**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| 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 No. 18-07-011 |
| And Related Matter. | Application No. 18-07-012 |

# OPENING COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA, DISTRICT 9 ON PROPOSED DECISION

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## RECOMMENDED CHANGES TO PD

CWA respectfully urges the Commission to revise the PD to reflect the record evidence that the merger is anti-competitive and, on balance, is not in the public interest. Specifically, the record shows – and the PD fails to reflect – that:

- The merger would eliminate thousands of California jobs;
- The merger would combine two companies with long histories of labor and employment violations;
- The merger would increase wireless employers' power to unilaterally set wages;
- There are no merger-specific, verifiable public interest benefits; and
- The merger is anti-competitive.

Moreover, the PD should be revised to include conditions to mitigate the merger's negative effects on employees, including requiring that no T-Mobile or Sprint employee (including those of dealers and contractors) loses a job or wages as a result of the transaction, and to ensure the complete protection of employees' right to form a union of their own choosing free from any interference by the New T-Mobile.

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# OPENING COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA, DISTRICT 9 ON PROPOSED DECISION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Communications Workers of America, District 9 ("CWA") respectfully submits these comments on the Proposed Decision Granting Application and Approving Wireless Transfer Subject to Conditions ("PD").

## I. INTRODUCTION

In July 2018, T-Mobile and Sprint (the "Applicants") filed applications with the Commission for the proposed merger. The Commission then proceeded to evaluate "the fundamental issue presented by these applications," which is whether a merger between the nation's third and fourth largest mobile wireless carriers "is in the public interest of the residents of California."[1] A record was developed which showed that the merger would harm competition

[1] Amended Assigned Commissioner's Scoping Memo and Ruling, October 4, 2018, p. 2.

and harm the public interest by eliminating jobs and increasing prices with no countervailing verifiable, merger-specific benefits.[2]

Specifically, the record showed that the merger would eliminate more than 3,000 California jobs, increase wireless employers' power to unilaterally set wages and combine two companies with a long history of labor and employment violations. The record also showed that the proposed merger raised serious competitive concerns that would disproportionately impact low- and moderate-income customers. In addition, the record showed that T-Mobile and Sprint failed to provide evidence of verifiable, merger-specific public interest benefits. Both companies are already poised to roll out 5G services and both companies would continue to compete as standalone companies. Moreover, the record did not support the Applicants' claim that the merger would bring improved service to rural California.

The record also showed that the DISH divestiture does not alter the conclusion of whether the proposed merger is in the public interest of Californians. The record evidence showed that the DISH divestiture would not remedy the merger's job losses, store closures or downward pressure on wages. The record also showed that the DISH divestiture would not remedy the proposed merger's anti-competitiveness. In short, the record evidence showed that the merger – with or without the DISH divestiture – is anti-competitive and not in the public interest.

The PD correctly states that the merger triggers Commission review under Public Utilities Code sections 854(b) and (c),[3] but the PD fails to satisfy the requirements of these

[2] *See* Opening Brief of Communications Workers of America, District 9, April 26, 2019 and Reply Brief of Communications Workers of America, District 9, May 10, 2019.
[3] PD, p. 6.

sections. Sections 854(b) and (c) require that, before authorizing the merger, the Commission must find, based on record evidence, that the merger provides short-term and long-term economic benefits to ratepayers, does not adversely affect competition and is in the public interest.[4] To determine if the merger is in the public interest, the Commission must consider, on balance, a range of criteria, including whether the merger maintains or improves the quality of service to ratepayers, is fair and reasonable to utility employees, and benefits the state and local economies and communities served by the resulting public utility, among other factors.[5] The PD fails to meaningfully consider the merger's harm to the public interest. The PD grossly ignores the record evidence showing that the merger harms ratepayers and eliminates thousands of jobs. Had the PD reflected the preponderance of record evidence, it would have undoubtedly concluded that the merger is not in the public interest. Moreover, the PD fails to find that the merger would not adversely affect competition. Indeed, it cannot. Overwhelming record evidence shows that the merger is anti-competitive. The PD is fatally flawed.

