by Section 854(b)(3) to determine whether the merger will adversely affect competition in California. The presumption of anti-competitive harm has not been rebutted and because the PD fails to make the required finding under Section 854(b)(3) that the proposed merger will not adversely affect competition in California. The PD fails to rely on the evidentiary record, which demonstrates that the proposed merger is, in fact, anti-competitive, will adversely affect competition, and not in the public interest. If the Commission approves the merger, despite ample evidence that approval is against the public interest, the PD still fails to "[p]rovide mitigation measures to prevent significant adverse consequences that will result from approval of this proposed merger."⁸⁵ The Public Advocates Office urges the Commission, if it ultimately approves this merger, to adopt conditions that specifically address the issues identified in its comments above, as well as those set out in the proposed changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix A to these comments.

⁸⁵ See PU Code Section 854(c)(8).

Respectfully submitted,

/s/ MICHELLE SCHAEFER
Michelle Schaefer
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2722
Email: Michelle.Schaefer@cpuc.ca.gov

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APPENDIX A

(Proposed Modifications to Findings of Fact, Conclusions of Law and Ordering Paragraphs)

Underline indicates an addition; ~~strikethrough~~ indicates removal. Note that certain Ordering Paragraphs found in the PD have been reordered for continuity.

FINDINGS OF FACT

1. ~~11.~~ The Transaction will increase market concentration throughout California.
2. ~~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 anti-competitive.
3. 94 percent of Californians reside in cellular market areas in which the merger is presumptively anti-competitive.
4. T-Mobile and Sprint are close competitors in the wireless market, typically offering lower priced plans than AT&T and Verizon; when customers leave Sprint, 50 percent of them choose T-Mobile and when customers leave T-Mobile, 40% of them choose Sprint.
5. ~~13.~~ Wireless service is offered on both a pre-paid and post-paid basis.
6. The Transaction will adversely affect competition.
7. ~~10.~~ By combining Sprint's spectrum and non-overlapping cell towers with T-Mobile's spectrum and non-overlapping cell towers, New T-Mobile has represented that it will be able to generate operational cost savings that New T-Mobile will use to offer 5G wireless service to 99 percent of Californians and to lower prices, overcoming the presumption of adverse effects to competition. New T-Mobile has represented that its 5G wireless network would be capable of delivering average download speeds of 444 Mbps by combining Sprint and T-Mobile's spectrum.

8. ~~22.~~ Since announcing the merger, 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.
9. ~~4.~~ Voice and data are transmitted wirelessly using discrete portions of the electromagnetic spectrum.
10. Wireless service can be operated with any combination of low-, medium, and high-band spectrum.
11. ~~4.~~ High-band spectrum carries large amounts of data over can be used to provide high capacity wireless service over short distances and cannot penetrate buildings. There are large volumes of available and soon to be available high-band spectrum.
12. ~~5.~~ Mid-band spectrum carries moderate amounts of data can be used to provide wireless service over moderate distances and can penetrate buildings. There are moderate amounts of available and soon-to-be-available mid-band spectrum.
13. ~~6.~~ Low-band spectrum carries small amounts of data can be used to provide wireless service over large distances and can more easily penetrate buildings. There are small amounts of low-band spectrum available.
14. Spectrum is licensed by the Federal Communications Commission.
15. Wireless spectrum can be acquired through individual sale, lease, or license, in addition to acquisition through merger.
16. Spectrum can be transmitted over areas smaller than its maximum broadcast distance in order for a wireless operator to re-use spectrum, accomplished by having a greater number of cells towers cited closer to each other in densely packed networks.
17. A wireless operator can increase available wireless network capacity by constructing or leasing space on additional cell towers and re-using existing spectrum. A wireless operator can also increase available wireless network capacity by using more spectrum on existing towers.
18. 5G wireless service is the next generation of commercial mobile radio service, representing a collection of various technological advancements that will generally

reduce latency, increase data speeds to a minimum of 100 Mbps, and expand simultaneous device connectivity to handle the Internet of things, among other changing factors.

