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

RESPONSE OF THE PUBLIC ADVOCATES OFFICE AND THE UTILITY REFORM NETWORK TO JOINT APPLICANTS' PETITION FOR MODIFICATION OF DECISION 20-04-008

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I. INTRODUCTION

Pursuant to Rule 16.4(f) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) and The Utility Reform Network (TURN) submit this response to *Joint Applicants' Petition for Modification of Decision (D.) 20-04-008*.[1] The Joint Applicants are Sprint Communications Company L.P., Sprint Spectrum L.P., Virgin Mobile USA, L.P., and T-Mobile USA, Inc. In their Petition for Modification (PFM), the Joint Applicants seek substantive changes to D.20-04-008 and inappropriately seek to utilize the Commission's PFM Rules to resolve issues that should have been raised in an application for rehearing pursuant to Public

[1] Joint Applicants' Petition for Modification of Decision 20-04-008, A.18-07-011 et al, filed Jun. 23, 2020 (Petition for Modification).

Utilities (Pub. Util.) Code § 1731(b) and Rule 16. Moreover, Joint Applicants inappropriately seek to relitigate issues that were already considered and rejected by the Commission in D.20-04-008, but provide no new facts or information that have occurred since the issuance of D.20-04-008 on April 27, 2020 to justify the requested modifications. Therefore, the Joint Applicants' PFM should be denied.

II. BACKGROUND AND PROCEDURAL HISTORY

On July 13, 2018, Joint Applicants filed a *Joint Application For Review Of Wireless Transfer Notification Per Commission Decision 95-10-032 (A.18-07-012)* and a *Joint Application For Approval Of Transfer Of Control Of Sprint Communications Company L.P. (U-5112-C) Pursuant To Public Utilities Code Section 854(a) (A.18-07-011)* (Applications). On August 16, 2018, Cal Advocates, TURN and Greenlining protested these Applications. On September 11, 2018, Administrative Law Judge (ALJ) Bemesderfer determined that the two applications arise from the same transaction and that the public interest required a consolidated review of both Applications. The Commission held evidentiary hearings on the Applications over four days in February 2019. Briefs were filed in April and May 2019.

Over the next several months, significant actions by the Joint Applicants resulted in major changes to the terms of the Transaction and changes to the course of this proceeding. On May 8, 2019, the ALJ granted the *Joint Motion of Joint Applicants and the California Emerging Technology Fund to Reflect Memorandum of Understanding between Joint Applicants and the California Emerging Technology Fund* of the Joint Applicants and the California Emerging Technologies Fund (CETF) permitting those parties to enter their Memorandum of Understanding (CETF MOU) into the record.[2] On May 20, 2019, and again on July 26, 2019, the Joint Applicants filed motions to "advise" the Commission of external agreements they had entered into with federal regulators that made revisions and additional commitments to the terms of their merger agreement.

[2] The Joint Motion was filed on April 8, 2019 - Parties addressed substantive issues raised by the Memorandum of Understanding in their reply briefs filed on May 10, 2019.

These included commitments made to the Federal Communications Commission (FCC) through the ex parte process and the terms of a proposed consent decree (the Proposed Final Judgment or PFJ) and related Stipulation and Order (Stipulation) that had been filed by the United States Department of Justice (DOJ) that same day in the US District Court for the District of Columbia (Court). Having concluded that "the merger of T-Mobile and Sprint likely would substantially lessen competition for retail mobile wireless service,"[3] the DOJ asked the Court to "permanently enjoin the proposed transaction"[4] while also presenting the PFJ and Stipulation for approval by the Court to mitigate the harms of the proposed Transaction.

In light of the significant changes to the Transaction agreed upon by the Joint Applicants and federal regulators, along with the CETF MOU, on August 27, 2019, the ALJ reopened the record of this proceeding.[5,6] The ALJ determined that the PFJ and accompanying documents "appear to fundamentally change the Transaction" and that the record was incomplete in light of the PFJ.[7]

On October 24, 2019, the Assigned Commissioner issued an Amended Scoping Ruling (Amended Scoping Memo).[8] The Amended Scoping Memo expanded the scope of the proceeding to include a detailed examination of how the PFJ's inclusion of Dish Network Corporation's (DISH's) acquisition of assets from the Joint Applicants impacted California and directed parties to submit additional testimony and briefs.[9] On November 26, 2019, the ALJ issued a ruling confirming the need for evidentiary hearings and their

[3] DOJ Complaint Filed 7/26/19 in the US District Court for the District of Columbia (DOJ Complaint) at 3, para. 6.

