

**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 Number 18-07-011

And Related Matter.

Application Number 18-07-012

**COMMENTS ON PROPOSED DECISION BY
CALIFORNIA EMERGING TECHNOLOGY FUND**

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Pursuant to Rule 14.3(a) of this Commission’s Rules of Practice and Procedure and the email ruling by the Assigned Administrative Law Judge (“ALJ”), dated March 24, 2020, allowing all parties to file 20 pages of comments “in view of the length and complexity of the Proposed Decision and the number of ordering paragraphs,” the California Emerging Technology Fund (“CETF”) hereby timely files its comments on the “Decision Granting Application and Approving Wireless Transfer Subject to Conditions,” mailed March 11, 2020 (“Proposed Decision” or “PD”) in the above-referenced consolidated proceedings. Established by this Commission, CETF is a non-profit statewide organization whose mission is to close the Digital Divide in California. CETF is a formal party to this proceeding.

I. Summary

CETF strongly agrees with the PD’s careful reasoning based on the record evidence and ultimate finding in Conclusion of Law 3: “The benefits of the Transaction. . . outweighs its detriments.” This corporate consolidation will help Californians who are on the wrong side of

the Digital Divide, both as to broadband infrastructure, discounted LifeLine offers that include broadband access and robust data plans, and affordable retail rate plans. In its consolidated applications, T-Mobile USA, Inc. (“T-Mobile” with the post-merger entity called “New T-Mobile”) has made a significant infrastructure pledge to California, promising that within five years it will bring next generation 5G wireless communications infrastructure to 99% of our state’s population. This major commitment greatly assists this state in achieving Digital Inclusion for our population, a statutory goal under Assembly Bill (“AB”) 1665.¹ In addition to this unprecedented wireless infrastructure commitment, New T-Mobile has pledged to offer low cost plans for all subscribers, not just LifeLine eligible subscribers.² These commitments coupled with other commitments negotiated in the MOU by CETF for improved broadband service at ten County fairgrounds, continuing low cost LifeLine plans with robust data plans, Digital Inclusion programs including school-based programs, emergency service support, and more – ensure this merger will benefit California consumers. CETF’s MOU provides that these commitments are made upon the closing of the Transaction. CETF urges approval, with minor adjustments suggested in these Comments.

¹ AB 1665 (Garcia) revised the goal of the California Advanced Services Fund to provide that its goal is to approve funding by December 31, 2022, for infrastructure projects that will provide broadband access to no less than 98% of California households in each consortia region.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1665

² In the current coronavirus emergency, T-Mobile has launched a new “T-Mobile Connect” plan, which is \$15/month plus tax, for unlimited talk and text, and 2 GB of high speed data.² Any retail subscriber may subscribe to this low cost T-Mobile Connect plan for the next two months to ensure they can participate in telecommuting, tele-education and telehealth applications. \$15/month is an affordable rate according to data collected by CETF during focus groups with low-income consumers. DISH, a new wireless competitor birthed by the DOJ Commitments of New T-Mobile, also pledged in the record to offer low cost retail plans. While DISH’s viability is unclear, the fact that there will be two wireless competitors vying for business on affordable plans will help keep rates low in CETF’s view.

II. All of the CETF MOU Commitments Should Be Included in Ordering Paragraphs with Enforcement Language

The PD appropriately gave weight to the CETF MOU commitments in evaluating the overall desirability of the Transaction. Thus, value has been placed on the hard work that CETF performed participating in this lengthy proceeding and using its own resources³ in order to negotiate the many positive voluntary commitments made by T-Mobile in the CETF MOU. Yet to CETF's disappointment, the PD picks and chooses only a handful of the CETF MOU commitments in the PD's Ordering Paragraphs. Footnote 53 at page 21 of the PD hints why when it states, "This decision adopts certain features of the CETF MOU as conditions of approval and these are enforceable by the CPUC. CETF must look at the Supreme Court for enforcement of the balance of the agreement, should that necessity arise."

CETF respectfully requests that all commitments by T-Mobile contained in the CETF Memorandum of Understanding (MOU)⁴ be included in the PD's Ordering Paragraphs as conditions of the final decision. CETF suggests the easiest way to achieve this is to include a new Ordering Paragraph that orders Joint Applicants to comply with its commitments in the CETF MOU, which is Attachment 2 to the PD, and stating that any party to the MOU may come to the Commission for enforcement of the MOU. This new OP will make crystal clear that it is the intent of the Commission that T-Mobile fully comply with all the terms of the CETF MOU, and not just the sections that appear in the Ordering Paragraphs. Also including the entire MOU will make clear that parties may bring disputes over the MOU to the Commission and the

³ CETF self-funds its own policy work before the Commission and does not apply for Intervenor Compensation.