19. Like wireless service in general, 5G wireless service can be operated with any combination of low-, medium-, and high-band spectrum.
20. ~~7. Efficient operation of a 5G wireless network covering both urban and rural areas requires a combination of~~ Low-, medium-, and high-band spectrum each provides different benefits, and each suffers from different drawbacks in the operation of a 5G network.
21. ~~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.~~
22. ~~3. Sprint owns very little low-band spectrum, large amounts of mid-band spectrum, and no high-band spectrum.~~
23. ~~8. A statewide wireless network requires tens of thousands of widely distributed cell towers.~~
24. ~~9. Sprint owns thousands of towers whose coverage does not overlap the coverage of that are not collocated with~~ T-Mobile cell towers.
25. Sprint and T-Mobile are currently deploying 5G wireless networks.
26. T-Mobile is representing that its 5G wireless network is already providing nationwide coverage.
27. New T-Mobile will decommission thousands of Sprint's cell sites in California, reducing cell tower infrastructure.
28. Sprint maintains hundreds of portable generators and an inventory of deployable cellular sites.
29. Customers, including emergency responders such as police, fire, and emergency medical services, will have reduced options for diverse, facilities-based service providers if the merger occurs.

30. ~~21.~~ The Department of Justice concluded that “[a]ny efficiencies generated by this merger are unlikely to be sufficient to offset the likely competitive effects on American consumers in the retail wireless service market” and has imposed significant conditions on its approval of the Merger including, among other things, partial divestiture of Sprint’s prepaid business to DISH and the requirement that New T-Mobile allow DISH access to its network as an MVNO pending DISH’s creation of its own national network.
31. ~~14.~~ T-Mobile and Sprint will transfer their prepaid businesses, other than Assurance, to DISH.
32. Under the divestiture arrangement, at the time the merger occurs DISH would acquire only a small subset of customers from Sprint; these customers are not bound by contracts and are free to leave DISH any time after they are divested to DISH.
33. Per the Joint Applicants’ economist’s analysis as presented by the District Court, the divestiture of prepaid customers to DISH does not materially affect the results of the HHI analysis, such that even when accounting for the divestment, the merger remains presumptively anti-competitive.
34. ~~17.~~ DISH has never provided mobile wireless service and currently has zero retail mobile wireless customers. DISH will may acquire towers, radios, spectrum and other assets from Sprint to enable it to become a wireless network provider.
35. ~~18.~~ T-Mobile will carry DISH traffic over its network while DISH is building out its own wireless network.
36. DISH has yet to begin deployment of a CMRS network in California.
37. DISH will not replace Sprint as a competitor in the wireless market in the near term, and it will be years before it could become a true national competitor of the three other companies.
38. Intervenors and Joint Applicants have both testified in this proceeding to Sprint’s ability to roll out a 5G network in absence of this merger and no party has contested Sprint’s ability to survive as a company.

39. Sprint has already invested heavily in network facilities, it is an experienced provider of telecommunications services, and it is staffed by experienced employees.
40. Joint Applicants have not argued in this proceeding, nor have they submitted evidence to support the contention that DISH will replace Sprint as a competitor in the retail mobile wireless market, let alone in any individually impacted cellular market areas in California.
41. ~~19.~~ New T-Mobile has ~~made significant commitments~~ committed to the California Emerging Technology Fund to prioritize the delivery of 5G technology to unserved and underserved communities throughout the state, to deploy 5G services at fairgrounds, and to deploy 5G services to various cell sites at average download speeds of either 100 Mbps or 300 Mbps.
42. ~~20.~~ New T-Mobile has ~~made significant commitment~~ committed to the Federal Communications Commission ~~regarding the~~ that the price of wireless service will not increase for three years following the merger and that it will make availability of wireless service available to unserved and underserved communities nationally following the Merger at average download speeds of either 50 Mbps or 100 Mbps.
43. Sprint is the only facilities-based wireless carrier that currently offers LifeLine in California.
44. T-Mobile does not and has never offered LifeLine in California.
45. ~~15.~~ If the Transaction is approved and after acquisition by 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 (CETF).
46. ~~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.