[4] DOJ Complaint at 10, para. 31(b).

[5] *See* Administrative Law Judge's Ruling Re-Opening Record to Take Additional Evidence and Directing Joint Applicants to Amend Application 18-07-012, filed in A.18-07-011 and A.18-07-012, at 5 (Motion Reopening Record).

[6] Motion Reopening Record at 2.

[7] Motion Reopening Record at 5.

[8] *See* Assigned Commissioner's Amended Scoping Ruling (Amended Scoping Memo) filed October 24, 2019.

[9] *See* Amended Scoping Memo at 3.

scope.[10] Evidentiary hearings were held on December 5, 2019 and December 6, 2019. Per the Amended Scoping Memo, concurrent briefs were filed December 20, 2019.

On March 11, 2020, the ALJ issued a Proposed Decision (PD) in this matter. Parties filed opening comments on April 1, 2020 and reply comments on April 9, 2020. On March 30, 2020 and March 31, 2020, the Joint Applicants engaged in a flurry of procedural actions arguing that the Commission no longer had jurisdiction to review the merger.[11] Cal Advocates, TURN, and Greenlining opposed the requests in each filing. On April 16, 2020, the Commission denied the Joint Applicants' multiple requests and adopted Decision (D.) 20-04-008. The Decision was issued on April 27, 2020.

On May 7, 2020, Cal Advocates, Greenlining and TURN filed an Application for Rehearing of D.20-04-008.[12] On May 22, 2020, Joint Applicants filed a response to the Application for Rehearing.[13] Joint Applicants filed the PFM on June 23, 2020, nearly two months after D.20-04-008 was issued.

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[10] *See* Administrative Law Judge's Ruling Confirming Evidentiary Hearings and Establishing Their Scope, A.18-07-11 *et al*. (Hearing Memo).

[11] *See* Sprint Communications Company L.P. Tier 1 AL 918 and related Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011 et al, filed Mar. 30, 2020 (notifying the Commission of the intent to withdraw the CPCN of Sprint's wireline operations and seeking to withdraw the joint application regarding the wireline elements of the subject merger). It is relevant to note that Joint Applicants continued to dispute the Commission's jurisdiction to approve the wireless elements of the transaction and 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. On April 1, 2020, Commissioner Rechtschaffen issued an Assigned Commissioner's Ruling directing the companies to retain separate operations in California until the Commission votes on the Transaction request.

[12] *See* Application of The Public Advocates Office, The Greenlining Institute, And The Utility Reform Network for Rehearing of Decision 20-04-008.

[13] *See* Joint Applicants' Response to the Public Advocates Office, The Greenlining Institute, and The Utility Reform Network Application for Rehearing of Decision 20-04-008, A.18-07-011 et al.

III. DISCUSSION

A. The PFM Inappropriately Attempts to Circumvent the Application for Rehearing Process.

The PFM seeks modifications to D.20-04-008, asserting, in part, that the Decision commits legal error.[14] The Joint Applicants' PFM is an inappropriate venue for seeking the modifications proposed. The Joint Applicants did not file an application for rehearing of D.20-04-008. Pursuant to Pub. Util. Code § 1731(b)[15] and Rule 16.1(a) of the Commission's Rules and Practice and Procedure, an application for rehearing of a merger must be filed within 10 days from the date the decision was issued. D.20-04-008 was issued on April 27, 2020. Therefore, the deadline to file an application for rehearing was May 7, 2020; that time has now lapsed.

Since the time to file an application for rehearing has lapsed, it appears that the Joint Applicants seek to utilize the PFM to circumvent Pub. Util. Code § 1731(b) and Rule 16.1(a). Pursuant to Pub. Util. Code § 1732 and Rule 16.1(c), an application for rehearing must "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Throughout the Joint Applicant's PFM, they make several allegations of legal error, asserting that the Commission lacks jurisdiction to approve wireless mergers and committed legal error in interpreting Pub. Util. Code § 854 as granting it the authority to

[14] Petition for Modification at 4-5, 7, 14.

