

**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, ) A. 18-07-011  
For Approval of Transfer of Control of Sprint ) (filed July 13, 2018)  
Communications Company L.P. Pursuant to )  
California Public Utilities Code Section 854(a) )

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 ) A. 18-07-012  
Delaware Corporation, for Review of Wireless ) (filed July 13, 2018)  
Transfer Notification per Commission Decision )  
95-10-032. )

**REPLY BRIEF OF  
THE CALIFORNIA EMERGING TECHNOLOGY FUND**

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### **Federal Law**

47 U.S. Code Section 1302(a).

### **State Law**

Public Utilities Code Section 281(b)(1)(A).

### **Commission Decisions**

Decision No. (D.) 05-11-028, Opinion Approving Application to Transfer Control, In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control of AT&T's Communications of California, TCB Los Angeles, Inc., TCG San Diego, and TCG San Francisco to SBC, Which Will Occur Indirectly as a AT&T Merger with a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corp., in A.05-02-027, mailed Nov. 22, 2005.

D.05-11-029, Decision Authorizing Change in Control, In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI, in A.05-04-020, mailed Nov. 23, 2005.

D.19-04-012, Decision Authorizing Pilot Programs of Boost Mobile, Inc. and iFoster Inc. in California LifeLine Program, in R.11-03-013, issued May 3, 2019.



April 8, 2019. In it, CETF and Joint Applicants reported that we had reached a mutually satisfactory understanding and a set of terms under which CETF can enthusiastically and wholeheartedly support the proposed transfer of control of Sprint to T-Mobile USA, Inc. (“the Transaction”). A full copy of the MOU is attached to the Joint Motion.

On April 23, 2019, Intervenors TURN and Greenlining filed a “Response of the Joint Consumers to Joint Motion of Joint Applicants and the California Emerging Technology Fund to Reflect the Memorandum of Understanding between the California Emerging Technology Fund and T-Mobile USA, Inc.” (“TURN/Greenlining Response”). On April 23, 2019, the Public Advocates Office (“Cal PA”) filed an “Opposition of the Public Advocates Office to Motion by CETF and Joint Applicants to Modify Positions” (“Cal PA Opposition”). On May 3, 2019, Joint Applicants and CETF filed a “Reply of Joint Applicants and the California Emerging Technology Fund to Responses to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.” (“Joint Reply”), addressing the objections in full.

On May 8, 2019, the Assigned ALJ granted the Joint Motion in a ruling<sup>1</sup> allowing CETF and Joint Applicants to enter the MOU into the record of the proceeding and change the litigation position of CETF to support of the merger. The ALJ Ruling stated, “Granting the motion does not prejudice the question of whether the merger is in the public interest though it adds weight to the argument of Joint Applicants for that conclusion.”<sup>2</sup> Thus, objections that the MOU was improperly placed in the record is moot.

In the TURN/Greenlining Response, Cal PA Opposition and their Opening Briefs, Cal PA, TURN and Greenlining raise questions about the MOU, and address the issues upon which CETF reached agreement in its MOU with Joint Applicants. CETF files this Reply Brief to address these issues and questions, and to explain further why it now strongly supports grant of the Applications due to significant public benefits that will flow from the Transaction.

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<sup>1</sup> Administrative Law Judge’s Ruling Granting 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, issued May 8, 2019 (“ALJ Ruling”).

<sup>2</sup> ALJ Ruling, at 5.

## **I. Summary**

CETF respectfully requests that the transaction proposed in the Applications be granted, in light of significant public benefits of the merger, including 5G wireless coverage with speeds of 100-300 megabits per second (“Mbps.”) download to the majority of California’s population, plus voluntary commitments by Joint Applicants on rates, LifeLine services, broadband adoption, school-based technology programs, and enhanced emergency preparedness/response. CETF requests that the Joint Applicant’s voluntary commitments in the MOU be included as conditions in the Ordering Paragraphs of a final decision granting the Applications. Further, CETF requests that the conditions adopted be verifiable and enforceable by this Commission.

## **II. CETF Advocates for “Appropriate, Fair and Comparable” Public Benefits**

Unlike any other party in the proceeding, CETF plays a unique role with its Commission-assigned mission to achieve ubiquitous access, adoption and usage to broadband and advanced services in California, particularly to underserved communities.<sup>3</sup> CETF is the only party in the proceeding that has over a decade of experience in leading and managing Digital Inclusion programs serving low-income consumers. CETF also works with broadband providers, local and state agencies and leaders, and the Communications Division on infrastructure issues. CETF submits annual reports to the Commission which in turn submits the reports to the Legislature to ensure transparency and accountability as to CETF’s workplan and programs.

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<sup>3</sup> CETF’s mission is set forth in two Commission decisions. See D.05-11-028, Opinion Approving Application to Transfer Control, In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control of AT&T’s Communications of California, TCB Los Angeles, Inc., TCG San Diego, and TCG San Francisco to SBC, Which Will Occur Indirectly as a AT&T Merger with a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corp., in A.05-02-027, mailed Nov. 22, 2005, at pp. 78-83, O.P. 1(c) and 8. “[W]e order that applicants commit \$9 million per year for 5 years in charitable contributions (\$45 million total), to a non-profit corporation, the California Emerging Technology Fund (CETF), to be established by the Commission for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly to underserved communities, through the use of emerging technologies by 2010. . . CETF . . . goals should be expanded to include adoption and usage” D.05-11-028, at p. 79. See also D.05-11-029, Decision Authorizing Change in Control, In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI, in A.05-04-020, mailed Nov. 23, 2005, at pp. 25, 98-102, OP 3(c), 3(d). “[W]e require Applicants to contribute a total of \$15 million over five years to the California Emerging Technology Fund (CETF). CETF is a non-profit organization tasked with ensuring that all California resident shave ubiquitous access to broadband and advanced services by 2010. A significant portion of CETF’s efforts will be targeted to underserved communities.” D.05-11-029, at 25.