## II. THE PD ERRS BY IGNORING THE OVERWHELMING RECORD EVIDENCE THAT THE MERGER IS UNFAIR AND UNREASONABLE TO UTILITY EMPLOYEES

To authorize a proposed merger, the Commission must find that the merger is in the public interest.[6] To determine whether the proposed merger is in the public interest, the Commission must consider whether the merger, among other factors, is fair and reasonable to utility employees.[7] Overwhelming record evidence shows that the merger would harm Sprint and T-Mobile retail workers in California. The PD completely ignores this substantial evidence.

[4] Pub. Utilities Code §§ 854(b) and (c).
[5] *Id.,* §§ 854(c)(1)-(8).
[6] *Id.,* § 854(c).
[7] *Id*., §§ 854(c)(1)-(8).

The ***entirety*** of the PD's "analysis" of whether the merger is fair and reasonable to utility employees consists of the following two statements in the section "Arguments in Favor of the Transaction:"

(1) "T-Mobile has also ***asserted*** that there is substantial evidence that the merger will have 'overall positive effects on jobs' in California. It has committed to open a new customer experience center in Kingsburg, CA that will create 1,000 new jobs and therefore benefit the Central Valley economy,"[8] and

(2) "DISH has the ***right*** to offer jobs to Sprint's Prepaid Asset Personnel (consistent with employee rights and employment laws), and New T-Mobile is obligated to facilitate that hiring process and the transition of employees."[9]

The Applicants' ***assertion*** "that there is substantial evidence that the merger will have 'overall positive effects on jobs' in California" does not constitute substantial evidence that the merger is fair or reasonable to utility employees. Indeed, overwhelming record evidence (described below) shows quite the opposite (even considering the jobs created by the Kingsburg customer experience center). In addition, DISH has made ***zero*** jobs commitments and, therefore, DISH's "***right*** to offer jobs to Sprint's Prepaid Asset Personnel" lends nothing to the merger being fair or reasonable to utility employees.

Moreover, despite CWA's extensive and detailed evidence showing that the merger would significantly and adversely impact jobs in California, the PD's "Arguments Against the

[8] PD, pp. 20-21, quoting Joint Applicants' Post-Hearing Opening Brief, April 26, 2019, p. 88 (emphasis added).
[9] PD, p. 25 (emphasis added).

Transactions" section contains ***no*** reference to CWA's evidence and ***no*** analysis of the merger's adverse impacts on utility employees. ***None***. The is a glaring omission.

### A. The PD Ignores Substantial Evidence of the 3,000 Job Losses that Would Occur in California

The PD should be revised to reflect the record which showed that the proposed merger would eliminate more than 3,000 California jobs from retail store closures.[10] Specifically, CWA's modeling found that 902 of 3,241 (28%) stores in California would close from the merger, eliminating 3,342 California jobs.[11] This is because, in California, Sprint and T-Mobile's 1,230 postpaid wireless services corporate and authorized retail stores have a substantial geographic overlap.[12] Therefore, it makes sense that the proposed merger would cause a significant number of store closures.[13] According to industry analysts, store closures are a key element of the projected cost savings from the proposed merger.[14] Indeed, T-Mobile acknowledged that the merger would result in a significant number of postpaid store closings in California but it has not determined which stores would close. In early 2019 it was "still evaluating plans related to any prepaid retail store locations as a result of the merger."[15] In other words, T-Mobile did not know how many stores would close as a result of the merger. The PD ignores this substantial evidence.

Record evidence showed that the merger would result in a net loss of 1,707 postpaid retail jobs in California.[16] The initial store closures following the merger will still eliminate more

[10] Exh. CWA-1, pp. 52, 101-109.
[11] *Id*., p. 52.
[12] *Id*., p. 53.
[13] *Id*.
[14] *Id*., citing New Street Research "Sprint/T-Mobile Redux: Refreshing Synergies and Scenarios," p. 28 (April 15, 2018).
[15] Exh. CWA-2, p. 6.
[16] Exh. CWA-1, p. 54; Exh. CWA-18, p. 6.

than 2,864 postpaid retail positions in California. Those losses will be somewhat offset by increased employment at remaining stores to cover higher volumes.[17] The PD ignores this substantial evidence.