[15] Pub. Util. Code § 1731(b) states: "[a]fter an order or decision has been made by the commission, a party to the action or proceeding, or a stockholder, bondholder, or other party pecuniarily interested in the public utility affected may apply for a rehearing in respect to matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. A cause of action arising out of any order or decision of the commission shall not accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property."

approve wireless mergers[16] and they assert that D.20-04-008's hiring mandate is outside of the Commission's regulatory authority.[17] However, they failed to raise any of these allegations in an application for rehearing. Therefore, pursuant to D.03-08-036, Joint Applicants are barred from raising these arguments in their PFM when they failed to raise these arguments in an application for rehearing.[18,19]

B. The PFM Inappropriately Attempts to Relitigate Issues Already Litigated and Decided in D.20-04-008.

The Joint Applicants seek to inappropriately relitigate issues already considered by the Commission when it issued D.20-04-008. Joint Applicants state that the Commission "may modify a decision if, for example: (1) new facts are brought to the attention of the Commission, (2) conditions have undergone a material change, or (3) the Commission proceeded on a basic misconception of law or fact."[20] However, in D.17-12-006, the Commission cautioned that while it has statutory authority pursuant to Pub. Util. Code § 1708 to "rescind, alter, or amend any order or decision made by it," after notice to all the parties and with an opportunity to be heard, the Commission has long recognized that this broad authority should be exercised with great care and justified only by extraordinary circumstances to protect parties from endless re-litigation of the same issues.[21] In the PFM, Joint Applicants inappropriately seek to relitigate the same issues that were already litigated and decided in D.20-04-008.

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[16] Petition for Modification at 4-5, 7, 14.

[17] Petition for Modification at 2.

[18] D.03-08-036 at 49 – "Since the complainants are challenging the interpretation of § 331(h), as contained in various Commission decisions and approved tariffs, the complainants should have filed timely applications for rehearing of the decisions alleged to have violated § 331(h)."

[19] *See also* D.03-08-036 at 48 fn 30 – "The underlying premise of the complainants is that the Commission and SCE wrongly interpreted the definition of a small commercial customer in the Commission decisions discussed above. A challenge to the interpretations contained in these decisions should have been raised through an application for rehearing."

[20] Petition for Modification at 5 (internal quotations removed).

[21] D.17-12-006 at 9.

In their PFM, Joint Applicants seek modifications to Ordering Paragraphs (OPs) 4.b. and 30 by seeking to change the deployment of 5G wireless service coverage at a specific speed benchmark, from 2024 to 2026.[22] However, in their opening comments on the PD prior to the issuance of D.20-04-008, the Joint Applicants stated that "[t]he proposed 5G network build conditions set forth in OP 4 (a) & (b) are consistent with the California projections used to create the corollary FCC commitments (which are subject to the FCC speed testing requirements) and are based on record evidence."[23] The Joint Applicants did not allege in their opening comments that the benchmark should have been 2026 instead of 2024. Moreover, as discussed below, the benchmarks are not new information and were already considered when the Commission issued D.20-04-008.[24] Accordingly, Joint Applicants fail to provide any grounds to modify OPs 4.b and 30.

In their PFM, Joint Applicants also request that the Commission modify OP 25 which requires that 1,000 jobs be created in California within three years after the closing of the merger, alleging that the Commission lacks jurisdiction to do so and that the current pandemic would make this requirement burdensome.[25] In their opening comments on the PD, Joint Applicants already raised jurisdictional arguments which were considered by the Commission,[26] and the pandemic was already underway when the Commission issued its decision. Moreover, it was the Joint Applicants who voluntarily committed to maintain existing jobs and to create new jobs in California. In opening briefs, Joint Applicants committed to maintain at least the same number of T-Mobile employees in California three years after the transaction's closing as Sprint, Assurance Wireless, and T-Mobile had as of the date of the transaction's closing, and to create approximately 1,000 new jobs at a customer experience center in California's central

[22] Petition for Modification at 7.