In doing this work, by necessity, CETF forges voluntary public-private partnerships with broadband providers. CETF scrutinizes proposed mergers for public benefits relating to those goals. Over the years, CETF has successfully negotiated settlement agreements with major broadband providers engaged in corporate consolidations<sup>4</sup> to ensure there are significant and verifiable public benefits afforded to underserved communities relating to broadband access, adoption and usage. Any representation that CETF lacks qualifications as an expert on broadband access and adoption issues should be rejected.

CETF intervened as a party as to these Applications because in corporate mergers of broadband providers CETF recommends that such consolidations should be reviewed to ensure there are public benefits that are “appropriate, fair and comparable” to prior mergers where applicants have agreed to provide a variety of public benefits. Examples of previously-negotiated public benefits include new or upgraded infrastructure builds in the state, voluntary commitments to affordable broadband rates, free or low-cost Internet-enabled electronic devices for low-income households (particularly households with school children who require home Internet connections to complete homework online), free public Wi-Fi hotspots in rural/remote areas or low-income urban areas. Prior to entering the MOU, CETF raised various questions and issues relating to Digital Divide issues in its pleadings and at the hearing. Now, CETF has entered into a comprehensive MOU with Joint Applicants to secure very significant voluntary commitments providing substantial public benefits. Thus, CETF has changed its prior position to strongly urge the Commission to approve the Transactions.

### **III. The Burden of Proof Is on the Applicants to Show the Merger Is in the Public Interest**

Pursuant to Section 854(e) of the Public Utilities Code, the Joint Applicants bear the burden of proof by a preponderance of the evidence that the merger is in the public interest. CETF points out that the Commission has authority under the Section 854(a) to consider the impacts of the merger on broadband services, specifically whether the Transaction would be beneficial on an overall basis to state and local economies, and to the communities in the area served. Section

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<sup>4</sup> For example, CETF has intervened in consolidation proceedings before the Commission and the FCC involving Comcast - Time Warner, Charter - Time Warner - Bright House, Frontier – Verizon, CenturyLink – Level 3, and AT&T -DirecTV.

706(a)<sup>5</sup> of the Telecommunications Act of 1996 gives this state Commission limited jurisdiction to evaluate the broadband aspects of the merger, including timely deployment on a reasonable and timely basis of advanced telecommunications capability (broadband) and removal of “barriers to infrastructure investment.” The plain language of the statute shows that Congress granted authority to state commissions to “encourage deployment” of “advanced telecommunications capability to all Americans” Thus, this Commission has jurisdiction over this transaction and should consider commitments contained in the MOU that encourage provision of advanced services to California residents.

#### **IV. CETF Uniquely Focused on Digital Divide Issues: Broadband Access, Affordable Broadband Rates, LifeLine, Broadband Adoption, and Enhanced Emergency Response and Preparedness**

CETF intervened in the proceeding because it had concerns over impacts of the merger on residents who live in areas where there is no broadband service or service below the state minimum speeds. As set forth in the Testimony of Sunne Wright McPeak, Exhibit CETF-1, at pages 5-7, CETF’s 2017 Annual Survey 2017 found that 87% of our residents have broadband access at home, but several demographic groups fall more than ten percentage points below the overall adoption rate of 87%. These groups include:

- Households earning less than \$20,000 (75%).
- Adults 65 or older (69%).
- Spanish-speaking Latinos (69%).
- Not a high school graduate (67%).
- Adults who identify as having a disability (75%).

Among the 87% with home high-speed Internet connection, *18% have access through a smartphone only*, while 69% report having broadband Internet access through a computing device. Between 2015 and 2017, the proportion of Californian’s connecting to the Internet through only a smartphone more than doubled from 8% to 18%. As a result, CETF has concerns

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<sup>5</sup> Section 706(a) of the Telecommunications Act of 1996 provides: “The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” 47 US Code Section 1302(a).

about how to ensure affordable wireless and data service rates for the low-income population that both Sprint and T-Mobile state that they primarily serve.

In CETF Exhibit 1, at page 6, McPeak in her unchallenged Direct Testimony explained that Table 5a of the 2017 Annual Survey explains why residents without home Internet connectivity say their household does not have it. The main reason is cost (34%), with lack of awareness (22%), lack of digital literacy (12%) and privacy concerns (12%) as the next reasons. Further, in CETF Exhibit 1, at page 7, McPeak identified state regions where home broadband Internet connections were lower than the statewide average of 82% (both at home and outside the home). The areas with the lowest connectivity were the Inland Empire (76%), and Los Angeles County (77%).<sup>6</sup>

In the Amended Assigned Commissioner's Scoping Memo and Ruling, issued October 4, 2018, the Assigned Commissioner set forth fifteen factors that this Commission would use to evaluate the proposed Transaction. CETF generally agreed that these factors were appropriate. Given its unique role as the only non-profit organization established by the Commission working on the Digital Divide, CETF addressed issues that fell within its broadband mission and expertise. In addition, CETF took a long, hard look at the public benefits proposed by Joint Applicants in its Applications.<sup>7</sup> The promised benefits of most interest to CETF and its Digital Divide mission include:

- “Build-out of a robust, nationwide, world-class 5G network and services, bringing the benefits of those services, sooner than otherwise possible.”
- “Creation of a 5G network that will create a substantial network and service capabilities including the introduction of a bona fide alternative for consumers to traditional in-home broadband providers.”
- “Delivery of better services and high-speed broadband for rural areas.”
- “Continuation of Lifeline services currently provided.”
- “The assets and scale for New T-Mobile to “supercharge” the “Un-carrier” and take its maverick agenda to the next level, to further disrupt the wireless industry, and to otherwise ensure an even more competitive market.”<sup>8</sup>

CETF fully participated in the evidentiary hearing in order to cross examine and test the bold promises being made by the Joint Applicants. As noted above, after the evidentiary hearing

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<sup>6</sup> CETF Exhibit-1, at page 7, citing 2017 Annual Survey results at p. 20, Table 8(e).