For prepaid retail job losses, CWA initially estimated the merger would result in closing 545 Metro and Boost Mobile stores and 1,635 associated retail job losses in California.[18] Neither T-Mobile nor DISH made any commitments to maintain employment levels in prepaid retail operations. While T-Mobile testified that "it plans to offer **all** of the employees at T-Mobile and Sprint retail stores in California the opportunity to continue as employees of New T-Mobile,"[19] the record showed that T-Mobile's plan would not, in fact, apply to "**all**" employees who sell, service, maintain or build T-Mobile and Sprint products and services. Rather, T-Mobile's jobs "plan" would apply to direct internal employees only (i.e. ***not*** employees of contractors or authorized dealers).[20] The record showed that ***at least 83%*** of T-Mobile stores are authorized dealer stores.[21] T-Mobile's "plan" to offer jobs to current employees would apply to ***none*** of the employees at authorized dealer stores, which make up virtually all of the prepaid retail stores in California.[22] The PD ignores this substantial evidence of harm to utility employees, particularly direct external employees.

[17] Exh. CWA-1, p. 54.
[18] *Id.*
[19] Exh. Jt. Appl.-2, p. 38 (emphasis in original).
[20] Tr., Vol. 4, p. 353:10-14 (Sievert). "Direct internal employees" are the company's payroll employees. "Direct external employees" are employees who work for authorized dealers or contractors.
[21] 83% is based on publicly available data catalogued by CWA. *See* Exh. CWA-2-C for the percentage of authorized dealer stores based on T-Mobile's confidential data.
[22] Exh. CWA-2C.

When asked whether it has made commitments to maintain employment levels at Boost branded retail stores in California (which are all operated by authorized dealers),[23] DISH testified that:

- DISH has made **no** commitments to maintain the Boost retail footprint in California following the proposed divestiture;[24]
- DISH has made **no** commitments to ensure that employees at Boost authorized dealer stores will not experience loss of employment as a result of the DISH acquisition of the Sprint prepaid assets;[25] and
- DISH has made **no** commitments to ensure that employees at Boost authorized dealer stores will not experience forced relocation as a result of the DISH acquisition of the Sprint prepaid assets.[26]

The PD ignores this substantial evidence.

Without commitments by T-Mobile and DISH to preserve jobs, "thousands of jobs in Boost and Metro stores continue to be at risk as a result of this transaction."[27] Tellingly, between the announcement of the proposed merger in April 2018 and November 2019, the Applicants closed a net 225 prepaid retail locations.[28] In the Los Angeles area, the second largest wireless market in the country, the applicants closed a net 116 prepaid retail locations, reducing their prepaid retail footprint by 15%. This was a 12% reduction of Metro locations and 20% reduction

[23] Tr. Vol. 9 at 1573:13-16 (Blum).
[24] *Id.* at 1578:18-22 (Blum).
[25] *Id.* at 1574:21-27, 1574:10-12 (Blum).
[26] *Id.* at 1575:23 – 1576:2 (Blum).
[27] Exh. CWA-18, p. 7.
[28] *Id.* Quite notably, since November 2019, there have been 110 additional store closings.

in Boost locations.[29] The shrinking prepaid retail footprint in California directly contradicts the Applicants' claims that there was no plan to change the retail footprint and that the merger would create jobs. The PD ignores this substantial evidence of the merger's harm to utility employees.

**B. The PD Ignores Substantial Evidence of the Merger's Adverse Effect on Wages**

Record evidence showed that labor markets in the U.S. are highly concentrated, workers are paid lower wages in more concentrated labor markets and collective bargaining substantially reduces downward pressure on wages from labor market concentration.[30] Therefore, a proposed merger's competitive analysis should identify the affected labor markets and analyze the merger's impact on concentration in those labor markets.[31] The PD fails to do so.

