

Docket No.: A.18-07-011 and A.18-07-012

Exhibit No.: _____

Hearing Date: _____

Witness: Sunne Wright McPeak

ALJ: Karl Bemesderfer

Commissioner: Clifford Rechtschaffen

**SUPPLEMENTAL TESTIMONY OF SUNNE WRIGHT MCPEAK
ON BEHALF OF THE CALIFORNIA EMERGING TECHNOLOGY FUND
NOVEMBER 22, 2019**

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1 **I. WITNESS IDENTIFICATION**

2 **Q. Please state your name and position.**

3 A. My name is Sunne Wright McPeak. I am the President and CEO of the California Emerging Technology
4 Fund (“CETF”), an intervenor in the Application No. (A.) 18-07-011 and A. 18-07-012. I supervise and direct
5 all public policy efforts by CETF before the California Public Utilities Commission (“Commission”), Federal
6 Communications Commission (“FCC”), and other local, state and federal agencies.

7 **Q. Please briefly describe CETF.**

8 A. CETF is a non-profit organization established by this Commission in 2006 with the mission to close the
9 Digital Divide in California. CETF has over a decade of expertise in broadband infrastructure and
10 broadband adoption programs. CETF regularly appears before this Commission in merger proceedings to
11 advocate for public benefits that are “appropriate, fair and comparable” to prior mergers where applicants
12 have voluntarily provided a variety of public benefits, for example, new communications infrastructure
13 builds in the state, voluntary commitments to affordable rates for broadband service, free or low-cost
14 Internet-ready electronic devices for low-income households, free public Wi-Fi hotspots in rural/remote
15 areas, and other broadband inclusion initiatives. CETF has successfully negotiated settlement agreements
16 or memorandum of understanding with major broadband providers engaged in corporate consolidations to
17 ensure there are public benefits. In this merger, CETF has a strong interest in ensuring that the merger has
18 benefits for California wireless customers, particularly those who are low-income and who rely on smart
19 phones to access the Internet. Further, CETF wants to ensure that wireless service speeds are improved
20 particularly in areas where current mobile coverage is of quality lower than nearby urban areas. Finally,
21 CETF wants any approvals conditioned on infrastructure commitments being fulfilled and ensuring
22 Commission monitoring of verifiable progress.

23
24 **II. Purpose of Testimony**

25 **Q. Is CETF a party in this proceeding?**

26 A. Yes, CETF has intervened in these proceedings to ensure that its views are heard as to commitments for
27 public benefits from the Joint Applicants, relating to broadband infrastructure and digital equity issues.

28 CETF is not eligible for intervenor compensation, but self-funds its involvement in order to ensure that

1 various broadband and digital equity goals of the state are considered by the Commission. CETF filed
2 “California Emerging Technology Fund Intervenor Testimony” on January 7, 2019 in this proceeding, in
3 addition to other pleadings in this docket. CETF has cross-examined witnesses and reviewed the amended
4 testimony by the Joint Applicants and the base documents relating to the federal agreements with the
5 Federal Communications Commission (“FCC”) and the Department of Justice (“DOJ”).

6 **Q. Has CETF executed a Memorandum of Understanding with T-Mobile USA, Inc.?**

7 A. Yes, on March 22, 2019, CETF and T-Mobile USA, Inc. (“T-Mobile”) executed a “Memorandum of
8 Understanding between California Emerging Technology Fund and T-Mobile USA, Inc.” (“MOU”) which
9 was executed after the hearing concluded in February 2019. A copy of the MOU was submitted into the
10 record on April 8, 2019, as Exhibit A attached to the “Joint Motion of the Joint Applicants and the
11 California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of
12 Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.” (hereinafter
13 “Joint Motion”).