<sup>7</sup> See Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032, in A.18-07-012, at page 4 for the complete list of the claimed public benefits in the wireless application.

<sup>8</sup> Id.

concluded, CETF pursued further settlement negotiations with the Joint Applicants and did successfully agree to the MOU to resolve our differences.

## **V. The CETF – T-Mobile MOU Establishes Public Benefits with a Powerful Public-Private Partnership to Close the Digital Divide and Enhance Competition**

In the MOU, CETF is pleased that, after long and tough negotiations, it was successful in laying the groundwork for a powerful public-private partnership with New T-Mobile, should the Transaction close. CETF and New T-Mobile propose to join forces to work together in a spirit of collaboration with other stakeholders and community-based organizations (“CBOs”) to make a significant contribution to closing the Digital Divide in California, in addition to other key benefits in times of disasters. CETF recognized that New T-Mobile has a potential to provide numerous consumer advantages which will serve the public interest if coupled with a strong commitment to public benefits, coupled with performance-based measures by New T-Mobile as set forth in the MOU. Further, CETF emphasizes that the 5G network build – which is only achievable by combining the three types of spectrum, facilities (cell sites, backhaul, towers), and other assets of Joint Applicants – will bring a stronger, more powerful third competitor to the two dominant wireless carriers in the state. Thus the Transaction will enhance wireless telecommunications and data competition. Legitimate concerns regarding rate hikes and potential negative impacts on low-income customers have been mitigated by provisions in the MOU.

### **A. Broadband Adoption**

In the MOU, CETF acknowledged a national pricing commitment entered by T-Mobile with the Federal Communications Commission (“FCC”) to make available the same rate plans or better rate plans offered by T-Mobile or Sprint as of the date of February 4, 2019 for three years following the close of the Transaction. In its Opening Brief, TURN expresses various concerns about this 3-year rate plan commitment, including that it is short term and how it will be impossible to monitor or enforce.<sup>9</sup>

In the MOU, CETF and T-Mobile agreed that within 60 days of the close of the Transaction, New T-Mobile shall provide CETF and the Commission a list of rate plans offered

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<sup>9</sup> TURN Opening Brief, at 18.

to new customers on the reference date and will include this information in the Annual Compliance Report required by the MOU, beginning with the first full year following the close of the Transaction and for two years thereafter.<sup>10</sup>

CETF's rationale for this section of the MOU was to ensure that there was clarity as to all the rate plans that are subject to the FCC pricing commitment in this state, and to ensure there is regular reporting to monitor New T-Mobile so that the pricing commitment is met. CETF's interest is to ensure benefits to California consumers who rely in wireless service from either of the Joint Applicants for their wireless and data service plans. Further, this commitment addresses concerns about whether rates will rise after the merger, particularly for low-income consumers. CETF posits that this addresses TURN's concerns about how to monitor the FCC rate commitment. Given the wireless marketplace is very competitive, CETF posits that the 3-year rate commitment is adequate and provides some rate certainty for consumers in the short term.

### **B. LifeLine Commitment**

In its Opening Brief, Cal PA expressed concerns about the fact that T-Mobile has never participated in the California LifeLine Program, and that there are substantial risks that LifeLine services currently provided only by Sprint's Assurance brand may be discontinued.<sup>11</sup> Cal PA requests as a proposed commitment that New T-Mobile continue and expand participation in the LifeLine program indefinitely, at terms equal to or better than the terms currently offered by Assurance.<sup>12</sup> In TURN's Opening Brief, it similarly notes how critical the LifeLine commitment is to a public interest analysis, and how it is a harbinger for New T-Mobile's commitment to low-income communities throughout California.<sup>13</sup> TURN expresses concern that Assurance is the only facilities-based provider in the state, and that New T-Mobile's participation in the program is voluntary and could be withdrawn upon 30 days' notice to customers.<sup>14</sup> TURN was critical of the witness put forward by T-Mobile on LifeLine as not being familiar with the service and unable to speak to resources necessary to cover all the market segments,<sup>15</sup> a concern shared by

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<sup>10</sup> CETF-T-Mobile MOU, filed as Exhibit A of the Joint Motion, at Section I, "Pricing Commitment."

<sup>11</sup> Cal PA Opening Brief, at pages 26-27.

<sup>12</sup> Cal PA Opening Brief, at p. 52.

<sup>13</sup> TURN Opening Brief, at pp. 20-28.

<sup>14</sup> TURN Opening Brief, at pp.20-21.

<sup>15</sup> TURN Opening Brief, at pp. 22, 24-27.

CETF. Like Cal PA, TURN requests proposed commitments that New T-Mobile market and participate in the LifeLine program under their current brands (T-Mobile, Boost, Metro and Assurance). Further, TURN asks that the new entity train its customer service agents to work with LifeLine participants, and to commit to a robust consumer education and marketing campaign that is culturally sensitive, in-language, and based on the communities they serve.<sup>16</sup>

CETF shares other intervenors' concerns about whether New T-Mobile may decline to offer LifeLine service in California. In CETF's view, Sprint has been an active and positive LifeLine participant in the state. CETF actively participated in the evidentiary hearing to cross examine Joint Applicants' witnesses to better understand what commitments would be made as to the post-merger LifeLine program. After its cross examination, CETF took steps to negotiate a more specific, robust and detailed LifeLine commitment from T-Mobile, particularly as to a minimum five-year term commitment, subscribership goals, \$5 million budget for advertising LifeLine and other affordable plans in culturally sensitive ways, and robust data plans in light of many consumers who rely on their smartphones for Internet connectivity.