47. The Memorandum of Understanding between New T-Mobile and CETF contains confidential information.

CONCLUSIONS OF LAW

1. The Transaction is subject to review under Public Utilities Code Sections 854(a), (b), and (c) and D.95-10-032.
2. T-Mobile USA's wireless affiliates T-Mobile West LLC (U3056C) and Metro PCS, California LLC (U3070C) are parties to the Transaction.
- ~~3.2. The Transaction is anti-competitive, will adversely affect competition, will reduce network redundancy, harm public safety, and is not in the public interest.~~
- ~~4.3. The benefits of the Transaction, as modified by the conditions imposed herein, ameliorate some of the harms of the merger outweigh its detriments.~~
- ~~5.4. With the conditions enumerated in the ordering paragraphs hereof, the Transaction can ~~should~~ be approved.~~

ORDER

IT IS ORDERED that:

1. The Joint Application of Sprint Communications Company L.P. (U5112C) and T-Mobile USA, Inc., a Delaware Corporation, for Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a) is approved, subject to the conditions in Ordering Paragraphs ~~2-4~~7.

A. FEDERAL and OTHER COMMITMENTS

2. New T-Mobile shall provide to California Public Utilities Commission (Commission) any California specific data in update 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). As a matter of transparency and to serve the public interest, the CETF MOU shall be made entirely public upon issuance of the final decision.

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% of California population provided with access to service with mean download speeds of at least 50 Mbps;
 - ii. 86.0% of California population provided with access to service with mean download speeds of at least 100 Mbps;
 - iii. 81.0% of the California rural population provided with access to service with mean download speeds of at least 50 Mbps; ~~and~~
 - iv. 79.0% of the California rural population provided with access to service with mean download speeds of at least 100 Mbps;
 - v. 81.0% of California population with access to service with mean download speeds of at least 300 Mbps; ~~and~~
 - vi. 70.0% of California rural population with access to service with mean download speeds of at least 300 Mbps.
 - b. By year end 2026, New T-Mobile shall provide 5G service to at least the percentage of California population indicated below:
 - i. 99.0% of California population with access to service with mean download speeds of at least 100 Mbps;
 - ii. 94.0% of California rural population with access to service with mean download speeds of at least 50 Mbps; ~~and~~
 - iii. 85.0% of California rural population with access to service with mean download speeds of at least 100 Mbps;
 - iv. 90.0% of California population with access to service with mean download speeds of at least 300 Mbps;

- v. 75.0% of California rural population with access to service with mean download speeds of at least 300 Mbps; and
- vi. 80.0% of California population with access to service with mean download speeds of at least 400 Mbps;
- c. By year end 2030, New T-Mobile shall provide:
 - i. 96.0% of California rural population with access to service with mean download speeds of at least 50 Mbps; ~~and~~
 - ii. 90.0% of California rural population with access to service with mean download speeds of at least 100 Mbps;
 - iii. 96.0% of California population with access to service with mean download speeds of at least 300 Mbps;
 - iv. 80.0% of California rural population with access to service with mean download speeds of at least 300 Mbps; and
 - v. 90.0% of California population with access to service with mean download speeds of at least 400 Mbps;
- d. Such coverage shall be maintained at least until year end 2031.
- 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~~ hidden fees. In order for in-home broadband service to be considered available to a household, T-Mobile must offer that household broadband service with at least 25 Mbps mean download speed and 3 Mbps mean upload speed. If data caps are imposed, the lowest data cap shall be one (1) terabyte (TB).
- 6. Until New T-Mobile's LTE network is decommissioned, New T-Mobile shall maintain LTE speeds and coverage areas in California at either 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 or no less than the download and upload speeds reported by CALSPEED in the Fall of 2017, whichever is data set provides faster download and upload speeds and greater coverage.

7. In California, New T-Mobile shall prioritize rolling out its planned 5G network in 10 unserved or underserved California areas. The 10 unserved or underserved areas for prioritization shall be selected by New T-Mobile after consultation with Staff, California Emerging Technology Fund (CETF) and the Rural Regional Consortia. New T-Mobile shall meet jointly with Staff, the Rural Regional Consortia and CETF within 180 days of the close of the Transaction to:
 - a. Provide an overview of planned 5G network improvements and capital expenditures in California; and
 - b. Obtain input from and consult with Staff, CETF and the Rural Regional Consortia to identify the 10 unserved/underserved areas that New T-Mobile shall prioritize as specified above. The California Advanced Services Fund shall not reimburse the Rural Regional Consortia for any expenses relating to meeting and consulting with New T-Mobile, CETF or Staff in connection with this condition.