⁴ Joint Motion of Joint Applicants and the California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc., filed April 8, 2019 ("Joint Motion"). Attached to this Joint Motion as Exhibit A is a full copy of the Memorandum of Understanding between CETF and T-Mobile (hereinafter "CETF MOU").

Commission will enforce the MOU. The parties to the CETF MOU intend that enforcement occur at the Commission, as is evidenced by the last sentence of Section XV, “Notice and Opportunity to Cure,” which states “This section does not restrict either party from seeking relief from the CPUC after this [notice and opportunity to cure] process.” Finally, it is very burdensome upon CETF to have to hire a court litigator to pursue enforcement in a brand-new venue (Superior Court) to enforce some of the MOU, and then hire regulatory counsel to appear at the Commission to enforce other parts of the MOU. This makes no logical sense and does not serve principles of judicial economy. Further, CETF is concerned that Joint Applicants may be tempted to not comply with the portions of the MOU that are not included in the Ordering Paragraphs.

Ample precedent exists for the Commission to fully enforce similar Memorandum of Understandings in past corporate consolidations. In the Frontier-Verizon merger decision, Decision No. (D.) 15-12-005, dated December 9, 2015, this Commission discussed the CETF MOU in the decision at pages 56-57, appended the full CETF MOU as Appendix E, and in Ordering Paragraph 13 at page 84 provided:

13. Frontier Communications Corporation (Frontier) shall perform, in a faithful and timely manner, all agreements made by it in the Settlements and the Memorandum of Understanding (MOU). Any party to a Settlement or an MOU may, at any time during the duration of the Settlement or the MOU, as the case may be, apply to this Commission for an order directing Frontier to perform one or more agreements contained in the Settlement or the MOU. Frontier consents to the jurisdiction of this Commission to enter an order enforcing the Settlements or the MOU.

Similarly, in D.16-05-007, Decision Granting Application to Transfer Control Subject to Conditions, issued May 16, 2016, relating to the merger of Charter Communications, Time Warner Cable, and Bright House Communications, this Commission described the Charter CETF

Memorandum of Understanding on pages 12-14 of the decision, and then in Ordering Paragraph 2 provided:

2. The approval granted herein is subject to the following conditions:

a. New Charter, and its regulated entities operating in California, shall abide by all the terms and conditions of the Memoranda of Understanding (MOUs) with the National Diversity Council and CETF. . .

c. Commission staff or any party to the MOUs with the National Diversity Council or CETF or the agreements with the County of Monterey or the City of Gonzales may, at any time during the duration of the MOUs or the agreements, as the case may be, apply to this Commission for an order directing New Charter to perform one or more promises contained in the MOUs or the agreements. Additionally, Commission staff may monitor the performance of community beneficiaries who receive funds pursuant to the MOUs or the agreements. New Charter consents to the jurisdiction of this Commission to enter an order enforcing the MOUs or the agreements.

Thus, Commission precedent provides that in the Ordering Paragraph of the consolidation decision, the merging applicants are ordered to abide by the terms of MOUs like the CETF MOU. Further, it is provided specifically that parties to the MOUs may apply to the Commission for orders directing the merged entity to perform one or more promises contained in the MOU, and the applicants consent to the Commission's jurisdiction to enter an order enforcing the MOUs. CETF requests this treatment be repeated here, so that CETF may ensure that Joint Applicants are clearly ordered to comply with all of the CETF MOU in an Ordering Paragraph and that enforcement is handled efficiently at the CPUC in the interest of judicial convenience.

III. Amend Page 21 of the PD to Accurately Reflect that Parties Had Opportunity to Comment on CETF MOU

At page 21 of the PD, first full paragraph, the PD states that the “other parties had not had the opportunity to comment on [the CETF MOU] . . .” This statement is a factual error. In fact, other parties to the proceeding did have a chance to comment on the CETF MOU, as is reflected

in the PD on page 14, first full paragraph, correctly noting the August 27, 2019 ALJ ruling which admitted the CETF MOU into the record of the proceeding, and “provided other parties an opportunity for comment.” We request that the incorrect statement that other parties did not have the opportunity to comment on the CETF MOU be removed on page 21 of the PD.