The LifeLine commitment is contained in Section II of the MOU.<sup>17</sup> It brings significant new public benefits to California low-income consumers.<sup>18</sup> First, T-Mobile committed to offer LifeLine services (both as to federal Lifeline and CPUC LifeLine programs) "indefinitely" in California. While the word "indefinitely" provided some mild assurance of the T-Mobile commitment, CETF sought a more specific term commitment from T-Mobile. CETF was successful in obtaining from New T-Mobile a guaranteed *five-year commitment to participate in LifeLine*. This is a significant public benefit for low-income communities in the state.

Second, Sprint currently offers LifeLine plans in California under its Virgin Mobile Assurance brand. CETF secured commitments from T-Mobile to continue to offer Lifeline services in California to both current and new eligible customers under rates (i.e. free), terms, and conditions no less favorable to eligible customers than those offered under the Assurance brand as of the date of the close of the Transaction.

Third, currently Sprint's Assurance brand offers LifeLine service in California with 3 gigabytes (GB) per month of data. Pursuant to the tariff, Assurance customers who were on the

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<sup>16</sup> TURN Opening Brief, at p. 28.

<sup>17</sup> Objections about this LifeLine and affordable offer not being in the record should be rejected given the grant of the Joint Motion to include the MOU in the record.

<sup>18</sup> CETF-T-Mobile MOU, filed as Exhibit A of the Joint Motion, at Section II, "Lifeline Commitment".

plan before the data allowance was increased from 2 GB to 3 GB had to call Assurance to ask for the new 3 GB of data. CETF reached an agreement with T-Mobile to continue to provide all new LifeLine customers with 3 GB per month of data, with an automatic upgrade of all existing Assurance LifeLine customers to 3 GB per month of data *without the need for a customer to call to request the upgrade*. Three gigabytes of data are important to ensure that low-income customers have adequate data on their LifeLine plans in order to perform necessary and daily tasks on the Internet, and to avoid unexpected charges when the data cap is exceeded. Further, as technology advances, data allowances need to be increased for a LifeLine consumer to have enough data for commonly used applications. Thus, CETF secured a commitment for T-Mobile to re-assess every two years the data allotment to determine its adequacy consistent with FCC guidelines. T-Mobile agreed it will make adjustments to align with FCC guidelines.

Fourth, CETF had concerns about whether Sprint's Assurance LifeLine users would be forced to purchase a new handset to stay compatible with the New T-Mobile system due to changes in spectrum and the move to 5G technology. CETF negotiated an agreement in the MOU that all California LifeLine customers would be able to avail themselves of New T-Mobile's larger geographic coverage footprint in California. After a transition period of not more than six months, all Assurance LifeLine customers will be migrated to the New T-Mobile Network platform. T-Mobile committed that on the first day after the close of the Transaction, new California Assurance LifeLine customers will be provided a free handset at the time of enrollment that is compatible with both the New T-Mobile and the Sprint network, but their service will continue to be activated on the Sprint network. No later than six months after the close, new California Assurance customers will be activated directly on the New T-Mobile network. All Assurance LifeLine customers with incompatible handsets that do not work on the New T-Mobile will be migrated on the same timeframe as the non-LifeLine legacy Sprint customers to the New T-Mobile network and will be given a free compatible handset at the time of migration. CETF is satisfied that this will ensure that Sprint's California Assurance LifeLine customers will be migrated in a reasonable timeframe, with a free compatible handset, and experience the benefits of the larger New T-Mobile network.

### C. New LifeLine and Low-Income Adoptions

Part of CETF's work is on increasing broadband adoption in the state, particularly by those groups that are most unconnected – for example, low-income, seniors, people with disabilities, and non-English speaking minorities. In the low-income area, CETF is pleased that T-Mobile agreed to use good faith efforts to achieve a combined goal of *332,500 new (additional) low-income households* through (1) new Assurance LifeLine customers (gross additions) approved by the LifeLine administrator and (2) low-income customers in California for a total of no less than 675,000 enrolled LifeLine/low-income households. In the second category, CETF views these as affordable offers. Such affordable offers may include customers added through non-Lifeline offers, e.g. the newly approved Boost pilot program,<sup>19</sup> that are priced at \$20 per month or less and that provide the minimum data allowance required under FCC Lifeline rules. As part of this commitment, within 90 days of the Transaction close, New T-Mobile will develop and submit to CETF a detailed strategic plan for achieving its 332,500 new LifeLine and low-income customers in California. After consultation, both New T-Mobile and CETF will provide this Strategic Plan to the CPUC no later than 180 days after the Transaction close. The Strategic Plan will include planned activities to market the LifeLine and low-costs plans including a promotion investment schedule and a timetable for implementation. Annual consultation will occur between New T-Mobile and CETF to review progress to the goal and adjust the Strategic Plan to achieve the goal.

TURN and Greenlining have expressed skepticism as to the Boost pilot offer because it is not a free service but service at \$20/month.<sup>20</sup> In fact, the Commission decision granting the Boost pilot program makes clear this is not a LifeLine offer but an innovative offer that will give low-income consumers the ability to sign up with a major wireless carrier for service and data at

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<sup>19</sup> D.19-04-012, Decision Authorizing Pilot Programs of Boost Mobile, Inc. and iFoster Inc. in California LifeLine Program, in R.11-03-013, issued May 3, 2019. In this decision, the Commission approved an innovative plan under which Sprint's Boost brand will give eligible customers a \$15/month discount off regular retail rate plan for up to two years and a free handset. The lowest cost retail rate plan is \$35 and includes 3 GB of data on 4G LTE. D.19-04-012, at pp. 7-9. Thus, the final cost to a consumer will be \$20 per month, a rate CETF would categorize as affordable. The Commission found that the Boost pilot program provide public benefits expected to include increased participation of facilities-based service providers, lower barriers to entry, increase program subscribership, and to provide a scalable solution for the LifeLine program. D.19-04-021, Finding of Fact 4, at p. 51.

