BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).	Application 18-07-011 (Filed July 13, 2018)
In the Matter of the Joint Application of Sprint Spectrum L.P. (U3062C), and Virgin Mobile USA L.P. (U4327C) and T-Mobile USA, Inc., a Delaware Corporation, for Review of Wireless Transfer Notification per Commission Decision 95-10-032.	Application 18-07-012 (Filed July 13, 2018)

REPLY BRIEF OF THE UTILITY REFORM NETWORK

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Dated: May 10, 2019

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I. INTRODUCTION

Pursuant to the Scoping Memo issued on October 4, 2018 and subsequent ALJ Ruling issued on March 25, 2019, The Utility Reform Network (TURN) hereby files this Reply Brief. TURN continues to urge the Commission to reject this merger. Opening briefs demonstrate that the harms from this transaction will outweigh the promises of merger benefits, thus preventing this Commission from finding that this transaction is in the public interest for California consumers.

Joint Applicants emphasize the technical benefits of combining the two networks, including promises of spectral efficiencies, multiplicative effects of capacity gains, and operational cost savings.[1] These claims are not disputed, as they merely describe basic principles of electrical and network engineering resulting from the combination of two large networks with diverse spectrum holdings. As Public Advocates notes, the combination of any two large networks offering similar services would have similar affects.[2] However, Joint Applicants fail to satisfy their statutory burden to demonstrate that the technical results of this spectrum consolidation and predicted cost savings will translate into direct benefits for ratepayers and allow the Commission to find that this transaction is in the public interest. For example, Joint Applicants' brief fails to provide sufficient evidence to answer these questions:

- How will the "excess capacity" temporarily resulting from the merger motivate New T-Mobile to pass through these benefits in the form of lower prices and increased service quality in the long term, when there will be fewer facilities-based competitors?[3]

[1] Joint Applicants Opening Brief at p. 18-19.
[2] Public Advocates Opening Brief at p. 34-35.
[3] Joint Applicants Opening Brief at p. 18-19; Public Advocates Opening Brief at p. 8, 15, 20.

- How will the companies' stated goal of competing with AT&T, Verizon, and the cable industry provide motivation for New T-Mobile to continue its focus on pre-paid customers and low-income communities, especially when these larger competitors do not focus their own efforts in these markets?[4]
- How will the loss of a facilities-based competitor, reduction of cell towers from the two separate networks, and the stated intentions to compete in post-paid, high revenues plans combined with the difficult economics of rural facilities-based deployment caused by weather, topography and lower population density,[5] allow New T-Mobile to profitably *increase* its presence in these areas with "deep and broad" 5G speeds only two years after the transaction closes?[6]
- How will the combination of two nationwide, facilities-based competitors that clearly compete with each other[7] result in "no net job losses," much less an increase in jobs in California?[8]
- How will the transaction result in merger savings, billions of dollars of investment, no job losses, lower bills, improved coverage with 5G speeds to significant percentages of California, better community outreach and low income plans, and increase emergency response capabilities, all within two to four years, while still requiring the company to touch every pole with new equipment, decommission poles, add facilities and poles, close stores, open service centers,

[4] Public Advocates Opening Brief at p. 24-27; CWA Opening Brief at p. 14, 15-16, 44.
[5] Public Advocates Opening Brief at p. 37; TR 306:25-307:3, 309:7-17.
[6] Public Advocates Opening Brief at p. 22; Public Advocates Opening Brief, Attachment A: Supplemental Declaration of Lee L. Selwyn, at ¶ 41, 50-57; Public Advocates Opening Brief, Attachment B: Supplemental Declaration of Mr. Cameron Reed at ¶¶ 66-70; CWA Opening Brief, p. 45-46.
[7] CWA Opening Brief at p. 13-19.
[8] CWA Opening Brief at p. 24.

deploy in-home broadband, compete with the two largest post-paid companies, continue wholesale services and still remain the fun-loving, un-carrier, market disrupter that both companies are today?

Other parties to the proceeding, each representing different stakeholders in California, also urge the Commission to deny the Joint Applicants' requested merger transaction and they each demonstrate that the Joint Applicants have not met their burden under Section 854 to demonstrate that this transaction is in the public interest.

Public Advocates sets out a comprehensive and detailed case exposing the weaknesses in the Joint Applicants' description of the merger benefits. Public Advocates emphasizes the significance of the loss of a major facilities-based competitor in California and the resulting further consolidation in the industry to then question almost every merger benefit proposed by the Joint Applicants.[9] This industry consolidation cannot be mitigated by the companies' claims of lower marginal costs, excess capacity and spectral efficiencies, but the record shows that it will instead lead to less competitive pressure and, therefore, less innovation, higher prices, and poor customer service.[10] Public Advocates also notes that claimed commitments to rural and low-income customers do not comport with basic economic principles and should also be dismissed.[11]

The Communications Workers of America District 9 ("CWA") argues that the resulting transaction will "disproportionately impact low- and moderate- income consumers" and result in job losses in California.[12] CWA also refutes many of the purported merger benefits by demonstrating, like Public Advocates, that consumers will enjoy improved 5G broadband and

[9] Public Advocates Opening Brief at p. 1
[10] Public Advocates Opening Brief at p. 8, 13, 17, 20.
[11] Public Advocates Opening Brief at p. 24-28, 45-46.
[12] CWA Opening Brief at p. 2.

expanded coverage without the merger and the harmful increased concentration in the market that this transaction will bring.[13]

Greenlining focused on the Joint Applicants' diversity and inclusion commitments, arguing that they are so vague as to be illusory, are non-binding and do not benefit the public interest.[14] Greenlining notes that T-Mobile has acted like a company that does not take diversity and inclusion seriously by, for example, failing to put forth a witness who was knowledgeable about company's current and future diversity commitments.[15] T-Mobile's commitments are either aspirational or set goals that are actually lower than goals set in 2017 or goals that T-Mobile has already achieved.[16] Thus they cannot be construed as beneficial to the public interest.