VI. Ordering Paragraphs 10-12 Expands Fairground Broadband Obligation in CETF MOU and Is Thus Factually Erroneous

Ordering Paragraphs 10 to 12 of the PD may be read to expand the fairground broadband obligation in the CETF MOU, in a way not agreed to by Joint Applicants and CETF. CETF requests that the PD be amended to accurately reflect the CETF MOU agreement. Ordering Paragraphs 10 to 12 exceed the scope of the CETF MOU in two ways: First, OP 11 states, “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.” (emphasis added) The underlined language of OP 11 is factually incorrect because it increases the speeds that New T-Mobile promised in the CETF MOU. Section VIII.A. “Fairgrounds” of the CETF MOU provides that “New T-Mobile shall deploy 5G wireless service that supports continuous service at 10 County Fairgrounds in rural counties, at least three of which shall be installed in the first 3 years. The wireless networks shall provide robust connectivity for Fairground users and administrators, provided that New T-Mobile shall not be required to add cell sites in addition to those specified in the investments in Infrastructure section above.” The quoted MOU language makes clear that the agreed upon capacity and speed is to be for “robust connectivity for Fairground users and administrators,” and not for presumably higher capacity and speed needed during an emergency by a response and evacuation center. Further,

CETF did not require that T-Mobile would put in special facilities beyond their planned 5G cell sites in order to accommodate the broadband connectivity to the ten County Fairgrounds.

Second, OP 12 of the PD states: “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 should be given to rural Fairgrounds most frequently used in the last decade to stage wildfire, flooding, emergency responses and support recovery activities. Priority consideration also shall be given to rural Fairgrounds for which the County Fair Board (in consultation with OES, County Board of Supervisors and other local stakeholders) has developed a plan for digital inclusion and other economic development activities when the site is not being used for emergency response and recovery.” (emphasis added) This OP 12 contains an expansion of the actual CETF MOU agreement and thus is factually incorrect. The actual CETF MOU language on this point is at Section VIII.A. and reads as follows:

A. Installations at County Fairgrounds

Within 5 years of the date of the close of the Transaction, New T-Mobile shall deploy 5G wireless service that supports continuous service at 10 County Fairgrounds in rural counties, at least 3 of which shall be installed in the first 3 years. The wireless networks shall provide robust connectivity for Fairground users and administrators, provided that New T-Mobile shall not be required to add cell sites in addition to those specified in the Investments in Infrastructure section above. The fairgrounds will be selected from the ones that currently have coverage below 25 Mbps (see Attachment D for a list of 24 such Fairgrounds). 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 the County Board of Supervisors and other local stakeholders) has developed a plan for digital inclusion and other economic development activities when the site is not being used for emergency response and recovery. The 10 Fairgrounds shall be selected by New T-Mobile after consultation with CETF, and the Rural Regional Consortia. (emphasis added)

OP 12 may be read to discard the CETF MOU Attachment D list of fairgrounds and replace it with a new fairground list from the Office of Emergency Services (“OES”). CETF does not

know if this means the Commission wants a new OES fairground list used, or if this is the same one that is in Attachment D to the CETF MOU. To provide background, the Attachment D list of 24 fairgrounds came from California Department of Food and Agriculture's (CDFA) Fairs and Expositions Branch in approximately February 2018. CDFA worked with OES to develop this list at the request of CETF. Attachment D contains rural California fairgrounds most often used as sites in emergency situations (i.e. emergency response, evacuation centers, or recovery sites) with the slowest broadband speeds according to the Commission's broadband map in approximately late 2017. T-Mobile's engineering staff reviewed this CDFA fairground list which is Attachment D to the CETF MOU and confirmed that all but two of the rural fairgrounds would be passed by NTM's 5G facilities and thus, New T-Mobile agreed to make the 10-fairground connectivity commitment. CETF requests that OP 12 accurately track the CETF MOU language on this point. Currently OP 12 in the PD is factually incorrect and does not reflect the CETF MOU agreement. Further, if the intention of OP 12 is to substitute in a new OES fairground list from which T-Mobile must choose the ten fairgrounds to connect with 5G broadband service, CETF does not think this is a fair process to impose a new list without prior review by T-Mobile's engineering staff. Some fairgrounds may not be technically feasible given the planned T-Mobile 5G build.

Finally, on the Fairground commitment, CETF notes that OP 13 adds OES and the Commission staff as consulting parties before New T-Mobile chooses the ten fairgrounds it will connect. CETF welcomes this collaboration from OES and Commission Communications Division staff.