<sup>20</sup> Joint Consumer Response, at 8.

an affordable monthly rate.<sup>21</sup> Further, CETF has survey data from focus groups with low-income consumers supporting the fact that affordable broadband offers should be below \$20/month. CETF is the only party in this proceeding that regularly conducts surveys and routinely convenes focus groups with low-income, digitally disadvantaged residents to understand barriers to broadband adoption and the ability of low-income customers to afford technology. Thus, CETF sees value in New T-Mobile participating in both LifeLine and in providing low-cost affordable offers (i.e. the Boost pilot) outside of the LifeLine context.

#### **D. Promotion of LifeLine and Low-Income Offers**

CETF shared the concerns of the TURN and Greenlining that New T-Mobile have a robust advertising and marketing effort to ensure that low-income communities are aware of affordable offers. Too often, CETF find that providers are not anxious to advertise their low-cost offers because it detracts from more expensive offers that better benefit the bottom line. CBOs also report that some providers advertise affordable offers in the middle of the night, or waste money on online advertising which cannot be accessed by the target group. In the MOU, New T-Mobile has agreed to collaborate with CETF on a detailed Promotional Investment Plan to promote the LifeLine and affordable offers, and to enroll eligible low-income customers, using community-based direct marketing and media. These ads will be run between 6 a.m. and 11 p.m. CETF will facilitate meetings with community media outlets. New T-Mobile will place an appropriate share of advertising with community media to ensure enough information in-language and in-culture is targeted to eligible communities. Results will be monitored and reviewed at intervals.<sup>22</sup> Further T-Mobile has pledged a minimum of \$1 million per year for five years for these promotional efforts support in LifeLine and affordable offers. At least half of the funds shall be dedicated to outreach and promotion of the LifeLine service and enrollment of new LifeLine or low-income customers.

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<sup>21</sup> See footnote 19, *infra*. See also D.19-04-012 at pp. 4-5, Findings of Fact 3-11, at pp. 50-51, and Ordering Paras. 2, 4.

<sup>22</sup> Should New T-Mobile reach its 332,500 new LifeLine and Low-Income customer goal before the conclusion of five years and expenditure of \$5 million, then New T-Mobile may reduce expenditures in the promotion investment plan with the exception of community media commitments. Further should there be material changes in the LifeLine programs at either the state or federal level, New T-Mobile reserves the right to seek relief from CETF, CPUC and/or the FCC after consultation with CETF, the CPUC and/or FCC staff. MOU at Sections IV.B and V.

CETF contends that these many significant LifeLine and affordable offer concessions from New T-Mobile well address the concerns for Cal PAO and TURN in this area. It is clear these are significant public benefits benefiting low-income communities that will flow from the merger.

#### **E. Investments in Digital Inclusion – School-Based Programs**

In addition, CETF also sought investments in digital inclusion in school-based settings. It is well documented that students without Internet access at home do not perform as well academically as students with home Internet access.<sup>23</sup> In the MOU, Section VI, New T-Mobile agreed to expand its current EmpowerED program and Sprint’s 1Million Project to reach *an additional 52,000 low-income California family households with K-12 school age children* within five years of the close of the Transaction for a total of 112,000 families. For the additional 52,000 families, the program will include at least 3 GB<sup>24</sup> of free high speed data and unlimited (non-high speed) Internet service thereafter, in addition to free Internet-enabled devices (such as Chromebooks or other Internet-enabled tablets, or other wireless devices that may be used as hotspots if the school provides a notebook or tablet that works with the hotspot). These school-based programs are to serve primarily low-income students and engage the participating school district and schools in providing to New T-Mobile data regarding the program impact on academic performance. Certain information about the program<sup>25</sup> will be submitted to CETF in the Annual Compliance Report.<sup>26</sup> Further, T-Mobile has also agreed to provide up to \$1 million over five years for school leadership teams from districts and schools (collectively serving 25,000 students) in the New T-Mobile school-based programs to attend the annual School2Home Leadership Academy. CETF is satisfied that these efforts will help close the Homework Gap for low-income K-12 children without home Internet access.

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<sup>23</sup> See for example <http://neatoday.org/2016/04/20/the-homework-gap/>

<sup>24</sup> CETF was successful in increasing the school program data from 2 GB to 3 GB of high speed data followed by an unlimited amount of non-high speed data.

<sup>25</sup> This information includes description of the services, impact information, number of families benefitted, and other benefits to schools, students and families.

<sup>26</sup> New T-Mobile and CETF will agree on an evaluation process and methodology to compare student academic performance and other relevant metrics for districts and schools participating in the School2Home partnership versus those only participating in the New T-Mobile school-based programs. MOU at Section VI, A.

## F. Digital Inclusion Policy and Programs

In addition, New T-Mobile shall provide \$7 million each year for five years for a total of \$35 million to CETF to sustain its core mission to close the Digital Divide in California and to promote and fund digital inclusion policy and digital literacy programs as set forth below:

- \$12.5 million to assist districts and school participating in the New T-Mobile school-based programs (and representing up to 25,000 students) to implement School2Home to incorporate technology into teaching and learning with significant parent engagement;
- \$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 New T-Mobile;
- \$5 million for grants to county and city governments to develop, adopt and implement digital inclusion policies and programs, with priority consideration for grants shall be given to local governments working in collaboration with their CASF-funded Regional Consortium; and
- \$13 million for CETF to sustain its core mission, including managing the Digital Inclusion programs funded by the MOU.<sup>27</sup>

CETF agreed to provide an Annual Report to New T-Mobile regarding these Digital Inclusion Policy and Programs.