Record evidence showed that the merger "could substantially increase concentration in numerous local wireless industry retail labor markets, increasing the monopsony power of employers in purchasing labor power of retail wireless workers, thereby depressing workers' wages and benefits through reduced competition for labor."[32] The record showed that the Economic Policy Institute and Roosevelt Institute's study of the labor market impact of the merger on retail workers who sell wireless equipment and services found that post-merger, the annual earnings of retail wireless workers in the most expensive urban areas in California would decline (by as much as $2,906 in Los Angeles, $2,953 in San Francisco, $2,363 in San Diego, $2,728 in San Jose and $2,319 in Sacramento on an annual basis).[33] Evidence from the FCC supported these findings. According to the FCC, New T-Mobile "will be able to reduce dealer

[29] *Id.* Since November 2019, the Los Angeles metro area prepaid store closings rose to 18%, including 15% of Metro stores and 25% of Boost Mobile locations.
[30] CWA-1, pp. 57-59.
[31] *Id.*
[32] *Id.*
[33] *Id.*, p. 59; Exh. CWA-18, p. 8.

commission rates because of the increased volumes after closure of duplicative retail locations"[34] and "is likely to achieve reduced commission rates due to greater store level productivity at increased average volumes per store."[35] The PD completely ignores this substantial evidence. Record evidence showed that "[t]hese supposed 'synergies' represent affirmative plans by the Applicants to use their increased market power to extract economic benefit from authorized dealers through reduced commissions. Evidence showed that the Applicants' plans to reduce dealer commission rates will directly translate to lower compensation levels for retail workers."[36] Indeed, the President and COO (and soon-to-be CEO) of T-Mobile testified that authorized dealers may earn "a lower commission per transaction."[37] This means that, post-merger, employees of authorized dealers will have to complete ***more*** transactions to earn as much as their pre-merger wages. The PD completely ignores this substantial evidence of the merger's harm to utility employees.

### C. The PD Ignores Substantial Evidence of T-Mobile's Violations of Workers' Rights

Record evidence showed why T-Mobile's claim that it "has an impressive history of employee satisfaction…"[38] is patently false and its long history of employment law and workers' rights violations "speaks volumes" about the company's "trustworthiness and corporate character."[39] Record evidence showed that T-Mobile has been found guilty of violating U.S.

[34] Exh. CWA-18, p. 8, citing Memorandum of Opinion of and Order, Declaratory Ruling, and Order of Proposed Modification in the Matter of the Joint Application of Sprint Communications L.P. and T-Mobile USA, Inc. FCC 19-103. WT Docket No. 18-197. Adopted October 15, 2019.
[35] Exh. CWA-19, p. 137.
[36] Exh. CWA-18, pp. 8-9.
[37] Tr. Vol. 9 at 1515:1-7, 1516:16-25 (Sievert).
[38] Exh. Jt Appl-8, p. 13.
[39] Exh. CWA-1, p. 61.

labor law seven times since 2015,[40] including most recently, the National Labor Relations Board's Region 32 found merit to the following unfair labor practice charge allegations that CWA filed against T-Mobile on September 16, 2019 regarding employer behavior at a T-Mobile retail store in Pinole, California:

> …the employer threatened employees with discharge in response to protected concerted activity. The employer, through the same person [name], interrogated employees about their protected concerted activity. [Name] further precluded employees from addressing group or workplace concerns, impliedly threatened employees with transfer in retaliation for protected concerted activities, and advised employees of the futility of organizing a union.[41]

The PD completely ignores this substantial evidence of the merger's harm to utility employees.

**D. The PD Fails to Mitigate the Harms to Utility Employees**

Overwhelming record evidence showed that the merger is unfair and unreasonable to T-Mobile and Sprint employees because it would eliminate more than 3,000 California jobs, reduce the employment options available to retail wireless employees in an already concentrated retail wireless labor market and exert downward pressure on wages and other working conditions. The Applicants' willful disregard for the massive job and wage losses that would occur for employees of authorized dealers is remarkable, but the PD does nothing to mitigate these harms. Collective bargaining mitigates the negative impacts of labor market monopsony power, but T-Mobile has fought aggressively to deny their employees this legal right, but the PD does nothing to remedy this harm.