DISH Network Corporation ("DISH") argues that the merger would result in significantly increased market concentration and that anti-trust regulators from around the world have consistently blocked four-to-three mergers in the wireless telecom market, and such mergers have been frowned upon in the U.S.[17] DISH argues that the merger cannot be deemed in the public interest because it would harm California customers by reducing the national broadband market to three carriers, leading to excessive concentration and price increases. The benefits are illusory and do not outweigh the harms.[18]

As discussed below, and in TURN's Opening Brief, Joint Consumers urge the Commission to reject this transaction pursuant to Section 854. In the alternative, if the Commission finds that this transaction may satisfy elements of Section 854, then it must also

[13] Id.
[14] Greenlining Opening Brief at pp. 5-12.
[15] Greenlining Opening Brief at p. 5.
[16] Greenlining Opening Brief at pp. 5-12.
[17] DISH Opening Brief at pp. 2-10.
[18] DISH Opening Brief at pp. 30-41.

consider and impose the conditions discussed on the record in this proceeding including in TURN's and Public Advocates' opening briefs.

II. STANDARD OF REVIEW

A. Commission Authority

Parties agree that under Public Utilities Code Section 854, Joint Applicants have the burden of proving that the transaction is in the public interest, and the requirements of the statute are met by a preponderance of the evidence.[19]

This transaction will impact millions of California consumers and the Commission's review of the transaction is crucial to ensuring that California ratepayers are not harmed by the combination of these two nationwide facilities-based competitors. Although the Commission has discretion regarding how to approach its review of this transaction, ultimately, it must meet its statutory mandate under Section 854. If the Commission finds that Joint Applicants have not met their burden to demonstrate that the benefits of this transaction outweigh the harms, this Commission can deny the merger or can consider "other reasonable options" to mitigating harms and ensuring ratepayer benefits by imposing specific conditions on the transaction.[20]

As TURN describes in its opening brief, neither federal preemption or Commission precedent prevent this Commission from exercising its statutory mandate to deny the merger or, in the alternative, to impose specific conditions on the merger.[21] Joint Applicants selectively cite

[19] Public Advocates Opening Brief at p. 3; CWA Opening Brief at p. 2-3; TURN Opening Brief at p. 2-3. Joint Applicants Opening Brief at p. 14 (claiming that its wireline application satisfies the "well-established standard under Section 854(a)"). Although the ALJ consolidated the Joint Applicants' wireline and wireless applications, Joint Applicants filed separate opening briefs for each application. TURN files this single reply brief in response to both of those briefs. All references to the Joint Applicants' Opening Brief refers to its wireless application brief unless otherwise noted.

[20] PU Code § 854(d); In addition to its own review, the Commission must request an advisory opinion from the State Attorney General's office regarding the impact of the transaction on competition and any mitigation measures that could be adopted to address those impacts, §854(b)(3).

[21] TURN Opening Brief at p. 4.

to the Commission's 1995 decision adopting a general policy of forbearance from merger reviews for wireless transactions as support for their claim that the Commission has limited authority to review the wireless elements of this transaction.[22] Yet, Joint Applicants do not discuss the Commission's rationale which rested on its finding that, *at that time,* standing reviews were unnecessary, and perhaps even harmful to, the potential for the development of competition in a nascent cellular market that existed in 1995 and that any wireless merger would likely only have a limited impact on those few early-adopter consumers that were relying on wireless technology.[23]

While it is true that the Commission generally has exercised its policy of forbearance over review of wireless mergers, it is also the case that the Commission has explicitly reserved its authority and reaffirmed its discretion to review these mergers where it finds it "necessary in the public interest."[24] Far from being unfair or inconsistent with Commission precedent, as Joint Applicants claim,[25] the Commission's decision to conduct a detailed review and merger approval process for this significant wireless transaction evolves directly from the rationale in 1995 and follows market developments and rapid consolidation in the industry.

In their opening brief, Joint Applicants discuss the FCC's ruling in its merger docket as if it has already happened, which it has not, to argue that the Commission is preempted from "second guessing" any federal approval of this merger.[26] Further, the Joint Applicants' citations

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[22] Joint Applicants Opening Brief at p. 14-15, footnotes 27 and 28, citing and quoting Ordering Paragraph 3 or D.95-10-032 but omitting the exceptions to the forbearance adopted by the Commission. These exceptions allow the Commission to require prior notice and, as Joint Applicants fail to acknowledge, a formal application in three possible scenarios, one of which is applicable here: "any proposed transaction involving a change in ownership of the CMRS provider in which an owner or group of owners acquire a larger ownership share than the largest current owner."

[23] TURN Opening Brief at p. 4, citing D.95-10-032.

[24] Id.

[25] Joint Applicants Opening Brief at p. 14.