In its Joint Motion Responses, Cal PA, TURN and Greenlining have objected to the \$35 million in payments to CETF for this Digital Inclusion Policy and Program section, implying it is excessive.<sup>28</sup> CETF strongly disagrees. Formed by Commission action in 2006, CETF is the only non-profit organization in the state focused on closing the Digital Divide. It has been in operation since 2007 following the mergers of AT&T-SBC and Verizon-MCI in 2005. CETF received \$60 million in voluntary contributions as a result of those mergers, and these funds have been its primarily grant and operating funds since formation. The amount provided to CETF itself (\$13 million) in this MOU is substantially lower than the amount approved by the Commission in the AT&T- SBC merger (\$45 million) and the Verizon – MCI merger (\$15 million). CETF is an experienced and well-respected non-profit organization that received two federal American Recovery and Reinvestment Act (ARRA) broadband grants which were successfully completed. CETF has engaged in policy work before the Commission in the area of

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<sup>27</sup> CETF has been found not to be eligible for Intervenor Compensation in a CPUC decision relating to the Frontier - Verizon merger. CETF sustains its operating costs and policy work via its initial \$60 million founding grant from the AT&T-SBC and Verizon-MCI 2005 mergers, grants, and from merger settlements approved by the Commission.

<sup>28</sup> Cal PA Response at 5; TURN/Greenlining Response, at 8.

communication mergers and broadband grant programs in order to provide recommendations on broadband access and broadband adoption issues. Further CETF reports its activities in detail in an Annual Report to both the California Public Utilities Commission and the state Legislature, and so there is full transparency as to its programs and activities.

## **G. Broadband Deployment**

### **1. Infrastructure Investments**

With CETF’s core mission of closing the Digital Divide as to broadband infrastructure, CETF put a strong focus in the evidentiary hearing on the 5G network model and the benefits in terms of coverage, speed and capacity. The New T-Mobile “California Projected 2021 and 2024 5G County Level Coverage Maps” presented as Attachment D in the Rebuttal Testimony of Neville Ray (Joint Applicants Exhibit 3C) appears to provide that the majority of the California population would receive coverage by 2024 with 5G wireless service at minimum speeds of 100 Mbps., with much of urban California obtaining coverage with speeds of 300 Mbps.<sup>29</sup> *Should this build-out occur, this would essentially meet the 98% broadband build out goals sought to be achieved under Assembly Bill 1665.* Under Assembly Bill 1665, the Commission is to administer the California Advanced Services Fund (CASF) to encourage deployment of high-quality communications services to all Californians that will promote economic growth, job creation and the substantial social benefits of advanced information and communications technologies. “The goal of the program is, no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region . . . The commission shall be responsible for achieving the goals of the program.”<sup>30</sup> While this merger does not involve a CASF grant, the Legislature clearly tasked the Commission with a goal to achieve broadband access to 98% of the state. *It is CETF’s opinion that this merger could substantially assist in achieving (and verifying) the AB1665 goal for much of the unserved and underserved regions of the state.*

As a result, CETF urges this Commission to approve the CETF – T-Mobile MOU and approve the transaction. In CETF’s opinion, New T-Mobile’s 5G infrastructure investment at speeds of at least 100 Mbps. download to rural and remote areas of California is a game changer

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<sup>29</sup> Joint Applicant Exh. 3C, Rebuttal Testimony of Neville Ray, Attachment D.

<sup>30</sup> PU Code Section 281(b)(1)(A).

for the broadband landscape in California.<sup>31</sup> This New T-Mobile investment will surely spur investment in rural California by other broadband providers. Further, the promised 100-300 Mbps. speeds are impressive for rural and remote areas. Currently, the CASF program and federal Connect America Fund requires broadband providers to provide speeds of at least 10 Mbps. download and 1 Mbps. upload for their grants. New T-Mobile's proposed 100 Mbps. download speed is *ten times faster* than these CASF and CAF II speeds. CETF cannot overstate the importance of this faster wireless broadband infrastructure which in its view will bring certain economic benefits to these rural communities.

In evaluating the New T-Mobile coverage proposal at the hearing, CETF engaged in cross examination of T-Mobile's Chief Technology Officer to ensure it understood how the 5G California County coverage maps were created, and how they predict the average speeds (throughput) for this network model. CETF continued its inquiry into this subject during its settlement discussions with Joint Applicants. CETF took a "trust but verify" approach. In the MOU, T-Mobile states that the network model relies on a number of inputs for the 5G deployment including: (1) the number and general location of cell sites in California at which New T-Mobile expects to deploy 5G; (2) the type of radio spectrum to be deployed at each of those sites (e.g. mid band, low band, and high band); and (3) the year in which it is deployed. Under the MOU, CETF and the Commission can track the Network Improvement Plan for California to ensure New T-Mobile constructs the 5G network with the promised coverage and speeds. To accomplish this, T-Mobile developed a Network Improvement Plan Tracking Tool for the MOU. T-Mobile took the list of cell sites used for the model and added the expected speed tier for each of the cell sites and the year that the anticipated speed tier would be achieved. This Network Improvement Plan Tracking Tool (containing confidential information) is attached to the MOU as Attachment B. To ensure that the network improvements are made, the MOU requires the pledged amount of California capital expenditures to deploy 5G technology be made within 6 years of the close of the transaction (with the right to defer a certain amount of the planned expenditures to the seventh year).<sup>32</sup>

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<sup>31</sup> New T-Mobile also pledges to deliver 300 Mbps. 5G speeds to urban areas. This commitment is also significant, but not as significant as the rural area commitment given vigorous wireless competition exists in urban areas of the state.

<sup>32</sup> MOU, at Section VII.C. CETF is comfortable with the potential deferral given siting challenges in California as discussed elsewhere in this Reply Brief.