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[40] *T-Mobile USA, Inc*., JD(NY)-34-15, 2015 WL 4624356 (August 3, 2015), adopted by NLRB on September 14, 2015; *T-Mobile USA, Inc*., JD-57-16, 2016 WL 3537770 (June 28, 2016); *T-Mobile USA, Inc. v. Nat'l Labor Relations Bd*., 865 F.3d 265 (5th Cir. 2017); *T-Mobile USA, Inc*., JD-23-17,2017 WL 1230099 (Apr. 3, 2017); *T-Mobile USA, Inc*., 365 NLRB No. 15 (Jan. 23, 2017); *T-Mobile USA, Inc. v. Nat'l Labor Relations Bd*., 717 F. Appx 1 (D.C. Cir. 2018).

[41] Exh. CWA-18, p. 9, quoting NLRB Settlement Agreement, Communications Workers of America, District 9, Unfair Labor Practice Charge against Deutsche Telekom AG d/b/a T-Mobile, Case 32-CA-248363, filed September 16, 2019.

Perhaps recognizing that the PD blatantly fails to analyze in any meaningful way the merger's impacts on utility employees, the PD conditions the merger on New T-Mobile increasing its number of employees in California "as of the date of the Transaction closing" by at least 1,000 three years following the close of the transaction.[42] But without meaningfully considering the substantial record evidence of the myriad of employee harms that would result from the merger, the PD's attempt at mitigating the harms is merely a stab in the dark. While substantial evidence showed that the merger would hit direct external employees the hardest with lost wages and lost jobs, the PD fails to protect them. While substantial evidence showed that hundreds of retail locations have closed since the Applicants announced the merger in April 2018, the PD opts to make the transaction closing date the employee headcount baseline for its "job creation" condition. With nearly 900 jobs[43] already lost since the merger announcement, the PD's conditions are hardly protective.

The Commission should revise the PD to meaningfully consider and reflect the overwhelming record evidence of the merger's adverse impacts on employees and include conditions that appropriately respond to and mitigate those public interest harms. CWA's recommended revisions and additions to the PD's conditions are included as Exhibit A. In short, the conditions must (1) protect direct internal ***and direct external*** employees from job and wage losses, (2) require an increased employee headcount as compared to ***the date the Applicants filed their application*** with the Commission (July 13, 2018) and (3) protect employees' rights to form

[42] PD, p. 49, Ordering Paragraph 25.
[43] CWA initially estimated that the merger would lead to the closure of 545 Metro and Boost Mobile stores in California. With an estimated three employees per store, CWA projected that this consolidation in the prepaid wireless market would cost 1,635 retail jobs. Since April 2018, the Applicants reduced the number of prepaid retail locations by 304 stores, which is equivalent to approximately 55% of the prepaid store closures and retail jobs (or, 899 jobs) initially projected by CWA.

a union. In addition, in light of the COVID-19 pandemic, the Commission should require New T-Mobile to provide wage and commission guarantees to retail store employees, and paid time not worked for employees who are in high risk categories, are sick, have been diagnosed with COVID-19, or must care for a child during school closures. These protections should extend to direct external employees.

## III. THE PD IGNORES THE MERGER'S ADVERSE CUSTOMER SERVICE IMPACTS TO CALIFORNIANS

The record shows that the merger would result in a substantial number of retail store closures, limiting communities' access to a diverse selection of wireless retail options. Reduced customer service is not in the public interest. The PD ignores this substantial evidence.

The record showed that both T-Mobile and DISH recognize that it is important for low-income customers, especially those with limited transportation options, to be able to easily access a diverse selection of wireless retail options in their communities.[44] Yet, record evidence also showed that store closures are a key element of the projected cost savings from the merger.[45] The merger would result in a significant number of store closures in California.[46] T-Mobile acknowledged this.[47] Further, DISH made no commitments to maintain the Boost retail footprint in California following the proposed divestiture.[48] Thus, substantial evidence showed that the merger will result in reduced customer access to a diverse selection of wireless retail options. The PD ignores this substantial evidence.

[44] Tr. Vol. 9 at 1504:15-21 (Sievert); Tr. Vol. 9 at 1572:12-19 (Blum).
[45] Exh. CWA-1, p. 53, citing New Street Research "Sprint/T-Mobile Redux: Refreshing Synergies and Scenarios," at 28 (April 15, 2018).
[46] *Id.*, pp. 52, 101-109.
[47] Exh. CWA-2, p. 6.
[48] Tr. Vol. 9 at 1578:18-22 (Blum).