[23] Joint Applicants' Opening Comments on Proposed Decision at 12 [April 1, 2020].

[24] D.20-04-008 at 44, 49-50.

[25] Petition for Modification at 14.

[26] Joint Applicants' Opening Comments on Proposed Decision at 17-18.

valley.[27] Therefore, Joint Applicants do not present new information which would justify a change to OP 25. Rather, Joint Applicants improperly attempt to relitigate this issue when it was already litigated and addressed by the Commission in D.20-04-008.

Lastly, the Joint Applicants' request to modify OP 30 to remove the requirement that drive tests be conducted based on the Commission's CalSPEED test and to instead utilize the FCC's drive test. Joint Applicants allege that the record does not include a discussion of CalSPEED and that OP 30 is burdensome, inefficient and would lead to regulatory uncertainty.[28] Joint Applicants raised these arguments in opening comments to the PD[29] and the Commission has already considered the Joint Applicants' claims when it issued D.20-04-008 and found them unpersuasive.[30] Once again, the Joint Applicants improperly seek to relitigate issues in their PFM which the Commission has already decided on in D.20-04-008.

C. The Commission has Authority over Wireless Transfers of Control.

The Joint Applicants once again incorrectly assert that the Commission lacks authority over wireless transfers of control.[31] This argument should have been raised in an application for rehearing.[32] Moreover, Joint Applicants attempted to make this assertion in their response to Cal Advocates', Greenlining, and TURN's joint Application for Rehearing,[33] in addition to making this assertion several times during the immediate proceeding. The Joint Applicants' assertions are not only procedurally improper, but

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[27] Joint Applicants Post-Hearing Opening Brief on the Join Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032, filed April 26, 2019 at 6.

[28] Petition for Modification at 17.

[29] Joint Applicants' Opening Comments on Proposed Decision at 18-19.

[30] D.20-04-008 at 45 – "At Applicants' request, we have also made some revisions to the CalSPEED drive test funding requirement and to coordinate with the federally-required testing."

[31] *See* Petition for Modification at 4, fn.11.

[32] As discussed above, by failing to seek rehearing of this alleged legal error, Joint Applicants are barred from raising it in a petition for modification.

[33] *See* Joint Applicants' Response to the Public Advocates Office, The Greenlining Institute, and The Utility Reform Network Application for Rehearing of Decision 20-04-008, A.18-07-011 et al, Section III.

they are wrong. The Commission has authority over wireless transfers of control and the terms and conditions of wireless service and has explicitly made this determination in D.20-04-008.[34]

In D.95-10-032, the Commission affirmed it had jurisdiction over the transfer of ownership of a wireless retail provider within California and concluded that "the transfer of ownership interests in a CMRS [Commercial Mobile Radio Service] entity is not tantamount to [market] entry, and Commission jurisdiction over such transfers is not preempted under the" federal regulation.[35] The Commission found that "[t]he legislative history of the Budget Act explicitly includes transfers of ownership as an example of 'other terms and conditions' over which states still retain the authority to regulate."[36] In 1998, the Commission again declared that Section 332(c)(3)(A) of the Federal Communications Act "does not prohibit state regulation of transfers of control" and "specifically reserves to the States the authority to regulate 'the other terms and conditions of'"[37] wireless retail service. The Commission has authority over wireless transfers of control and has the authority to impose conditions on merging entities. The Commission should deny the Joint Applicant's PFM and reiterate its authority and obligation to determine whether the merger is in the public interest.

D. The PFM Fails to Identify New Facts, Material Change in Conditions, or Misconception.

Pursuant to D.17-12-006, the Joint Applicants' PFM must also be denied because it has failed to demonstrate new facts, material change in conditions, or a misconception that would create a 'strong expectation' that the Commission would have reached a

[34] D.20-04-008 at 3 – "Section 854 specifically provides that a merger involving a public utility may not occur without authorization from the Commission."

[35] D.95-10-032 at Conclusion of Law (COL) 9 ("The transfer of ownership interests in a CMRS entity is not tantamount to entry, and Commission jurisdiction over such transfers is not preempted under the federal legislation.").