[26] Joint Applicants Opening Brief at p. 15.

to cases that discuss federal preemption over market entry and rates do not support their argument that the Commission's jurisdiction over transfers of control of wireless companies is so limited. As Public Advocates notes, the reduction in facilities-based competition resulting from this merger, and the resulting risk to consumers from a failure of competitive forces, should call into question any assumption that forbearance from regulation is appropriate here.[27] The Commission should move forward to protect California ratepayers by conducting a meaningful review of the merger and, if it finds that the transaction is not in the public interest, denying the merger or, in the alternative attempting to mitigate harms by imposing conditions on the terms and conditions of the merger. Denying the merger, or imposing meaningful conditions, does not result in a barrier to "market entry," as each of these companies already serves millions of California customers with their extensive existing networks and the companies will continue to serve these customers and compete in the marketplace even if the transaction does not proceed.[28] Moreover, as the Commission found in 1995, "the legislative history of the Budget Act [imposing limits on state regulation of market entry] explicitly includes transfers of ownership as an example of the 'other terms and conditions' over which states will retain the authority to regulate."[29] Further, numerous federal courts have found that when states place tailored and meaningful conditions on terms and conditions of wireless service in an attempt to mitigate harms to state consumers, whether or not related to a merger transaction, those conditions do not

[27] Public Advocates Opening Brief at p. 5.
[28] TR 635:14-17, 649:8-22, 659:17-23 (Mr. Dow Draper says, Sprint "will be here to compete whether we merge with T-Mobile or not." He also emphasized that Sprint is a stable company and not a failing firm and will be able to remain competitive).
[29] D.95-10-032 at p. 15; The Commission further notes that the regulation of merger transactions is "clearly" not preempted if those transactions are made in the ongoing course of business and where there is no change in boundaries, much like the parent level transaction as described by the Joint Applicants here.

constitute either "market entry" or "rate regulation" as that term as been specifically interpreted.[30]

B. Commission Procedure

Public Advocates also notes that Joint Applicants have the burden of proof to demonstrate the benefits of the transaction through their own affirmative case.[31] Instead, however, Joint Applicants were allowed to wait to make their case in their rebuttal testimony, requiring a delay in the schedule to accommodate additional post-hearing testimony and discovery.[32] And now, even in briefing, the Joint Applicants continue to add material to the record in an attempt to shore up the transaction and meet the statutory and Commission requirements.[33] TURN supports the Public Advocates motion to strike the Joint Applicants attempt to bolster its case by making new commitments to build a customer service center in

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[30] While Joint Applicants include their own string cites to cases where state regulation was limited, there are many cases where federal courts have found Congressional intent to give states broad authority and limited preemption over consumer protection, service quality and entry regulations. *In the Matter of Wireless Consumers Alliance, Inc.* (2000) 15 FCC Rcd 17021; *Spielholz v. Superior Court* (2001) 86 Cal.App.4th 1366; *Communications Telesystems Intern. v. CPUC* (9th Cir. 1999) 196 F.3d 1011, 1017; *Fedor v. Cingular Wireless* (7th Cir. 2004) 355 F.3d 1069, 1074; *Farina v. Nokia et al.* (E.D. Penn. 2008) 578 F. Supp.2d 740, 761; *Murray v. Motorola* (D.C. Cir. 2009) 982 A.2d 764, 775*; Nat'l Ass'n of State Utility Consumer Advocates v. FCC* (11th Cir. 2006) 457 F.3d 1238, cert. den. *Sprint Nextel Corp. v. Nat'l Ass'n of State Util. Consumer Advocates*, 552 US 1165, 128 S. Ct. 1119, (2008); *In the Matter of Petition of the Connecticut Dep't of Pub. Util. Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers*, PR Docket No. 94-106, FCC 95-199, (1995) 10 FCC Rcd 7025, para. 82 ("Nothing in the [Budget Act] indicates that Congress intended to circumscribe a state's traditional authority to monitor commercial activities within its borders…we believe [a state] retains whatever authority it possess under state law to monitor the structure, conduct and performance of CMRS providers in that state.").
And further, while Joint Applicants cite conflict preemption principles to support their claim of broad preemption in this area, a countervailing consideration is the "presumption against preemption" that puts the burden on those parties claiming preemption and gives the Commission authority to move forward in the absence of a clear intent to preempt. *Farina v. Nokia Inc*. (3d Cir 2010) 625 F.3d 97, 116 (citing *Medtronic 518 U.S. 470, 485; Wyeth 555 U.S. 555, n. 3) (*Courts look for a "clear and manifest" Congressional purpose to preempt).

[31] Public Advocates Opening Brief at p. 3-4.

[32] Public Advocates Opening Brief at p. 4.

[33] Motion of the Public Advocates to Strike Portions of Joint Applicants' Opening Brief and Confidential Attachment to Joint Applicants' Ex Parte, filed May 2, 2019; Motion of the Utility Reform Network and the Greenlining Institute to Strike Portions of Joint Applicants' Opening Brief and Request for Expedited Review, filed May 3, 2019.