IV. Ordering Paragraphs 15 and 21 on LifeLine Commitment in CETF MOU Agreement Is Factually Inaccurate, Contains Impermissible Rate Regulation, and Seeks to Expand the Actual NTM Commitment on Rates, Handset Obligations

The CETF MOU obtained a very beneficial LifeLine commitment for eligible low-income consumers from Joint Applicants. The CETF MOU agreement is the only California LifeLine commitment in the record. The Supplemental Testimony of G. Michael Sievert, dated Nov. 7, 2019, at pages 6-7, summarizes the CETF – T-Mobile LifeLine agreement well, post DOJ commitment:

Q: Does the divestiture of Sprint's prepaid assets (excluding Assurance Wireless) to

DISH impact New T-Mobile's commitment under the CETF MOU to LifeLine or any LifeLine customers or your prior testimony in this case?

- A. No. The divestiture to DISH of the Sprint prepaid customers has no impact on the CETF MOU provision regarding LifeLine or on my testimony regarding LifeLine. All of Sprint's LifeLine customers are served by Assurance Wireless. Those customers are not being transferred to DISH. Accordingly those customers will stay with New T-Mobile, and we will continue to provide them LifeLine service. Moreover, under the CETF MOU we have affirmative obligations to (i) continue to offer LifeLine services indefinitely in California; (ii) continue to offer LifeLine services in California to both current and new eligible customers for free and under terms and conditions no less favorable than those offered by Assurance Wireless as of the date of close; and (iii) grow that customer base. As I noted above, we stand by all of our commitments."

OP 15 in the PD contains factual errors in describing the CETF MOU agreement on LifeLine which is contained in Section II.A. The most glaring errors are the mandated inclusion of "all retail service plans" into the LifeLine program of NTM, and that such LifeLine offers will be made for as long as NTM operates in California. These provisions are not contained in the CETF MOU, and thus are not supported by the record. OP 15 inaccurately describes the actual LifeLine commitment and should be corrected as erroneous.

The CETF MOU provides that NTM must offer LifeLine service plans for at least five years. In its initial wireless application, Joint Applicants stated NTM will continue LifeLine services currently provided by Virgin Mobile in California.⁵ CETF negotiated a minimum five-year term to ensure that NTM did not end its offer of LifeLine service soon after the transaction closed. Further, the CETF MOU provides that LifeLine must be offered at rates, terms and conditions no less favorable to eligible consumers than those offered under Virgin/Assurance brand as of the date of the close of the transaction. As part of the LifeLine plan, CETF negotiated that these customers get an increased amount of data per month, and that this increase in data be allowed automatically without the LifeLine customer having to contact T-Mobile to request it.

The current OP 15 language greatly expands the CETF MOU agreement by requiring all NTM retail service plans to be eligible for LifeLine program discounts. This makes no sense. There are certain minimum service requirements mandated in the LifeLine program, and not all

⁵ Wireless Application, at p. 25, states: "Following consummation of the Transaction, New T-Mobile will continue the Lifeline services currently provided by Virgin Mobile."

NTM retail rates plans may qualify. Further, participation in LifeLine is voluntary by providers, who craft conforming rate plans to the specific LifeLine minimum requirements.

Finally, this Commission may not regulate wireless rates, an area within the exclusive jurisdiction of the Federal Communications Commission as is made clear in 47 U.S.C. Section 332(c)(3).⁶

OP 15 also mandates NTM to offer such LifeLine programs as long as it operates in California. The OP 15 language is unsupported in the record, factually inaccurate, and should be revised to match the negotiated CETF MOU agreement on LifeLine. As noted above, NTM made a firm commitment in the CETF MOU for at least five years, but did say it would offer it indefinitely. The current OP 15 goes beyond this commitment.

CETF does not oppose the last sentence of OP 15 relating to using various Virgin, Boost Mobile pilot or other Commission models authorized by the LifeLine Program by the Commission.

On Ordering Paragraph 21, this commitment tracks Section II.B. of the CETF MOU on LifeLine handset distribution. Here, CETF corrects a factual error in OP 21, by adding the six-month timeframe for the transition that was agreed to in the CETF MOU. CETF further clarifies that any handset provided due to the transition of networks shall be free. If the PD's OP 21 differing language reflects a concern is that a LifeLine customer will be left with a non-working handset due to the transition from Sprint's network to T-Mobile's network, T-Mobile assured CETF that this would not be the case, as the Sprint network will not be turned off until all customers, including LifeLine customers, are transitioned to compatible handsets. Further, CETF adds back in important language to OP 21 that any new LifeLine customers will get a free compatible handset immediately after the close of the Transaction.