14 In our Joint Motion at pages 2-3, CETF noted its “strong interest in ensuring that this proposed
15 merger. . . has benefits for California wireless customers, particularly those who are low-income and who
16 rely on only their smartphones to access the Internet.” CETF expressed concerns about New T-Mobile’s
17 participation in the LifeLine program, that the rates and terms of services on low-income smartphone plans
18 would remain affordable and of similar quality, that wireless service rates would remain the same for all
19 customers for at least 3-5 years, that the Joint Applicants make California-specific commitments to
20 infrastructure upgrades with verifiable data speed increases; and that Joint Applicants support digital
21 inclusion and literacy outreach programs in the state. CETF specifically requested that this Commission
22 adopt conditions in each of these areas and the conditions should be verifiable and enforceable and
23 monitored by the Commission to ensure compliance.

24 I am extremely pleased that the CETF MOU contains provisions that address every major concern that
25 CETF had raised, plus adds an additional voluntary commitment to support the state’s efforts to enhance
26 emergency preparedness and response in an era of increasing wildfire and other disasters. I urge the
27 Commission to carefully review the entire CETF MOU which delivers a robust set of verifiable public
28

1 benefits including rural wireless broadband coverage by 5G within five years, which in CETF's view
2 warrants immediate approval of these Applications.

3 **Q. Are you aware of agreements entered into by Joint Applicants with the FCC and the DOJ?**

4 A. Yes, I was made aware of the FCC and the DOJ agreements by representatives of the Joint Applicants
5 promptly after they were made public. Full copies of the agreements were made available to CETF and its
6 Special Counsel. CETF has reviewed the agreements and analyzed them to ensure we understood how the
7 FCC and DOJ agreements might impact the CETF MOU.

8 **Q. Are you aware of the assigned Administrative Law Judge's August 27, 2019 order requesting that
9 the Joint Applicants file an Amended Application reflecting the changed conditions?**

10 A. Yes.

11 **Q. Is the purpose of this reply testimony to respond to the additional eight questions posed in the ALJ's
12 August 27th order?**

13 Yes.

14
15 **III. AMENDED SCOPING RULING – ISSUE NUMBER 1**

16 **Q. In Issue Number 1 of the Amended Scoping Ruling, it asks "What changes are required to
17 previously submitted written or oral witness testimony resulting from Sprint, T-Mobile or Dish
18 Network entering into DOJ and FCC Commitments? The changes must be identified in new
19 testimony from the same witness who submitted the original testimony." Do you have any changes to
20 your prior submitted written or oral witness testimony?**

21 A. No. Bear in mind, however, that my written and oral witness testimony *preceded* the execution of the
22 CETF MOU. At the end of my initial testimony at page 9, I recommended there be verifiable and
23 enforceable conditions placed on the merger that will: (1) ensure that low cost and affordable wireless
24 service plans – including LifeLine plans that include adequate data – remain in place at existing rates for at
25 least 3-5 years; (2) require New T-Mobile to offer low cost data plans that are adequate to access the
26 Internet via a smartphone so that typical applications are accessible; (3) require Applicants to make
27 California-specific commitments to infrastructure upgrades to increase data speeds in areas of the state with
28 no, slow or unreliable wireless service, and that such commitments are verifiable; and (4) require

1 Applicants to provide digital adoption outreach programs that encourage unconnected low-income or
2 disadvantaged persons to access the Internet in areas where broadband adoption is low in the state. I am
3 pleased to report that the CETF MOU accomplishes all these goals, plus adds more benefits in emergency
4 services given current wildfire emergencies and Public Safety Power Shutoff events where mobile
5 communications are critical in fire risk and surrounding geographic areas.

6 CETF urges the Commission to review the Joint Motion to understand the public benefits of the MOU,
7 and to review the “Response of California Emerging Technology Fund to Joint Applicants’ Amended
8 Wireless Application” filed October 21, 2019 (“CETF Response to Amended Application”) in this
9 proceeding. In both those filed documents, CETF sets forth in detail its analysis of the impact of the FCC
10 and DOJ agreements and commitments on the MOU and concludes that significant public benefits will
11 flow from the agreement, and that these far outweigh any costs or speculative concerns.