Also, New T-Mobile commits to deploy 5G technology at 90% of the cell locations specified in the Network Improvement Plan Tracking Tool (or geographically comparable sites by 2025). As explained in the MOU at Section VII.C., the commitment is for 90% versus 100% of cell sites given the variability in siting, permitting, spectrum clearing timeframes, backhaul acquisition,<sup>33</sup> and other factors beyond New T-Mobile's control. CETF contends that this variability is reasonable, given the well-documented difficulty of cell siting in California due to environmental laws, community aesthetic/EMF safety concerns, a lack of backhaul in rural and remote areas of the state, delay in permitting by various agencies, and the like.<sup>34</sup> Should delays be experienced in the time schedule reflected in Attachment B, then New T-Mobile will provide a detailed explanation at the regional level in its required annual Network Report to CETF.

After addressing ways to confirm construction of the majority of the cell sites, CETF turned its attention to ensuring that the 5G promised speeds would be delivered as shown on the coverage maps at the hearing. New T-Mobile committed to achieve the average (mean) speed tier (per the measurement protocol set forth in the MOU) across all sites for a specified speed category in the applicable year as specified in the Network Improvement Plan Tracking Tool. For sites that are designated to achieve both speed tiers (100 Mbps. and 300 Mbps.), there will be two speed tests: (1) one speed test in the year when spectrum and equipment are deployed that will allow the site to reach the first speed tier (i.e. 100 Mbps.), and (2) a second speed test in the year when the spectrum is deployed to allow the site to meet its second speed tier (e.g. 300 Mbps.). Additionally, New T-Mobile is committed, as a result of this MOU, to achieve a minimum of 80% of the specified speed tier *category at each site*, per the measurement protocol in the MOU. To the extent a cell site does not meet at least 80% of the designated speed tier (100 Mbps. or 300 Mbps.), T-Mobile will use good faith efforts to achieve the designated speed tier at that site. Speed testing results will be provided in the New T-Mobile annual Network Reports beginning in 2022.

CETF and T-Mobile developed a test protocol for coverage and speed that is contained in the MOU at Section VII.E. In it, New T-Mobile agreed to provide a speed test *for each site* (in

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<sup>33</sup> Backhaul connects the cell site traffic back to the Internet.

<sup>34</sup> The MOU at Section VII.C. also allows T-Mobile latitude should other events occur such as a regulatory or other imposed divestiture of assets, a force majeure event (e.g. natural disaster), inability to acquire necessary equipment or backhaul before the end of the 6-year commitment, and a siting moratorium or other extraordinary permitting delay or limitation.

Attachment B). The speed tests shall be conducted by an independent third party selected by CETF from a list of experts which is attached to the MOU as Attachment C, paid for by New T-Mobile, using a mutually agreed upon recognized third party data speed test (e.g. CalSpeed or FCC speed tests). CETF performed due diligence on the list of experts and found that there are numerous qualified independent experts on this list. The testing location shall be selected by the independent third-party testing firm consistent with customary professional standard reflecting a reasonable outdoor use case for the individual cell site being tested, without unusual blockage and an approximate distance between cell tower and cell site edge. Well over 10,000 speed tests will be performed. The speed test data will be provided to CETF in the annual Network Report.

Annually, under Section VII.D of the MOU, an annual Network Report will be provided to CETF. It will include a high resolution .pdf map depicting buildout progress in the form of the 5G County Coverage Maps. New T-Mobile will also provide high resolution .pdf maps that were provided in the Joint Applicants' Rebuttal Testimony of Neville Ray so that these may be compared to the buildout progress maps. Also, New T-Mobile will provide a link to its public coverage map to CETF. On this public coverage map, a user can zoom in to assess levels of coverage on a more granular basis.

CETF explains this critically important part of the MOU to the Commission and intervenors in order that they understand that CETF's goal was to "trust but verify" the Joint Applicants' promises of improved network coverage and 5G speeds (100 Mbps. and 300 Mbps. depending on the area) for California. TURN has expressed concern that New T-Mobile's proposed network cannot be verified by reasonable means.<sup>35</sup> Instead of accepting the coverage and speed promises at face value, CETF has sought in the MOU to require independent evidence to verify that the 5G network build has actually occurred with the coverage and at the speeds promised the Commission. CETF is satisfied that its substantial efforts to secure this portion of the MOU will help ensure the 5G buildout is achieved for the benefit of the public.

In Section VII.C. of the MOU, New T-Mobile promised to prioritize its planned 5G network improvements in 10 unserved and underserved California areas. The 10 areas will be selected by New T-Mobile after consultation with CETF and the Rural Regional Consortia. TURN and Greenlining have raised issues about what these Regional Consortia meetings will

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<sup>35</sup> TURN Opening Brief, at 29.

accomplish.<sup>36</sup> CETF explains that the Rural Regional Consortia will be asked to propose priority areas that are unserved or underserved by broadband to New T-Mobile, who in turn will match these priority areas up with its construction schedule. New T-Mobile has agreed to prioritize (meaning accelerate construction) of its planned 5G network upgrade to at least 10 of these unserved and underserved areas. CETF will monitor this commitment via the annual Network Report and confirm progress with the Rural Regional Consortia.

## **2. Emergency Preparedness and Response**

CETF listened with interest to testimony by the Joint Applicants on its Emergency Preparedness and Response efforts in the state, including in response to recent severe wildfires. CETF has prioritized broadband upgrades to certain rural fairgrounds that have broadband speeds lower than 25 Mbps. which are frequently used for emergency responder staging, evacuation camps for disaster victims, and national stockpile sites. At CETF's urging, T-Mobile included in Section VIII.A of the MOU a commitment to bring 5G wireless service to 10 fairgrounds in rural Counties with at least 3 installed in the first three years after the Transaction closing. The 10 fairgrounds will be chosen by T-Mobile from a list of 24 fairgrounds listed in Attachment D to the MOU.