[36] D.95-10-032 (under the section "Stock and Security Issuances/Ownership and Asset Transfers or Encumbrances").

[37] D.98-07-037 at 8.

different result based on the alleged new information.[38] In D.17-12-006, the Commission held that "[t]here must be a major change that would 'create a strong expectation that we would make a different decision based on these facts or circumstances.'"[39] The Joint Applicants' PFM has failed to demonstrate that there was a major change in circumstances within just the few weeks since the issuance of the Final Decision that would have caused the Commission to render a different outcome regarding the modifications requested. Therefore, the Joint Applicant's PFM is improper and must be denied.

E. The Commission Should Not Delay the Requirement for Joint Applicants to Provide 300 Megabits Per Second Service to 93% of Californians.

The Joint Applicants request that the Commission delay by two years, from 2024 to 2026, the requirement for New T-Mobile to provide 5G wireless service coverage with at least 300 Megabits per second (Mbps) download speeds to 93% of Californians.[40] The Joint Applicants claim that their use of year 2024 in their testimony was meant as a proxy for the time period six years after merger's closing.[41] However, the PFM ignores the Joint Applicants' repeated representations in their testimony and briefs, without mentioning a three year or six year post merger time frame, that New T-Mobile would provide 5G wireless service coverage at download speeds of 300 Mbps by year 2024.[42]

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[38] D.17-12-006 at 11 (citing to D.03-10-057 slip op. at 17) – "Pursuant to Rule of Practice and Procedure 16.4(b) and Section 1708, the Petition must be denied because it has failed to demonstrate a new fact, material change in conditions, or misconception that would create a "strong expectation" that the Commission would have reached a different result based on the new information."

[39] D.17-12-006 at 11-12.

[40] Petition for Modification at 7.

[41] *Ibid.*

[42] Joint Applicants Post-Hearing Opening Brief on the Join Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032, filed April 26, 2019 at 35. *See also* Joint Applicants Post-December 2019 Hearing Brief on the Join Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032, filed December 20, 2019 at 30 "the combined network will… nearly *triple* 5G monthly capacity by 2024 when compared to the combined 5G capacities of the standalone networks."

The Commission should hold New T-Mobile accountable to deliver on its promise to Californians.

Joint Applicants admit that the references to achieving 5G wireless service coverage at speeds of 300 Mbps by 2024 were included in their own testimony which included specific charts and claims of 5G deployment by 2021 and 2024. Despite this, Joint Applicants now claim that their witnesses actually meant time periods of three years and six years after closing of the merger.[43] Even considering these references as "illustrative," Joint Applicants had ample opportunity to clarify this position in rebuttal testimony, which was filed January 29, 2019, opening briefs, filed April 26, 2019, and supplemental testimony, which was filed November 7, 2019. Yet, the rebuttal testimony, opening brief, and supplemental testimony had tables and exhibits that show New T-Mobile would deliver the purported 5G wireless service coverage by 2024.[44] For example, Joint Applicants' witness Neville R. Ray claims in his supplemental testimony that "[i]n fact, the combined network enables *almost* 2X the 5G capacity by 2021 and *more than* 2X the 5G capacity by 2024, when compared to the combined stand-alone networks."[45] Even in November of 2019, when it was clear the merger would not close until 2020, Joint Applicants still represented that New T-Mobile would deliver its purported merger benefits by 2024.

Furthermore, Joint Applicants' request to delay deployment of 5G wireless service coverage at download speeds of 300 Mbps service to 93% of Californians will deepen the anti-consumer harms that D.20-04-008 sought to alleviate by adopting conditions distinct from the FCC's commitments and CETF MOU.[46] Joint Applicants repeatedly claimed that one of the key benefits of the merger was New T-Mobile's ability to deploy 5G faster

[43] Petition for Modification at 11.

[44] *See* Attachment D to Jt Appl.-3, Rebuttal Testimony of Neville R. Ray which provides Comparisons of Coverage by 2021 and 2024. *See also* Jt. Appl.-28C, Supplemental Testimony of Neville R. Ray at 12.

[45] Jt. Appl.-28C, Supplemental Testimony of Neville R. Ray at 21:22-24.