12 13 **IV. AMENDED SCOPING RULING – ISSUE NUMBER 2**

14 **Q. What changes are required to the terms of the Memorandum of Understanding between T-** 15 **Mobile and CETF resulting from Sprint, T-Mobile or Dish Network entering into the DOJ and FCC** 16 **Commitments?**

17 A. CETF has reviewed the Joint Applicants Amended Testimony filed on November 7, 2019 in this docket.
18 CETF is satisfied that the minor changes listed therein do accurately reflect necessary changes to the CETF
19 MOU.

20 As to the FCC and DOJ commitments, CETF has concluded that the New T-Mobile 5G build-out
21 commitment in five years is unaffected by the potential purchase of the 800 MHz spectrum by Dish
22 Networks. This is consistent with the conclusion reached by Neville Ray in his Supplemental Testimony at
23 page 4, lines 7-8. This build-out commitment is one of the key provisions of the CETF MOU, because this
24 5G broadband build will go a long way to achieve the goal of Assembly Bill (AB) 1665 in rural California.
25 AB1665, codified at Public Utilities Code [710], requires this Commission approve funding by December
26 31, 2022 for infrastructure projects that will provide broadband access to no less than 98% of California
27 households in each consortia region. This Ray testimony is consistent with assurances received by CETF
28 from T-Mobile that the California 5G build-out timing is unaffected by the DOJ and FCC Commitments.

1 CETF agrees with Mr. Ray that the FCC Commitments will enhance the accelerated build-out, coverage
2 and speeds, and promote competition for in-home broadband service in rural areas not well served by
3 broadband at present. This is because in the FCC commitment, New T-Mobile has made specific, concrete
4 national benchmarks, backed up by an FCC enforcement mechanism, in addition to the CETF MOU
5 mechanism as to the California-build out.

6 CETF directs the Commission’s attention to pages 9-12 of the MOU for a thorough description of the
7 California 5G infrastructure build-out, and post-construction speed tests and comparison of coverage maps,
8 which is how CETF will ensure the 5-G coverage and speeds that were promised to the Commission and
9 the people of California in the Application, as amended, will be actually delivered. This is no mere
10 certification. As set for in the MOU at pages 9-12, New T-Mobile has agreed to an independent third party
11 firm experienced in working with the wireless industry testing upgraded cell sites in 2021 and 2024 to
12 demonstrate that the cell sites after its 5G upgrades reach the coverage area at the promised speeds. This
13 testing verifies the coverage maps proffered by Joint Applicants in its Amended Application.

14 Further, New T-Mobile will prioritize its 5G build to make improvements in ten unserved and
15 underserved California areas, selected by New T-Mobile after consultation with CETF and the Regional
16 Broadband Consortia. Also, CETF secured emergency preparedness commitments which include New T-
17 Mobile deploying 5G wireless continuous service to ten County fairgrounds in rural counties with no or
18 poor broadband service, with three fairgrounds to receive service within three years. Also New T-Mobile
19 has committed to support first responders with Cells on Wheels and Cells on Light Trucks to aid in
20 restoring wireless service after major disasters. New T-Mobile also pledged to support connectivity to first
21 responders, emergency workers and displaced residents, including free charging stations, free wireless
22 service, etc. These commitments all remain in place.

23 CETF also has reviewed the Joint Applicants’ Supplemental Testimony of G. Michael Sievert, dated
24 November 7, 2019, as to the impact of DOJ and FCC commitments on the CETF MOU. Overall, CETF
25 concurs with the changes that Mr. Sievert made to his Supplemental Testimony at pages 4-5, as to the
26 minor impact of the FCC and DOJ agreements on the MOU. Joint Applicants made a three-year pricing
27 commitment in this proceeding, and the CETF MOU memorializes it in Section I of the MOU. Should the
28 transaction close, the pricing commitment will apply to all New T-Mobile brands until Dish decides

1 whether it will purchase Boost and Virgin Mobile brands. Should Dish purchase Boost and Virgin Mobile,
2 the pricing commitment will only cover New T-Mobile and Assurance Wireless, brands that New T-Mobile
3 controls. CETF is satisfied with this change.