Fresno.[34] Public Advocates argues that allowing the Joint Applicants to rely on this call center for the first time in their opening brief prejudices parties that had no opportunity to analyze or conduct cross examination regarding the truth of the claim.[35] TURN and the Greenlining Institute also filed a motion to strike parts of the Joint Applicants' opening brief that references commitments from a memorandum of understanding (MOU) between the California Emerging Technologies Fund (CETF) and the Joint Applicants. TURN and Greenlining arguing that because these were new commitments introduced after hearings had concluded, parties had no opportunity to analyze or cross examine the commitments or factual assertions thereby prejudicing the parties.[36] The ALJ issued a Ruling approving the CETF/Joint Applicants Motion to allow the MOU into the record of the proceeding.[37] Some of the commitments made by Joint Applicants for the first time in their brief may benefit some ratepayers and may mitigate some harms from the merger, but these promises do not go far enough to allow this Commission to find the transaction in the Public Interest under Section 854. Additionally, allowing Joint Applicants to present these commitments without complying with the Commission's settlement process as described in Rule 12 of the Commission's Rules of Practice and Procedure, sets a dangerous precedent and prejudices parties to the proceeding because they cannot test factual claims and the veracity of the commitments themselves. TURN discusses CETF MOU commitments in the context of the Joint Applicants' opening brief below.

III. NETWORK BUILDOUT PROMISES ARE INCOMPLETE

[34] Public Advocates Motion to Strike at p. 2.
[35] Id.
[36] TURN and Greenlining Motion to Strike at p. 2.
[37] Administrative Law Judge's Ruling Granting the Joint Motion of Joint Applicants and CETF, May 8, 2019.

In its opening brief, TURN argues that the record does not support New T-Mobile's promises to expand network coverage, including claims of significant increases of speed and capacity throughout California.[38] Joint Applicants' opening brief continues to herald the impacts from the combination of complementary spectrum, but does not adequately demonstrate how the company will perform the work to build out the network to deliver these promised speeds and capacity, especially in rural areas, calling into question the timing and scope of many of their claimed merger benefits. Nor do Joint Applicants provide sufficient detail in testimony or briefing to determine whether the network investment promised for California[39] will be sufficient to implement these goals.

Joint Applicants' brief states that increased spectrum, more cell sites, and spectral efficiency are the key ingredients to the promised New T-Mobile 5G network.[40] But, just like a three-legged stool, Joint Applicants' failure to support its claims for additional cell sites, weakens the stability of the entire structure. Joint Applicants have provided only vague details regarding the capital investment, resources, and timing for the work on the ground necessary to deploy the cell sites that will deliver the spectrum benefits the merger promises.[41] The record demonstrates that work to combine the two networks requires significant investment of money, resources, and new equipment *on every pole in the network*[42] and that T-Mobile employees and independent contractors[43] will have to visit thousands of individual poles throughout California

[38] TURN Opening Brief at p. 29-30.
[39] Joint Applicants Opening Brief at p. 38; TURN acknowledges that Joint Applicants submit pages of attachments from its federal proceeding regarding the engineering modeling used to predict capacity, network design and sizing. Joint Applicants Opening Brief at p. 25-26, but TURN is unaware of witness testimony that links the lump sum investment dollars to the work required to carry out the network build modeled by the engineers.
[40] Joint Applicants Opening Brief at p. 18.
[41] Public Advocates Opening Brief at pp. 36, 42.
[42] TR 535:1-536:2l; Joint Applicants Opening Brief at p. 54; Public Advocates Opening Brief at p. 45 (noting the additional investment and effort required to build in rural areas).
[43] TR 311:27-312:4, 357:4-23; CWA Opening Brief at p. 24 (describing the difference between direct and indirect employees).

to deploy specific pieces of equipment on each pole and decommission other poles necessary to realize claimed operational cost savings.[44]

While Joint Applicants do not address this feet-on-the-ground work, their opening brief continues to make optimistic promises that New T-Mobile will "*almost immediately* increase[ ] the amount of spectrum deployed per site…" after the merger.[45] They also claim that they will have access to new sites "more rapidly" because some of them are already permitted as current Sprint cell sites, ignoring that work must still be done on these existing sites.[46] They repeat their claims that they can deploy necessary spectrum "quickly and cheaply" and suggest that there will be "cost savings" in this process because they will not have to build out new poles.[47] They also argue that the merger will allow them to "leapfrog" over AT&T and Verizon in 5G deployment because they can create "cell splits *nearly immediately* in this fashion, in many cases without incurring substantial new costs or delays."[48] Moreover, their presentation of the brightly colored maps that were the subject of much discussion during the hearings provides a stark depiction of just how much work would need to be done to every pole between L.A. and Sacramento, for example, to deliver the promised speed and capacity increases by 2021.[49]

The success of this merger and realization of promised benefits is, quite literally, resting on the availability of adequate pole access and related capital investment. It is, therefore, notable that the company refuses to acknowledge California's complicated and detailed pole attachment process where, even for existing poles, companies are required to coordinate with pole owners

[44] TR 311:27-312:4, 357:4-23, 535:1-536:2l; Joint Applicants Opening Brief at p. 54.
[45] Joint Applicants Opening Brief at p. 21.
[46] Joint Applicants Opening Brief at p. 21; During cross examination there was confusion regarding any commitments to deploy new pole sites that will expand coverage beyond the existing footprint of both companies and it seemed that the exact number and location of those new sites, if any, has yet to be determined. TR. 537:6-540:8.
[47] Joint Applicants Opening Brief at p. 54.
[48] Joint Applicants Opening Brief at p. 68.
[49] TR Vol. 5, 540:9-17; Joint Applicants Opening Brief at p. 33-35.