[46] D.20-04-008 at 37.

than either standalone company.[47] The Commission should be concerned with the Joint Applicants' request to delay one of the claimed key benefits of the merger, especially considering that standalone Sprint and T-Mobile were providing average download speeds in excess of 300 Mbps in cities where the companies had already deployed 5G.[48] The Commission should maintain the 2024 target year for Joint Applicants to provide 300 Mbps service to hold Joint Applicants accountable to deliver on the promises made to obtain merger approval.

F. The Commission Should Retain the Mandate for New T-Mobile to Create 1,000 New Jobs.

The Joint Applicants requested that OP 25 should be modified to remove the requirement to create 1,000 new jobs in California.[49] The Joint Applicants incorrectly contend that the Commission does not have authority to impose job creation requirements on utilities.[50] Joint Applicants also state that the requirement is burdensome in light of the Coronavirus Disease 2019 (COVID-19) pandemic.[51] While COVID-19 is undoubtedly an unprecedented challenge for all Americans, COVID-19 is not a "new" circumstance or a material change in circumstances since D.20-04-008 was issued.[52] In fact, Joint Applicants were clearly aware of the impacts of COVID-19 before opening comments were filed on the PD. The Commission should reject Joint Applicants' attempts to relitigate D.20-04-008 and keep the condition to add 1,000 new jobs.

Furthermore, on March 31, 2020, Joint Applicants filed a letter which relied on COVID-19 to attempt to justify merging prior to the Commission's vote on the PD. The Joint Applicants claimed that the financial uncertainty COVID-19 created necessitated

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[47] Jt Appl.-3 at 7. Mr. Ray claims that "…neither [Sprint's or T-Mobile's] 5G network will deliver anything close to what the combined company's 5G will deliver… and certainly not in any timeframe close to that which New T-Mobile's network will be deployed."

[48] Pub Adv 20, Reply Testimony of Cameron Reed at 10:1-9.

[49] Petition for Modification at 14.

[50] Petition for Modification at 14-15.

[51] Petition for Modification at 14-15.

[52] Petition for Modification at 15-16.

this premature closing of the merger.[53] The Joint Applicants' claims that COVID-19 warranted closing the merger because of "turmoil in the financial markets," demonstrates that Joint Applicants, and the Commission, were well aware of the impact of COVID-19 prior to the approval of the Final Decision.[54] Despite this, Joint Applicants' opening comments on the PD filed the next day on April 1, 2020 did not mention COVID-19 when they argued why OPs 25 and 26 should be modified to remove the requirement to add 1,000 new jobs.[55] Instead, Joint Applicants incorrectly argued that the Commission does not have jurisdiction to require T-Mobile to create new jobs.[56] The PFM repeats these same jurisdictional arguments and adds on an argument about the potential burdens caused by COVID-19 which should have been raised, if at all, in an application for rehearing.[57] Joint Applicants' failure to address COVID-19 in opening comments on the PD does not mean that COVID-19 is a new material fact. The Commission appropriately rejected Joint Applicant's jurisdictional arguments in their opening comments and should similarly reject Joint Applicants' attempt to relitigate the issue in the PFM.

Moreover, the jobs commitment outlined in OP 25 and 26 is for a three-year period after the merger closes.[58] Even considering potential challenges posed by COVID-19, which Joint Applicants offer no specific examples of,[59] Joint Applicants have ample time to construct and staff the customer experience center mandated by OP 26, among other avenues promised by the Joint Applicants, such as opening new stores in rural California, to meet the 1,000 new job condition. Joint Applicants claimed that the

[53] March 31, 2020 T-Mobile Letter to Commission Rechtschaffen and Administrative Law Judge Bemesderfer at 1.

[54] March 31, 2020 T-Mobile Letter to Commission Rechtschaffen and Administrative Law Judge Bemesderfer at 2.

[55] Joint Applicants Opening Comments on Proposed Decision, Filed April 1, 2020 at 17-18.

[56] Joint Applicants Opening Comments on Proposed Decision at 17.

[57] Petition for Modification at 14-15.

[58] D.20-04-008 at 57.