C. NETWORK RELIABILITY AND EMERGENCY PREPAREDNESS

8. No later than October 1, 2020, New T-Mobile shall 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 to continue to be available to users in its coverage area (as reflected in the same FCC data submission) for at least 72 hours following an emergency event, Public Safety Power Shutoff or other incident that results in the loss of local electric utility line power.
9. This requirement will remain in place until any future backup power requirements are ~~developed~~ adopted by ~~CPUC~~ the Commission in Rulemaking 18-03-011, or

any subsequent proceeding, on the timetable and subject to the other requirements developed in that proceeding.

D. PERMANENT OPERATIONS AT FAIRGROUNDS

10. Within 5 years of the close of the Transaction, New T-Mobile shall deploy permanent 5G wireless service at 10 County Fairgrounds in rural counties, at least 3 of which shall be installed in the first 3 years.
11. The wireless networks shall provide robust connectivity for Fairground users and administrators adequate to support the capacity and speed needed during an emergency by a response and evacuation center. Robust connectivity requires a minimum resiliency such that if one cell tower providing service to the fairground experiences an isolated service outage, other nearby cell towers will still provide adequate capacity and speed for fairground users and administrators.
12. The fairgrounds will be selected from the ones that currently have 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 Boards 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.
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 (and all its subsidiaries), 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 authorized by the Program in a Commission Decision.
16. New T-Mobile shall add at least 300,000 new LifeLine customers within ~~over the next~~ five years from the date of the final decision. 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 in the previous month.
 - b. New T-Mobile shall train and monitor employees adequately to ensure they only enroll new LifeLine customers who are eligible.
 - c. New T-Mobile shall offer LifeLine sign-ups at all New T-Mobile (and subsidiaries) physical stores.
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 program.
 - d. applicable changes in consumers' accounts.
 - e. applicable advice letter considerations.
 - 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 via the following methods, at a minimum:
 - a. Sales scripts (for phone, online, and in-store sales);

- b. Text messages;
 - c. Blurb on post-paid phone bills; and
 - d. Web sites
19. New T-Mobile shall submit to ~~CPUC~~ the Commission, including the Communications Division and the Public Advocates Office for review and approval all California LifeLine related outreach materials.
20. New T-Mobile shall provide a sample of customer bills (to show the required outreach message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the ~~CPUC~~ the Commission to send staff to audit compliance into California stores/call centers at any time while the stores/call centers are open during normal business hours to the public.
21. New T-Mobile shall distribute handsets that are compatible with the New T-Mobile network, and comparable to the consumer's existing handset such that the consumer does not experience a loss in service, to all active California LifeLine participants receiving cell phone services from Virgin whose handsets belong to either of the following categories:
- 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. Secure any necessary approvals from the Federal Communications Commission and Department of Justice to transfer the California LifeLine Pilot Program and 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 decision is 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 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 ~~the Commission Decision approving the merger~~ this order, Metro PCS (or whichever T-Mobile brand will replace Boost in the pilot program) shall provide a sample of customer bills (to show the required message), submit screenshots of Web pages that include the required content, include an approved CPUC number on its text message distribution list, and permit the CPUC to send staff to audit compliance into California stores/call centers at any time while the stores/call centers are open during normal business hours to the public.

F. JOB CREATION

25. New T-Mobile shall have a net increase in jobs in California, such that the number of full time and full-time equivalent New T-Mobile employees in the State of California at three years after the close of the transaction shall be at least 1,000 greater than the total number of full-time and full-time equivalent employees of

Sprint, Assurance Wireless and T-Mobile in the State of California as of the date of the Transaction closing.

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

G. EDUCATIONAL BROADBAND SPECTRUM (EBS)

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

H. CALSPEED TESTING

28. 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 compliance with the minimum speeds required in these conditions is determined.
29. Annually or at such other frequency as Staff determines appropriate, CPUC ~~may~~ shall perform CalSPEED drive tests of the New T-Mobile and Dish networks from 2020 through 2030. New T-Mobile's shall reimburse CPUC for the 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 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) annually, 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.

d. New T-Mobile shall be subject to immediate Commission enforcement action should New T-Mobile not comply with requirements set upon it by Ordering Paragraphs 29, 30, and 31.