and pole sitters, conduct technical analysis of pole loading, and negotiate changes to the configuration of equipment on poles.[50] On the stand, both Mr. Sievert and Mr. Ray had to admit to the complicated and expensive processes for building new pole sites, adding or exchanging equipment on existing sites, and decommissioning sites, but neither of them could explain how it would be possible to navigate this process in the accelerated time frame of the merger commitments.[51]

Moreover, Joint Applicants do not provide a sufficient explanation of what are otherwise lump sum figures of billions of dollars cited by the Joint Applicants to support this network buildout over six years while also providing the "immediate" benefits claimed by the company.[52] When pushed, Joint Applicants could not provide clear commitments for new poles and infrastructure beyond Sprint's existing poles,[53] even in rural areas where the Joint Applicants are claiming much of the merger benefits will be realized through expanded coverage.[54]

Public Advocates' opening brief also demonstrates that not only is the promised capital investment less than what the stand alone companies would have ultimately invested in CA without the merger, but that the promises of network expansion and increased coverage are not supported in the record.[55] Public Advocates notes that profit opportunities "have tended to be

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[50] See, generally, Commission General Order 95; This process is different than the process to deploy new pole infrastructure that Mr. Ray acknowledges is also time consuming and costly. TR Vol. 5, 542:1-545:11; Jt Appl. Exh. 3 (Ray) at p. 18:6-19:12.

[51] TR Vol. 4, 290:16-291:16 (Sievert talking about the high cost of labor and years it will take to "decommission thousands of towers" and "climb those towers and reposition those radios"); TR Vol. 5, p. 542:8-545:11 (Mr. Ray talking about how he has worked on many projects dealing with the diverse and complicated zoning and jurisdictional rules around pole attachments); See also, Jt Appl. Exh. 3 (Ray) at p. 18:6-19:12.

[52] Joint Applicants Opening Brief at p. 5; 38 (describing CETF MOU commitments).

[53] TR Vol. 4, 307:25-308:7 (Mr. Sievert claiming that the plan "fully funds thousands of new sites across the country…primarily in rural areas.") yet the opening brief is silent on this commitment and, see, TR Vol 5, p. 538:23-27 (When asked, Mr. Ray could not identify the areas in California where the company plans to deploy new cell sites to further expand coverage because "those locations have not been…they have not been identified yet.").

[54] TR Vol. 5, 470:22-471:2. (Nor could Mr. Ray identify where many of the decommissioned cell towers will be located and whether any of those will be in rural areas where network coverage is already sparse.) TR Vol. 5, 470:13-472:15.

[55] Public Advocates Opening Brief at pp. 35-36, 45.

low in rural areas due to the high costs and relatively low potential revenues from small populations"[56] and that Joint Applicants provide no evidence regarding why or how this merger will allow New T-Mobile to overcome these traditional barriers to rural deployment, including complicated and expensive network buildout. Indeed, Joint Applicant's witness Ray agrees that rural deployment has unique considerations and agrees that New T-Mobile will be "up against the tough economics of… material terrain difficulties and major unpopulated areas."[57]

TURN urges the Commission to require the Joint Applicants to commit to certain build out and equipment deployment schedules and investments with an emphasis on specific rural areas and to coordinate that schedule more closely with promised coverage, speed, and capacity benchmarks to ensure that this merger benefit is properly implemented. The CETF MOU can provide a starting point for this exercise, but this agreement gives New T-Mobile six to seven years to complete 90% of its promised build out with a promise to "prioritize" effort in a list of ten, to be determined, unserved and underserved areas of California.[58] This, along with numerous caveats, exceptions and "out" clauses, suggest that the CETF agreement only goes so far and is quite different than, as discussed above, the commitments for "immediately" faster speeds and capacity and maps that suggested by 2021 significant improvements in coverage. If the numerous and seemingly conflicting promises cannot be sorted out to determine whether there are actual merger benefits in the public interest, then TURN urges the Commission to dismiss this promise of network expansion.

[56] Public Advocates Opening Brief at pp. 37, 45.
[57] Public Advocates at p. 43, citing TR 463:8-14; During cross examination, it was also clear that the Joint Applicants promises, and Mr. Ray's testimony, attempts to conflate rural and urban, as well as outdoor and indoor, network expansion and service offering promises. When analyzed more closely it is clear that the companies promises are much different in these more difficult to reach places. TR Vol. 5, p. 580:22-583:17; Jt. Appl. Exh. 3 (Ray) at p. 33-34 (coverage and speed generally) compared to p. 39-40 (coverage and speed indoor vs. outdoor in rural areas).
[58] CETF MOU at p. 10-11.

IV. LOW INCOME

Joint Applicants claim that low income consumers will "benefit the most" from this merger[59] and that New T-Mobile will be motivated to "take [low-income consumers'] needs and interests to heart in designing and pricing its services."[60] Yet, a closer examination of merger commitments, including new commitments appearing for the first time in opening briefs,[61] suggest that these are overstatements describing the possible benefits going to low income communities. CWA, Public Advocates, Greenlining, TURN, and DISH each expose the weaknesses in the Joint Applicants' showing of merger benefits generally, including those for low income customers.[62] Specifically, for low income and LifeLine customers, the Joint Applicants' commitments have been vague and do not sufficient mitigate the harm that will result from the loss of a significant facilities-based competitor in the prepaid market.[63]