⁶ 47 United States Code (USC) Section 332(c)(3): "STATE PREEMPTION Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services."

V. OP 16 Changes the CETF MOU Target Lifeline and Low-Income Goal

Ordering Paragraph 16 contains a factual error in that it changes the obligations of New T-Mobile as to the number of LifeLine customers it will sign up over the next five years under the CETF MOU. OP 16 at page 46 states NTM shall “add at least 300,000 new LifeLine customers over the next five years. These customers will be in addition to those already participating in Lifeline through an existing pilot.” In the CETF MOU, Section III.A. entitled “Goal for New Adoptions” requires a combined goal of 332,500 new (additional) low-income households through new Assurance LifeLine customers (gross additions) approved by the LifeLine Administrator, and Low-Income customers for a total of no less than 675,000 enrolled LifeLine/Low-Income households. In the CETF MOU, the phrase “Low-Income customers” may include customers added through other non-LifeLine offers (such as the non-LifeLine Boost pilot program and the brand new T-Mobile Connect \$15/month plan) that are priced at \$20/month or less and provide the minimum data allowance required by FCC Lifeline rules. OP 16 does not match the agreement in Section III.A. and should be amended to match it.

CETF does not object to adding a definition of “new customer” for the purpose of this LifeLine OP, and the requirement of appropriate training and monitoring to ensure enrolled LifeLine customers are eligible.

VI. LifeLine Ordering Paragraphs Do Not Accurately Reflect the NTM LifeLine / Low-Income Strategic Plan Development

Section III.B. of the CETF MOU requires NTM develop a Strategic Plan on how it plans to obtain the 332,500 new Lifeline and Low-Income customers and requires an annual meeting to discuss the Strategic Plan. CETF and NTM also agreed in Section III. B. of the CETF MOU to meet annually on progress to revise the Strategic Plan. CETF requests that at the end of OP 17, this requirement be added to accurately reflect the CETF MOU commitment.

VII. LifeLine Ordering Paragraphs Do Not Reflect NTM Requirement to Promote LifeLine and Low-Income Offers

Section IV entitled “Promotion of LifeLine and Low-Income Offers” of the CETF MOU include the Section IV.A Promotion Investment Schedule, which describes NTM obligations for outreach for LifeLine and Low-Income customers plus in-language and in-culture marketing

during hours when consumers are awake, and Section VI.B., entitled “Pledged Promotion Investment,” which requires NTM to spend at least \$1 million/ year for five years for promotion of LifeLine and enrollment efforts. Both sections are not reflected in the OPs, and they should be included to ensure NTM is required to comply as a condition of this decision. CETF requests this minor oversight be fixed by adding new language with these requirements to the end of OP 18.

VIII. Ordering Paragraphs Do Not Reflect T-Mobile Commitment to Digital Inclusion Investments and Should Be Included

The Ordering Paragraphs fail to include a critically important piece of the CETF MOU which is to include the Section VI “Investments in Digital Inclusion.” These important public benefits include Section VI.A. reflecting NTM’s voluntary commitment to expand of its EmpowerED Program and Sprint’s 1Million Project to reach an additional 52,000 low-income families with K-12 school children within five years of the close of the Transaction. As part of this education technology program, NTM voluntarily committed \$1 million/year over five years to fund school leadership teams from the districts and schools to attend the annual School2Home Leadership Academy to promote effective use of advanced technology in education, with emphasis on low performing schools. In Section VI.B. NTM voluntarily committed \$35 million to CETF to be used for the following digital inclusion programs in California:

- \$12.5 million for NTM School Based Programs to implement School2Home;
- \$4.5 million for grants to community-based organizations, schools and libraries to provide digital literacy training for up to 75,000 new LifeLine and low-income households enrolled by NTM; and,
- \$5 million for CETF grants to county and city governments to develop, adopt an implement digital inclusion policies and programs.

CETF requests that the Commission include these important commitments to digital inclusion in the Ordering Paragraphs and allow CETF to enforce them here at the Commission. Given the

importance of broadband connecting our residents during this era, these commitments are very important to California's economic well-being.

IX. CETF Requests Commission Include Section VII "Investments in Infrastructure" of the CETF MOU in the Ordering Paragraphs

CETF appreciates that in the PD at OPs 4-7 there is a wholly different method of confirming NTM's aggressive infrastructure commitments. Also, OPs 28-31 order CalSpeed tests to confirm that the California infrastructure commitments are indeed met by NTM, particularly those that benefit rural, remote and Tribal customers. Achieving this major wireless infrastructure upgrade will be critical to closing the Digital Divide, now seen as so critical in the current coronavirus emergency. CETF suggests that the PD's approach to confirm infrastructure buildout is redundant to the two coverage tests that will be performed by the FCC and under the CETF MOU, and should be removed.