30. CPUC shall provide New T-Mobile with statewide mapping of the test point results and interpolations of upload/download speeds and latency and perform geographic coverage analysis of areas and population with available download speeds at or above 50 Mbps, ~~and 100 Mbps~~, 300 Mbps, and 400 Mbps for both urban and rural areas. New T-Mobile shall reimburse CPUC for the cost of such mapping data.
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 provide 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.
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 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.

J. ENSURING COMPLIANCE

38. Compliance Monitor and Enforcement. Within 120 days of the effective date of the Commission decision approving the merger, CPUC shall hire, at New T-Mobile's expense, an independent monitor to review New T-Mobile's compliance with all its commitments herein. The compliance monitor shall meet initially with Staff within 30 days of being hired and at least quarterly thereafter to report on New T-Mobile's adherence to the conditions imposed by this decision.
39. New T-Mobile shall not object to actions taken by the Compliance Monitor in fulfillment of the Compliance Monitor's responsibilities under any Order of the CPUC on any ground other than the Compliance Monitor's malfeasance. Any objection on the grounds of the Compliance Monitor's malfeasance by New T-

Mobile must be conveyed in writing to the CPUC and the Compliance Monitor within ten (10) calendar days after the action taken by the Compliance Monitor giving rise to New T-Mobile' objection.

40. New T-Mobile shall use their best efforts to assist the Compliance Monitor in monitoring New T-Mobile' compliance with their individual obligations to the CPUC. The Compliance Monitor and any agents or consultants retained by the Compliance Monitor shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Decision, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. New T-Mobile shall take no action to interfere with or to impede the Compliance Monitor's accomplishment of its responsibilities.

41. As a condition of approval to this Transaction, New T-Mobile shall submit to the CPUC, within 30 days of the approval of the proposed merger, either a performance bond or a deposit in an escrow account of ten (10) percent of the capital New T-Mobile has stated it intends to use to deploy 5G technology in California, as stated in Figure 13 of Pub Adv-03C at 30. Whether a performance bond or an escrow account is chosen, the balance shall remain at ten (10) percent of the stated capital expenditure amount for the entire time frame that the conditions remain in effect. In the event New T-Mobile fails to meet any of the conditions ordered in this decision, the Commission can recover either the full amount or incremental amounts, based on statutory fine, of the performance bond or in the escrow account.

42. New T-Mobile must comply with all data requests and provide all data requested, at the granular level requested, whether that request comes from the Commission, or any unit of Commission staff including the Public Advocates Office, or the Compliance Monitor.

4339. The Compliance Monitor will provide quarterly ~~make semi-annual~~ findings on merger compliance and/or lack of compliance to the Commission, copying both

the Director of the Communications Division as well as the Attorney General of California. For the instances where the New T-Mobile is out of compliance, the Compliance Monitor will recommend in their findings penalties, sanctions, and/or recovery of the performance bond ~~a penalty~~ to bring T-Mobile into compliance ~~and forward his findings and recommendation to the Director of the Commission's Communications Division and the Attorney General.~~ The Attorney General may enforce this Order either pursuant to Public Utilities Code Sections 702 and 2101, or under its independent authority, and such enforcement actions would not interfere with the Commission's authority but would be complimentary. The CPUC shall require a performance bond from New T-Mobile and develop a citation program that can be utilized to impose sanctions and/or penalties on New T-Mobile for violations of the terms of this decision.

~~4440.~~ Baseline Report. Following completion of the Merger, New T-Mobile shall provide the following information to CPUC annually ~~in the 4th calendar quarter of each year 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.
- ~~c.~~ Each MVNO agreements and their status.