A. Branding

As a general commitment to low income customers, New T-Mobile pledges to retain affiliate brand names and identities such as Boost, Assurance, and Metro that each currently market intensively to low income customers.[64] But, keeping each affiliate in name only will not ensure post-merger robust competition among these currently competitive brands. Indeed, despite the companies pledge not to change the business models of these brands, Joint Applicants also have stated plans to reposition its Boost brand, and those plans are not the same as plans for

[59] Joint Applicants Opening Brief at p. 5.
[60] Joint Applicants Opening Brief at p. 73.
[61] Joint Applicants Opening Brief at p. 5; See also, TURN and Greenlining Motion to Strike, May 3, 2019.
[62] Public Advocates Opening Brief at p. 14, 28 (higher absolute prices will hurt low income customers; loss of competitor in prepaid space will hurt MVNOs offering services to low income customers); CWA Opening Brief at p. 3, 35 (higher prices), p. 45 (limited incremental benefit of network expansion); Greenlining Opening Brief at 5 (diversity commitments are illusory); DISH Opening Brief at p. 30 (higher prices).
[63] Public Advocates Opening Brief at p. 24; CWA Opening Brief at p. 12, 34.
[64] TR Vol. 4, 370:14-20 (Sievert committing to not changing Boost or Metro brands in any way); Joint Applicants Opening Brief at p. 103, commits to retaining its prepaid brands and not closing any Metro or Boost stores which it states will benefit low income communities served by many of these stores.

its Metro brand,[65] suggesting limited post-merger competition between these two affiliates despite their current competitive activities. Moreover, while New T-Mobile claims that excess capacity after build out will motivate it to keep prices low, thereby benefitting low income customers, Joint Applicants have not provided sufficient evidence to support this claim in the face of generally accepted principles of economics that a loss of competitor will generally not result in lower prices.[66]

B. LifeLine

TURN supports Joint Applicants' commitment to continue to offer LifeLine "indefinitely" and, pursuant to the CETF MOU, expand service offerings beyond Sprint territory to customers in T-Mobile's current territory through the Assurance brand.[67] But, this commitment does not go far enough and is full of loopholes and confusion that the Commission must clarify or reject as not in the public interest. Most fundamentally, it is not clear from the Joint Applicants' opening brief, the CETF MOU, or cross examination whether New T-Mobile will offer, or even market, LifeLine directly, or instead, limit outreach, marketing and participation in LifeLine to its affiliate, Assurance Wireless.[68] Second, the promise to offer LifeLine at "rates, terms and conditions no less favorable to eligible consumers than those offered under the Virgin/Assurance brand as of the date of close of the Transaction" must specify current offerings by Virgin/Assurance as part of the California LifeLine program and not the

[65] Joint Applicants Opening Brief at p. 57.
[66] DISH Opening Brief at p. 31 (even if all other merger benefits materialize, prices will still increase); Public Advocates Opening Brief at pp. 13-17; CWA Opening Brief at p. 34.
[67] Joint Applicants Opening Brief at p. 81-84; CETF MOU at pp. 4-5.
[68] TR Vol. 4, 316:5-316:24 (Mr. Sievert noting that he "hasn't gotten that far" when asked if New T-Mobile will offer LifeLine or a subsidiary.); CETF MOU at p. 4 (seems to suggest New T-Mobile will also offer LifeLine in addition to Assurance) and see p. 5 (referencing Boost pilot program as possibly contributing to low income adoption goals, but not committing to LifeLine). Joint Applicants Opening Brief, at p. 84, only makes reference to the "Assurance LifeLine program" as being offered in T-Mobile territory.

companies' federal program offerings.[69] Also, this commitment not only gives Sprint and Assurance the unfettered ability to change the terms of the LifeLine offering between now and the merger close date, subject only to protest of the advice letter that LifeLine providers must submit to staff, this commitment is inexplicably different than the commitment to freeze non-LifeLine plans as of February 2019, thus potentially causing confusion, giving Assurance too much discretion, and enabling discriminatory treatment of LifeLine customer pricing.

Another example of the weaknesses of these commitments comes from Joint Applicants' opening brief, citing to Mr. Sievert's testimony and linking T-Mobile's willingness to continue LifeLine with the claimed increased capacity that may come with the combination of the two networks.[70] As Public Advocates testifies, reliance on this excess capacity and related lower costs to motivate lower priced offerings, including LifeLine, is speculative at best and may be transitional and temporary as 5G grows to fill that available capacity on the network.[71] So while the Joint Applicants' commitment is to offer LifeLine "indefinitely," there is no discussion of what will happen to the LifeLine offering once the excess capacity is taken up by New T-Mobile customers using the "broad and deep" 5G as promised by this merger or once marginal cost savings from the merger are absorbed into New T-Mobile. This linkage between LifeLine and excess capacity, though subtle, is reinforced by a caveat to this commitment that it will be in place "at a minimum" until 2024.[72] It is likely no coincidence that the end of 2024 is the benchmark for completion of New T-Mobile's 5G network buildout and full implementation of

[69] CETF MOU at p. 4; Joint Applicants Opening Brief at p. 82.
[70] Joint Applicants Opening Brief at p. 82 (emphasis added), "As Mr. Sievert testified, with the *increased capacity unlocked* by the Transaction, retaining and growing LifeLine program customers is a sound business strategy for New T-Mobile."
[71] Public Advocates Opening Brief at p. 17 (arguing that reliance on "lower marginal costs" from excess capacity to motivate price decreases is speculative and wrong).
[72] Joint Applicants Opening Brief at p. 82. The company also caveats its commitment to say that it is subject to any "material changes" to the program, Joint Applicants Opening Brief at p. 82.

their commitments to 5G speeds and capacity.[73] The company should clarify that it is not the intent of New T-Mobile to limit its LifeLine commitment only to the availability of some unannounced threshold of available "excess" capacity and that LifeLine will no longer be offered when capacity on the network becomes more congested.