At a national level, Joint Applicants promised to deploy 5G service to cover 97% of the nation's population within the next three years and to cover 99% of the population within the next six years, including 85% of rural Americans within three years and 90% of rural Americans within six years. In terms of speeds, NTM has committed to provide 99% of Americans with access to speeds of at least 50 Mbps and 90% of the US population with speeds of at least 100 Mbps. That includes 90% of Americans living in rural areas having at least 50 Mbps speeds and two-thirds of rural Americans having access to speeds of at least 100 Mbps. The Federal Communications Commission (FCC) included in its order approving the Sprint-T-Mobile merger "rigorous drive-testing, overseen by an independent third party and subject to [FCC]oversight" to make sure the service commitments are met. Further, NTM will be required to pay up to \$2 billion if it does not meet the conditions within six years with additional payments until these commitments are met. In summary, the FCC has already provided a national drive test as to NTM coverage commitments, backed up by a potential hefty fine.

As to California, CETF similarly sought a method to confirm the Joint Applicant's infrastructure promises made in its Application and subsequent testimony, specifically Attachment D "California 2021 and 2024 5G County Level Coverage" dated 12-06-2018 to the Joint Applicants' Rebuttal Testimony of Neville Ray ("5G County Coverage Maps"). With

CETF's Digital Divide mission, providing confirmation of actual 5G coverage was the most important aspect of the NTM commitments.

In Section VII of the CETF MOU, CETF sought to ensure that coverage commitments by NTM as expressed in its proposed wireless coverage maps in its 5G County Coverage Maps were kept. NTM has committed to cover 99% of the California population. If met, this commitment will be a great public benefit to consumers who live in rural, remote and Tribal areas and who lack reliable broadband.

Section VII of the CETF MOU outlines a sensible, well thought out testing protocol to ensure that NTM's 5G is deployed at 90% of the cell site locations⁷ specified in the Network Improvement Plan Tracking Tool by 2025, and results in the promised speeds and coverage for that area. Further, NTM is required by the CETF MOU to provide annual coverage maps that depict coverage as NTM progresses through its 5G build. Also, at NTM's expense, an independent third party selected by CETF from a list of experienced wireless engineering firms⁸ will provide a speed test of every cell site in California, to ensure that the promised speeds are delivered. This data will be included in the Annual Network Report to CETF. Under OP 3, all reports provided by NTM will also be provided to the Commission Communications Division.

CETF recommends that between the mandated FCC drive testing, the CETF cell site testing and coverage map requirement, and the stiff potential FCC fine, there are ample incentives for NTM to meet its infrastructure commitments in California. CETF therefore recommends that the CalSpeed testing contained in OPs 28-31 be deleted as redundant and unnecessary.

X. OP 4(c) and 4(d) Extending Build-out Requirements to 2030 Is Not Supported by Record Evidence and Exceeds this Commission's Authority

CETF is puzzled by the PD's OP 4 (c) and (d) which extends build-out commitments to 2030 and seeks to maintain 5G commitments until 2031. CETF reviewed the extensive record

⁷ CETF agreed to a 90% figure due to events that may occur outside of NTM's control relating to specific cell sites such as regulatory divestiture of assets, a force majeure event, inability to acquire necessary equipment or backhaul, a siting moratorium, or other extraordinary permitting delay and limitation. However, the ultimate coverage provided by the cell sites actually built must meet the speed promised in the Applications for that area on the map.

⁸ The firms are listed in Attachment C of the CETF MOU and have been independently verified by CETF and appropriate members of its Advisory Board as experienced, legitimate wireless engineering firms.

on infrastructure commitments and cannot find any record evidence that supports these extended build-out or 5G requirements beyond 2026 on a voluntary basis. Absent that, this Commission should not impose orders as to types and levels of wireless services, an area over which the FCC exclusively has jurisdiction.⁹ Thus, CETF recommends OP 4(c) and(d) be stricken as factually erroneous as a voluntary commitment, and beyond this Commission’s jurisdiction if a commitment sought to be imposed by this Commission.

WHEREFORE, CETF respectfully requests that its Comments be implemented into the final decision.

Respectfully submitted,

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⁹ 47 USC Sections 301, 303, 307, 308, 319, 332.