~~4541.~~ Annual Compliance Reports. New T-Mobile shall submit annual compliance reports to CPUC and the Compliance Monitor 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~~ all areas, identify specific locations, by latitude and longitude where

possible, where work is being done. The detailed reports shall include at least:

- (i) A description of the work New T-Mobile has completed by network enhancement project.
 - (ii) A description of the equipment installed, including new spectrum deployed, by New T-Mobile by network enhancement project.
 - (iii) A description of the results of the network enhancement project, such as, but not limited to – faster speeds, increases to emergency back-up power, necessary maintenance, or improved coverage.
 - (iv) Completed date of each network enhancement.
 - (v) Detailed project costs of each network enhancement, including but not limited to – labor costs, equipment costs, and permitting.
 - (vi) An estimate of the number of customers impacted by each network enhancement project.
- e. Inventory of EBS spectrum leases, including the licensee, whether the spectrum is currently in use and whether there have been requests by the educational institutions or any California tribal organizations to utilize the spectrum, including documentations of meeting or partnerships, and discussions of additional buildout. Identification and progress on the 10 Homework Gap pilots.
- f. New T-Mobile capacity limitations including reporting on how DISH's network use may be impacting capacity.
- g. A list of all Pricing for its mobile phone plans and in-home broadband plans offered by New T-Mobile and all subsidiaries in California, including for each plan:
- (i) Name of the provider (i.e. New T-Mobile, Assurance, etc.)
 - (ii) Pricing,
 - (iii) A list explanations of the available handsets,
 - (iv) Number of subscribers, and
 - (v) Terms identifying the plan as prepaid or postpaid.
- h. A report on the pProgress 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~~

ik. Progress Status reports on 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.

jl. Total full time and full time equivalent employees by business unit in the State.

km. For California LifeLine Program:

(iv) New T-Mobile shall report on its progress according to the Implementation Plan submitted according to Condition E.173 above. New T-Mobile shall include information about which elements of the Implementation Plan have been implemented and the results. If any of the items in the Implementation Plan are late, delayed, or otherwise modified, New T-Mobile will provide a detailed explanation of why the item is delayed or modified, and when completion is expected.

(iiv) 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).

(iii). Transfer of LifeLine customers from Sprint to New T-Mobile. Provide the number of LifeLine customers lost to other wireless providers.

46. On the first day of the first fiscal quarter following completion of the merger and every quarter thereafter during the first six years of operation, New T-Mobile executives will meet with the Compliance Monitor and Communications Division staff to discuss the results from the reporting requirements completed in the most recent three months and discuss future work, as necessary. Relevant New T-Mobile staff and executives shall participate.

47. No later than 180 days from the closing of the Transaction, the CPUC, in consultation with the Compliance Monitor and New T-Mobile, will select and retain an independent expert Survey Consultant ("Survey Consultant"), at the expense of New T-Mobile.

(a) This Survey Consultant will not have previously provided any services or contract work with T-Mobile or Sprint and shall act independently to

- develop the survey design and survey questions for a multi-lingual customer satisfaction survey in Sprint's former service area.
- (b) The Survey Consultant will solicit input from stakeholders, including the CPUC, New T-Mobile, The Public Advocates Office, the Compliance Monitor, and other consumer groups in jointly held meetings facilitated by the Survey Consultant.
 - (c) The Survey Consultant shall solicit input, through meetings with the CPUC, New T-Mobile, the Public Advocates Office, and other consumer groups to design the structure and content of its reports containing the survey results.
 - (d) The survey design and questions must be finalized and approved by the CPUC no later than nine months from the closing of the Transaction.
 - (e) The Survey Consultant must, in each quarter, survey a statistically significant number of wireless and in-home broadband customers to ensure survey results are statistically significant.
 - (f) The parties recognize and acknowledge that the survey responses will reflect the state of New T-Mobile's ongoing network initiatives.
 - (g) The survey design must include customers identified as having limited English proficiency, and must include some customers who speak at least the top three languages spoken in Sprint's former territory.
 - (h) The survey must measure customer satisfaction for in-home broadband and wireless services.
 - (i) New T-Mobile shall cooperate with all reasonable requests from the Survey Consultant, including supplying the Survey Consultant on a monthly basis a list of existing customers and a list of new customers.
 - (j) The surveys will commence no later than 12 months from the closing the transaction and will continue for three years.
 - (k) The Survey Consultant shall issue a confidential quarterly survey Report to New T-Mobile, the Commission, the Communications Division, the Public Advocates Office, and any other consumer groups that participated in the planning process containing the results of the survey every quarter.
 - (l) The final report shall be submitted 36 months from the commencement of the surveys.

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