TURN also urges the Commission to find that the "good faith efforts" pledged by New T-Mobile to add 332,500 low income households to its customer base, which will then help it reach an aspirational "goal" of 675,000 low income customers over the course of five years is a conservative, vague, and limited commitment.[74] This commitment must be more aggressive to address the critical need for additional, robust, facilities-based LifeLine providers to capture the millions of low-income consumers in California that are eligible for LifeLine but not yet on the program. Neither the Joint Applicants' brief or the CETF MOU justify how this "best efforts" commitment will meet the public interest to mitigate the risks to low income Californians and LifeLine customers from the market consolidation resulting from this merger.

Weakening the commitment even further, the company appears to be planning to serve these additional customers through not only its participation in the LifeLine program but also, more generally, through a general commitment to serve a generic category of "low income customers" that will not participate in LifeLine but are not otherwise identified or defined.[75] Therefore, this commitment is not exclusive to the LifeLine program and can be satisfied by including customers that meet some vague standard of "low income" and not receiving the same

[73] See, for example Joint Applicants Opening Brief at p. 21-22 (cell site and spectral efficiency buildout benchmark by 2024); p. 88 (labor commitments until 2024).
[74] Joint Applicants Opening Brief at p. 82 (New T-Mobile will "strive" to add more LifeLine customers); CETF MOU at p. 5.
[75] Joint Applicants Opening Brief at p. 82; CETF MOU at p. 5.

discounts and benefits as LifeLine customers.[76] This also means that the related commitments to invest $5 mill in marketing and outreach and development of a strategic plan in coordination with CETF within six months of the close of the transaction are not specific to the LifeLine program and could be satisfied in any number of unspecified ways that may be difficult to track and monitor.[77]

Finally, what is glaringly absent from the Joint Applicants' commitments and the CETF MOU is a proposal to offer a low-income discounted rate for any of the promised 5G services or in-home broadband services discussed by the Joint Applicants.[78] Indeed, the commitments in the CETF MOU do not commit New T-Mobile to offer any specific speeds, much less 5G speeds of 100 or 300 Mbps for its LifeLine/Low Income discounted services or free 5G phones for those customers. Joint Applicants urge the Commission to find that their proposed in-home broadband services and wireless broadband will allow customers to substitute New T-Mobile 5G service for traditional wireline services, but have no proposal to offer a low income broadband offering beyond the data that will come with its existing LifeLine plans.[79] This is a telling omission that

[76] CETF MOU at p. 5, also referencing Boost Pilot approved by the Commission (D. 19-04-021) wherein Boost is committed to offer a maximum of 350,000 customers service at $20 a month but with no free phone and all LifeLine rules, processes and procedures waived.
[77] Joint Applicants Opening Brief at p. 83. The opening brief also makes reference to the recently approved pilot program in R.11-03-013 (D.19-04-021) involving Boost Mobile. TURN supported the Commission's efforts to implement a pilot program framework, but raised numerous concerns regarding the lack of oversight and exemptions from numerous program rules granted to Boost, that are also relevant to the commitments made by the Joint Applicants here to the extent the customers participating in the Boost pilot will "count" toward meeting the goal of participating customers under the CETF MOU. As part of this Boost pilot process, the Commission has agreed to spend $6 million for outreach to CARE customers, who are mostly eligible only for the Boost pilot. New T-Mobile is now committing an additional $5 million (or perhaps only $2.5 million) to promote LifeLine and enroll customers in these programs. The Commission must ensure that this money is spent to benefit low income consumers in California through tracking, reporting and auditing.
[78] TR 321:13-322:1 (Mr. Sievert stating that he doesn't know the answer and hasn't gotten that far when asked if they will offer a low-income rate for wireless broadband or in-home broadband services); The CETF MOU does not commit New T-Mobile to such an offering.
[79] Jt Appl. Exh. 2 (Sievert) at p. 31:22-33:9.

calls into question the commitment of New T-Mobile to share the merger benefits of its "broad and deep" 5G network with low income consumers.

Instead of meaningful discounts and commitments to extend the high speed 5G services to LifeLine customers, New T-Mobile commits to a one-time $36 million donation to support digital inclusion efforts, plus an additional $5 million in "promotion investment" over the course of the next five years. At least $30 million of this monetary commitment goes directly to CETF to be used for specific projects such as its School2Home program and, more generally, to carry out its core mission.[80] TURN acknowledges the generosity of this commitment and the potential for this money to benefit low income customers in California. However, there is absolutely no basis in the record to allow the Commission to conclude that this support for digital inclusion programs and, more generally, millions of dollars going to CETF's core mission is connected to this merger in any way or that it will have an impact on the public interest value of this transaction. While TURN acknowledges that CETF raised concerns in its testimony regarding digital divide disparities in California,[81] there is no evidence regarding the stand alone companies' commitment to this issue that existed prior to the merger and whether the agreed-upon disbursement of this funding is appropriately tailored and sufficient to mitigate any harms that may arise to these programs from the loss of a facilities based competitor and the shift in focus by T-Mobile to post-paid competitors AT&T And Verizon.