The record also showed that the merger will result in not only reduced customer access to a diverse selection of wireless retail options, but also reduced customer service at the remaining retail locations. DISH made no commitments to maintain or improve customer service.[49] Further, by reducing authorized dealer commission rates, New T-Mobile will ***disincentivize*** maintaining or improving customer service. When asked how earning a lower commission per transaction incentives better customer service to Californians, T-Mobile's President and COO (and soon-to-be CEO) responded that employees would "rather be working with customers than cleaning the counters or doing other things that are less enjoyable."[50] Mr. Sievert's declaration is a presumption at best. It's entirely likely that employees would instead prefer to earn more for doing more work. Perhaps fair pay would translate into maintaining or improving customer service for Californians.

In short, record evidence showed that the merger would result in diminished customer service for Californians and is, therefore, not in the public interest. The PD completely ignores this substantial evidence and does nothing to mitigate this public interest harm.

## IV. THE PD FAILS TO FIND THAT THE MERGER DOES NOT ADVERSELY AFFECT COMPETITION

The Commission cannot authorize the proposed merger unless it finds that the merger would not adversely affect competition.[51] The PD is fatally flawed because it made no such finding and, indeed, it cannot. Rather, overwhelming record evidence showed that the proposed merger raises serious competitive concerns. Specifically, the merger would significantly increase concentration in the already highly concentrated mobile telephony/broadband and prepaid

[49] *Id*. at 1578:7-12 (Blum).
[50] Tr. Vol. 9 at 1518:20-22.
[51] Pub. Utilities Code § 854(b)(3).

wireless retail markets and massively exceed the spectrum screen. The merger would also eliminate fierce competition between two companies whose customers view their products and services as close substitutes.[52] Moreover, extensive record evidence showed that the DISH divestiture does not remedy the merger's anti-competitive harms because:

(1) the DISH divestiture violates all of the basic tenets of Antitrust Division policy requiring that merger remedies by "appropriate, effective and principled,[53]

(2) the DISH divestiture of less than a full business unit carries significant execution risk;[54]

(3) the DISH divestiture depends on behavioral conditions that will last for years, creating excessive entanglements between New T-Mobile and DISH requiring multi-year oversight;[55]

(4) DISH fails to meet the standard financial, managerial, technical and operational, and regulatory requirements for a divestiture buyer;[56]

(5) the incentives for DISH to build in a timely framework its own retail wireless network in competition with AT&T, Verizon and T-Mobile are weak, and DISH has strong incentives to remain an MVNO under favorable terms and ultimately sell its spectrum, or alternatively, operate any network it builds outside of the relevant market;[57]

(6) the Commission cannot rely on the federal commitments as a remedy because several commitments are vague and unenforceable;[58] and

[52] *See* CWA Opening Brief, pp. 4-22 and CWA Reply Brief, pp. 5-21.
[53] Exh. CWA-18, pp. 9-16.
[54] *Id*., pp. 16-18.
[55] *Id*., pp. 18-21.
[56] *Id*., pp. 21-30.
[57] *Id*., pp. 30-33.
[58] *Id*., pp. 33-36.

(7) under any reasonable definition of the "public interest," a remedy that carries a high risk of failure and exposes the public to substantial economic harm if it fails cannot be said to be in the "public interest."[59]

Indeed, the PD acknowledges that:

(1) Sprint "is a far stronger competitor than DISH,"[60]

(2) "DISH will have to undertake massive spending in order to create a network capable of competing with AT&T and Verizon,"[61]

(3) "[i]t will take years before DISH can become a true national competitor of the three other companies,"[62]

(4) the Commission has "serious reservations about the competitive effects of the Merger here in California,"[63]

(5) the Commission is "concerned that the conditions the FCC and the DOJ previously imposed on the Merger may be insufficient to ensure robust post-Merger competition in California,"[64] and

(6) "the Attorney General concluded that the proposed merger…is likely to have significant anticompetitive effects in California unless conditions are imposed."[65]