4 As to LifeLine, CETF obtained certain commitments from T-Mobile as to the indefinite commitment
5 to provide LifeLine services (with an assurance of at least five years at a minimum), with certain data caps,
6 and free compatible handsets. Assurance is the Sprint LifeLine service provider that will provide such
7 services. Assurance is not an entity that will be divested. New T-Mobile has agreed to fund advertising
8 and adopt new enrollment goals of 332,500 new additional low-income households for its LifeLine and
9 low-income adoption to help close the Digital Divide. Finally, New T-Mobile will expand certain school-
10 based digital inclusion programs and provide funding for other digital inclusion initiatives. As noted in Mr.
11 Sievert's Amended Testimony at page 6, these remain in place unchanged.

12 In summary, after review of the Joint Applicants' Amended Testimony, CETF does not have any
13 concerns about the FCC and DOJ agreements and the commitments made thereunder as to the CETF MOU.
14 CETF is fully satisfied that such agreements will not adversely impact the commitments made to California
15 by Joint Applicants in the MOU.

16 17 **V. AMENDED SCOPING RULING – ISSUE NUMBER 3**

18 **Q. What are Dish Network's California service obligations?**

19 A. CETF declines to respond to this question which appears to be directed towards Joint Applicants and
20 Dish. CETF will merely say that it is aware that other intervenors in their protests were greatly concerned
21 about the reduction in wireless competitors in the state from four to three. CETF applauds the Joint
22 Applicants for its DOJ commitments which respond directly to this important concern about competition,
23 presenting potential for a new national wireless competitor in Dish, a seasoned national satellite video and
24 Internet provider, with significant assets from Joint Applicants (including the potential to purchase 800
25 MHz spectrum, obtain decommissioned cell sites, obtain a favorable long term Mobile Virtual Network
26 Operator agreement, and other support). Considering the DOJ commitment, CETF thinks an immediate
27 grant of the applications is warranted and urges timely action.

1 **VI. AMENDED SCOPING RULING – ISSUE NUMBER 4**

2 **Q. How does the proposed transfer of spectrum to Dish Networks impact the quality and extent of**
3 **New T-Mobile’s existing 4G network and its planned 6G [sic] network? [Please respond to the**
4 **question substituting “5G” for “6G”, a typographical error in the Amended Scoping Memo.]**

5 A. CETF has examined the DOJ Commitments and CETF concludes there is no discernable impact on the
6 current 4G LTE network or the proposed 5G network being planned for California. Further, CETF has
7 reviewed the prior testimony of Neville Ray and Michael Sievert and their respective amended testimony
8 post-DOJ Commitment. Given that the 800 MHz spectrum that may be purchased by Dish is not planned
9 to be a foundational part of the planned 5G network, an 800 MHz spectrum transfer to Dish will not have
10 any impact on the 5G build. In his Supplemental Testimony at page 9, lines 3-5, Mr. Ray further notes that
11 New T-Mobile did retain the right to lease back a certain amount of the 800 MHz should it decides it needs
12 it after all. CETF points out that the critical spectrum that T-Mobile sought from the Sprint combination is
13 what is called mid-band spectrum, which means spectrum that is at or above 1 gigahertz (GHz). 800 MHz
14 is below 1 GHz on the FCC spectrum band and is considered “low band spectrum.” Thus, the 800 MHz
15 spectrum was not the spectrum that T-Mobile desires for its 5G build-out. As Mr. Neville notes in his
16 Supplemental Testimony at page 10, lines 1-13, T-Mobile already has a substantial amount of low-band
17 600 MHz spectrum, and so 800 MHz is not the spectrum it wanted to deploy a 5G network. It wants mid-
18 band spectrum, which in this case was Sprint’s 2.5 GHz spectrum. CETF has reviewed the spectrum
19 refarming table that Mr. Ray had used in his prior testimony and confirmed that New T-Mobile did list five
20 types of spectrum it would use to deploy 5G (600 MHz, PCS, AWS, 2.5 GHz and mmWave) -- and that
21 800 MHz was not listed.