TURN and Greenlining characterize MOU emergency response commitments as "limited" and are critical that the 10 fairgrounds to obtain 5G broadband service are "as yet unnamed rural counties."<sup>37</sup> CETF strongly disagrees. CETF assures this Commission that this fairground merger commitment is a major public benefit to the state, because rural fairgrounds lack the ability to attract investment from private companies to bring adequate Internet speeds to their fairgrounds for the needs of the administrators, vendors and the fair attendees. When a fairground is used as an evacuation and emergency staging site, the lack of adequate broadband service often requires communication providers to bring in Cells-on-Wheels (COW) and Cell-Sites-On-Light-Trucks (COLTs) to serve the increased demand for communications. Further, evacuees urgently need broadband to call their friends and family, their employers, and to contact their insurance companies.

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<sup>36</sup> TURN/Greenlining Response, at 8.

<sup>37</sup> TURN/Greenlining Response, at 8.

To explain how the list of 24 fairgrounds was derived, CETF first provided to T-Mobile a complete list of all the California fairgrounds from the California Department of Food and Agriculture's (CDFA) Fairgrounds Division. This CDFA list contained each California fairground and included the broadband speeds, according to the California Broadband Map. Only fairgrounds with speeds below 25 Mbps. were placed on the final Attachment D. Further, the CDFA fairground list showed which fairgrounds had been used the most as emergency staging or evacuation sites for disasters in the last five years. T-Mobile then took that list of sites and compared it to its 5G network build plans. T-Mobile removed two fairgrounds that were outside its 5G upgrade plans. CETF agreed that New T-Mobile could select 10 of the remaining 24 fairgrounds for upgrade within five years of the date of the close of the transaction.

In Section VIII.B. of the MOU, Sprint and T-Mobile also made important commitments to maintain the COWs and COLTs that each company has in California, and by 2021, to expand by 50% the number of COLTs and COWs it has in California so it may assist in disaster emergencies. Further, New T-Mobile pledged to continue the practice of offering community support to those impacted during an emergency, with concessions such as free wireless service, charging stations for devices, and other support necessary depending on the severity of the event. Surprisingly, TURN and Greenlining have belittled these important pledges as "limited commitments" on connecting rural fairgrounds and emergency preparedness and response. CETF strongly disagrees with this characterization. Connection to robust broadband of these rural fairgrounds have long been a CETF priority, given their important role as a community gathering point, and their frequent use as staging grounds for emergency responders and disaster evacuees. With wildfire preparedness at the top of mind of the Governor, Legislature and Commission, these commitments are important.

#### **H. Consultation with Regional Consortia**

In Section IX of the MOU, New T-Mobile agrees to meet with the Regional Consortia within 180 days of the transaction close in order to: (1) to brief the Consortia on the planned 5G network improvements and capital expenditures in California and (2) obtain its input on the 10 priority communities to be constructed pursuant to Section VII.C. Annually thereafter until 2024, New T-Mobile agrees to meet with the Regional Consortia in a joint meeting after

submission of its Annual Compliance Report to describe its capital investments in the prior year and discuss its upcoming plans for the next year.

While TURN and Greenlining have characterized the purpose of these meetings as “vague,”<sup>38</sup> the purpose of this New T-Mobile – Regional Consortia meeting is to give New T-Mobile an opportunity to obtain feedback and input from the Regional Consortia for future planning for capital investments, and to identify ways in which the Consortia can help with plan implementation. The latter may include assistance with local introductions and permitting, including providing support letters for planned projects. CETF will facilitate the planning of the meeting, given its current active work organizing, sharing expertise, providing guidance and data as requested to the Regional Consortia, on a wide variety of broadband issues and topics.

### **I. Annual Compliance Report**

Beginning in 2020 and continuing for five years, New T-Mobile will provide no later than February 28th of each year to CETF and the CPUC Communications Division Staff an Annual Compliance Report detailing its compliance with this MOU and progress meeting specified commitments for the prior calendar year. In the report, information shall include the Rate Plan report, a LifeLine/Low Income Report, and a Network Report. Specific details of the reports are contained in Section X of the MOU.

### **VI. CETF Requests Commission Conditions to Ensure Implementation of Public Benefit Commitments in the CETF – T-Mobile MOU**

In summary CETF respectfully requests that the Commission find that significant public benefits as described above will result from the MOU and promptly approve the Applications forthwith. As noted earlier, CETF plays a unique role with its broadband mission assigned by this Commission, ensuring that all Californians have access to, and adopt, advanced technologies, particularly low-income and underserved communities. CETF posits that what it has achieved in the MOU is set of very significant and verifiable public benefits for all Californians, particularly for residents unserved and underserved by broadband, for school children who cannot do their homework because they lack an Internet connection at home, for low-income households that need an affordable broadband plan, and for evacuees and emergency

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<sup>38</sup> TURN/Greenlining Response, at 8.

responders who need high speed Internet at rural county fairgrounds. Further, CETF's deep expertise and practical experience in state and federal broadband issues make it uniquely qualified to assess and opine on the coverage, speed and timing of the proposed 5G network. Our expertise further enabled us to develop a method to confirm that the 5G network build commitments will be completed as promised. In the end, CETF is fully satisfied that the Transaction will bring substantial consumer benefits. For these reasons, CETF urges the Commission find that the transaction will contain significant public benefits that outweigh other detriments and should be approved promptly.

## **VII. Conclusion**

WHEREFORE, CETF respectfully requests that the Transaction proposed in the Applications be granted, in light of significant public benefits of the merger, including 5G wireless coverage with download speeds of 100-300 Mbps. to the majority of California's population, plus significant voluntary commitments by Joint Applicants on rates, LifeLine services, broadband adoption, school-based technology programs, and enhanced emergency preparedness/response. CETF requests that the Joint Applicant's voluntary commitments in the MOU be included as conditions in the Ordering Paragraphs of a final decision granting the Applications. Further, CETF requests that the conditions adopted be verifiable and enforceable by this Commission.

Respectfully,

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