V. NETWORK RESILENCE COMMITMENTS DO NOT GO FAR ENOUGH

A. Network Backup Plans Do Not Address New Needs for Robust Power Capability

[80] Joint Applicants Opening Brief at pp. 97-98, citing CETF MOU at pp 7-8. It is unclear whether the CETF and National Diversity Coalition MOUs' commitments overlap. The NDC MOU also commits T-Mobile to develop a Community Wireless Initiative that relies on the same school-based programs as the CETF MOU. Joint Applicants Opening Brief at p. 101; Jt. Appl. Exh. 8 (Sylla Dixon) at Attachment B.
[81] See, generally, CETF Exh. 1 (McPeak) at pp. 5-7.

Joint Applicants claim that the merger would enhance network resiliency and disaster preparedness. They claim T-Mobile's commitment to maintain Sprint's existing portable generators, Cell on Wheels (COW) and Cell on Light Trucks (COLT) equipment and alternative backhaul via microwave or satellite will be used to expedite restoration of service when outages occur, thus enhancing resiliency.[82] Joint Applicants point to what they deem "robust" permanent back-up power throughout their standalone networks, emphasizing that all of T-Mobile's macro cell sites[83] have built-in battery backup,[84] and asserting that T-Mobile "has installed fiber backhaul into almost every T-Mobile cell site in California" and that as T-Mobile expands into rural and unserved areas, the fiber backhaul network in these areas will grow and become more redundant."[85]

Joint Applicants fail to address the crucial problem of ensuring that the New T-Mobile network would continue to function during long-term power outages, including multi-day outages resulting from de-energizing power lines to mitigate wildfire risk. As TURN pointed out in its opening brief, the back-up batteries located at cell sites provide power for, at most, a few hours,[86] whereas in a de-energization event, customers are warned that their power could be out for several days.[87]

T-Mobile claims that it intends to expand service to rural areas previously unserved by T-Mobile or Sprint, but T-Mobile's commitment to provide robust backup power to newly constructed cell sites in these areas is vague at best. T-Mobile would not commit to treating cell sites in newly served rural areas as "mission critical," (cell sites supported by more robust

[82] Joint Applicants Opening Brief at pp. 90-91.
[83] Generally, all cell sites are considered macro cell sites. TR Vol. 5, 553: 23-27 (Ray).
[84] Joint Applicants Opening Brief at p. 91.
[85] Joint Applicants Opening Brief at p. 92.
[86] TURN Opening Brief at p. 36.
[87] TURN Opening Brief at p. 40.

backup power such as standard generators) to ensure that isolated communities continue to receive service during significant outages.[88] Further, T-Mobile's witnesses were unable to confirm back-up power plans for newly served territory, and were unfamiliar with the terrain and roads in many of the rural service territories, information that is important when attempting to re-deploy portable generators brought in from other states.[89] Fiber backhaul requires backup power to function during a prolonged commercial power outage, and absent robust backup power will not provide the network resiliency that T-Mobile claims will occur due to the deployment of fiber.

B. The Memorandum of Understanding (MOU) between Joint Applicants and CETF Provides Benefits but Does Not Cure the Lack of Backup Power

The Joint Applicants-CETF MOU addresses two aspects of emergency preparedness: deployment of 5G connectivity to county fairgrounds, and support for first responders. Specifically, the MOU calls for deploying 5G to 10 county fairgrounds over the course of five years, with priority given to those rural fairgrounds most frequently used for staging support for emergency responses, except if such deployment requires additional cell site deployment beyond the New T-Mobile's planned buildout.[90] Further, the MOU stipulates that the New T-Mobile shall retain, and then expand by 50%, the number of Cells on Wheels (COWs) and Cells on Light Trucks (COLTS) that both companies currently maintain in California.[91]

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[88] TURN Opening Brief at p. 39.
[89] *Id.*
[90] CETF MOU at p. 12.
[91] MOU at p. 12-13. Mr. Ray has already committed to maintaining Sprint's current California inventory COWs and COLTs until network integration is complete because that equipment can't be used on New T-Mobile's network. TURN assumes this new CETF commitment requires New T-Mobile to purchase new equipment to meet the same "number" of COWs and COLTS the two companies have today in California. Moreover, TURN assumes this number is in addition to the portable generators discussed and additional equipment Mr. Ray described as being at the ready in other states. Jt. Appl. Exh. 3 (Ray) at p. 52:8-17.

While TURN supports both of these measures, they do not address the broader concern that the back-up power envisioned by T-Mobile is inadequate to ensure that the network continues to function during prolonged commercial power outages. As TURN pointed out in cross examination and our opening brief, T-Mobile's commitments are vague, its chief technology officer was unaware of the de-energization practices of investor-owned electric utilities, and the Joint Applicants have provided no information on plans to ensure that the combined network will have sufficient backup power to function during prolonged outages.[92]

VI. CONCLUSION

TURN urges the Commission to find that this transaction, as currently structured, is not in the public interest. The market cannot support the loss of a major facilities based competitor. Public safety, rural deployment, low income communities, prepaid innovations and industry wide pricing will all be negatively impacted by the merger of these two large and influential companies. As discussed above, to the extent the Commission finds that this transaction may meet detailed public interest standards, it must impose certain conditions on the merger transaction and the promises of New T-Mobile.

Dated: May 10, 2019

Respectfully submitted,

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[92] TURN Opening Brief at pp. 36-42.