22
23 **VII. AMENDED SCOPING RULING – ISSUE NUMBER 5**

24 **Q. How does the divestiture of Sprint, Boost and Virgin pre-paid businesses impact California**
25 **consumers who are currently receiving services from one or another of these providers?**

26 A. As to the CETF MOU, CETF does not see any impacts relating to this divestiture of the prepaid
27 businesses. In the MOU, the key actor for the LifeLine commitments is Sprint’s Assurance brand. The
28 DOJ commitment specifically excludes the divestiture of Sprint’s Assurance unit, and CETF understand

1 this was specifically due to the MOU and its California commitment. CETF declines to respond to the
2 question as to other aspects.

3
4 **VIII. AMENDED SCOPING RULING – ISSUE NUMBER 6**

5 **Q. How does the requirement that New T-Mobile make its network available to Dish Network for up
6 to seven years impact the quality and the extent of New T-Mobile's existing 4G network and its
7 planned 6G [sic] network?**

8 A. CETF is pleased about both requirements. From the Supplemental Testimony of Neville Ray, he states
9 that after the planned 5G build, there will be plenty of capacity for many resellers, including Dish Network.
10 Further, seven years will give Dish Network time to build its own facilities-based network, which is
11 important for any national wireless carrier's success. As a result, CETF recommends that these
12 requirements will result in significant public benefits for California consumers.

13
14 **IX. AMENDED SCOPING RULING – ISSUE NUMBER 7**

15 **Q. In what other ways, if any, could the DOJ and the FCC commitments change the benefits that
16 applicants have claimed California customers will receive from the proposed transaction?**

17 A. CETF does not think that the DOJ or the FCC commitments change the benefits that Joint Applicants
18 have claimed that California consumers will receive. Upon analysis, CETF is satisfied that the very minor
19 changes wrought by the DOJ and FCC commitments do not impact the public benefits in the MOU. CETF
20 fully intends to ensure that every public benefit it negotiated for in the MOU is delivered to the people of
21 this state by New T-Mobile, and if it is not, CETF intends to pursue compliance with this Commission in a
22 complaint proceeding or petition for modification. Therefore, CETF emphasizes that compliance with its
23 MOU be placed in the Ordering Paragraphs of a final decision on the consolidation, and that any consumer
24 intervenor be able to pursue compliance with the MOU here at the Commission, as in past consolidation
25 decisions.

1 **X. AMENDED SCOPING RULING – ISSUE NUMBER 8**

2 **Q. With references to the Network and In-Home Commitments set forth for New T-Movie’s**
3 **Nationwide Deployment at pages 1-3 of Attachment 1, provide all of the same information in the**
4 **same format as contained in Sections I, II and III of Attachment 1, specifying the commitments for**
5 **deployment in California rather than nationwide.**

6 A. CETF has no response to this question.

7
8 **X. CONCLUSION**

9 CETF strongly recommends immediate approval of the Amended Applications as having
10 numerous California public benefits that have been *increased* with the subsequent post-hearing
11 commitments to CETF, the FCC and DOJ. In the absence of a reasonable position by the other
12 intervenors, CETF maintains that a plethora of real, verifiable public benefits for our state’s
13 residents is achievable in this corporate consolidation. Plus, there are other significant benefits
14 that have been offered including 1,000 new jobs in the San Joaquin Valley and the formation of a
15 fourth new national wireless carrier, Dish. In prior cases, much less has been offered and
16 Commission approvals have been granted.

17
18 CETF does not recommend holding new evidentiary hearings on the Supplemental Testimony
19 of the Joint Applicants. After CETF’s careful review, it is obvious that the changes are quite
20 minimal and have no impact on the package of public benefits that CETF obtained in the MOU
21 for California consumers.

22 Time is of the essence in closing the Digital Divide. Access delayed is access denied for those
23 living without access to the Internet. This concludes my testimony.

DECLARATION

I, Sunne Wright McPeak, have reviewed the Supplemental Testimony prepared for me in Application Nos. 18-07-011 and 18-07-012, and declare under penalty of perjury under the laws of the State of California that the responses to the questions posed are true and correct to the best of my knowledge, information and belief, and if called to testify thereon, I am prepared to do so. None of the information I have provided is confidential.

Dated: November 22, 2019



Sunne Wright McPeak