Yet, the PD concludes that, in light of its additional conditions "intended to memorialize representations that Joint Applicants have made in this proceeding or complement and strengthen the promises already made by T-Mobile in the other forums in which this Merger has been

[59] *Id*., pp. 36-37.
[60] PD, p. 34.
[61] *Id*., p. 35.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*, pp. 35-36.

evaluated and in the CETF and NDC MOUs," the "approval of the merger, as conditioned, is in the public interest."[66] There is not substantial record evidence supporting the PD's conclusion and, importantly, the PD never finds (and cannot find based on the record) that the merger does not adversely affect competition as required by section 854(b) of the Public Utilities Code. This is a fatal error.

## V. CONCLUSION

The PD fails to satisfy the requirements of Public Utilities Code sections 854(b) and (c). The PD fails to meaningfully consider the merger's harm to the public interest. The PD grossly ignores the record evidence showing that the merger harms ratepayers and eliminates thousands of jobs. Had the PD reflected the preponderance of record evidence, it would have undoubtedly concluded that the merger is not in the public interest. Moreover, the PD fails to find that the merger would not adversely affect competition. Indeed, it cannot. Overwhelming record evidence showed that the merger is anti-competitive.

To protect the public interest in quality jobs, the Commission must require that no T-Mobile or Sprint employee (including those of dealers and contractors) loses a job or wages as a result of the transaction, and must ensure the complete protection of employees' right to form a union of their own choosing free from any interference by the New T-Mobile.

[66] *Id.*, p. 39.

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## APPENDIX A

**Proposed Changes to Ordering Paragraphs**

25. New T-Mobile shall have a net increase in jobs in California, such that the number of full time and full-time equivalent New T-Mobile direct internal and direct external employees in the State of California at three years after the close of the transaction shall be at least 1,000 greater than the total number of full-time and full-time equivalent direct internal and direct external employees of Sprint, Assurance Wireless and T-Mobile in the State of California as of July 13, 2018, the date of the filing of Applications 18-07-011 and 18-07-012~~Transaction closing~~. "Direct internal employees" are the company's payroll employees. "Direct external employees" are employees who work for authorized dealers or contractors.

40. Baseline Reports. ~~Following completion of the Merger, New T-Mobile shall provide the following information to CPUC annually in the 4th calendar quarter of each year or on such other timetable as New T-Mobile and CPUC shall agree on:~~

a. By July 1, 2020, New T-Mobile shall provide to CPUC the ~~Current~~ full time and full-time equivalent direct internal and direct external employee headcount for Sprint, Assurance Wireless, Metro, Boost and T-Mobile in the State of California as of July 13, 2018.

b. Following completion of the Merger, New T-Mobile shall provide the following information to CPUC annually in the 4th calendar quarter of each year or on such other timetable as New T-Mobile and CPUC shall agree on: Transfer of LifeLine customers from Sprint to New T-Mobile.

41. MVNO agreements and their status Annual Compliance Reports. New T-Mobile shall submit annual compliance reports to CPUC within thirty (30) days of the end of every calendar year. These reports shall include:

l. Total full time and full time equivalent direct internal and direct external employees per month by business unit in the State.

**Proposed Additional Ordering Paragraphs**

- For a minimum of three years following the Transaction closing, current direct internal and direct external employees of Sprint, Assurance Wireless and T-Mobile shall have no less than the wages, hours, and other terms and conditions of employment provided before the Transaction closing.

- For a minimum of five years after the date of the Transaction closing, New T-Mobile shall keep its Pinole, CA retail store open, not reduce the number of employees at the store, and provide quarterly reports to the CPUC on New T-Mobile's contract negotiations with Communications Workers of America, District 9.

- New T-Mobile shall not interfere in employees' right to form a union of their own choosing.

- In light of the COVID-19 pandemic, New T-Mobile shall ensure that its direct internal and direct external employees receive the following:

  (a) Wage and commission guarantees for retail store, kiosk and customer care center direct internal and direct external employees to ensure income consistency; and

  (b) A minimum of 20 days of paid time not worked for direct internal and direct external employees who are in high risk categories, are sick, have been diagnosed with COVID-19, or who must care for a child during school closures.