[59] Petition for Modification at 14-16.

merger would produce new jobs and should be held accountable to such.[60] The Commission should reject the PFM and require New T-Mobile to create 1,000 new jobs.

G. CalSPEED is Appropriate for Verifying Joint Applicant's Compliance with the Mobile Broadband Deployment Conditions.

Joint Applicants claim that the FCC's drive tests will verify compliance with the merger conditions. Joint Applicants further claim that the required CalSPEED testing is unnecessary, duplicative, and would cause regulatory uncertainty.[61] Joint Applicants are incorrect in asserting that CalSPEED should not be used for verifying California specific merger conditions. CalSPEED was developed by the Commission with a specific focus on testing in California. Further, contrary to Joint Applicants' assertions otherwise, CalSPEED testing requirements are supported by the record. As such, the Commission should keep the CalSPEED reporting requirements.

First, using CalSPEED provides the Commission with more regulatory certainty, not less. The Commission has a history of using CalSPEED to evaluate mobile broadband speeds and has published ten mobile broadband reports on its website.[62] CalSPEED is a more appropriate verification tool for California specific merger conditions than the FCC's national drive tests or the third-party testing outlined in the CETF MOU. The Commission should not rely on national FCC drive tests to verify California specific merger conditions and should use CalSPEED.

Second, D.20-04-008 noted that that the Commission must "carefully evaluate the proposed transaction with an eye to its specific impacts in California."[63] With that California specific focus, D.20-04-008 concluded that "not withstanding the presumptively beneficial effects of implementing… the FCC commitments, and CETF

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[60] Jt Appl.-2 Rebuttal Testimony of G. Michael Sievert at 36:1-9, 38:6-8.

[61] Petition for Modification at 16.

[62] The Commission has published five years of biannual CalSPEED reports https://www.cpuc.ca.gov/General.aspx?id=1778

[63] D.20-04-008 at 37.

and NDC MOUs, we believe that additional conditions specific to California are needed…"[64] The Commission was clear that the conditions outlined in OP 4 are different from commitments that Joint Applicants made to the FCC, being focused solely on California. It is reasonable for the Commission to use a testing methodology it developed, which is specific to California, to verify compliance with conditions that are specific to California. Furthermore, the Commission can use previous CalSPEED tests of the T-Mobile and Sprint networks to evaluate the improvements of New T-Mobile's network following the merger. D.20-04-008 also orders an independent compliance monitor that would be distinct from the FCC's enforcement mechanism.[65] Therefore, it is appropriate for the Commission to rely on its own CalSPEED testing to verify Joint Applicants' compliance with D.20-04-008.

Furthermore, the Joint Applicants' claim that the record's only reference to CalSPEED is a single conversation during hearings is incorrect.[66] In opening testimony Cal Advocates discussed and presented previous CalSPEED reports to evaluate Joint Applicants' service quality.[67] Specifically, Cal Advocates' testimony compared Joint Applicants' service quality both to each other and to their competitors.[68] Having analyzed the CalSPEED data, Cal Advocates recommended that the Commission continue to monitor the service quality offered by wireless cell service providers,[69] and ensure that Joint Applicants deliver the speeds promised as merger benefits.[70] The Commission's use of CalSPEED testing to monitor New T-Mobile's compliance with

[64] D.20-04-008 at 41.

[65] D.20-04-008 at 41.

[66] Petition for Modification at 17, Footnote 47.

[67] Exhibit Pub Adv-06 at 16-17, "Data speeds and latency are two important factors for determining wireless service quality" and "The Commission gathers data on the mobile communications market through its CalSPEED app."

[68] Exhibit Pub Adv-06 at 16-18, Figure 5, Figure 6, and Table 1.

[69] Exhibit Pub Adv-06 at 33:27-30.

[70] Exhibit Pub Adv-05 at 22:16-19.

merger conditions is fully supported by the record, reasonable, and necessary. The Commission should retain the CalSPEED testing requirement.

IV. CONCLUSION

For the reasons stated herein, the Commission should deny the Joint Applicants' PFM.[71]

Respectfully submitted,

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July 22, 2020

[71] Pursuant to Rule 1.8(d), Cal Advocates is authorized to sign on behalf of TURN.