BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).	Application No. 18-07-011
And Related Matter.	Application No. 18-07-012

REPLY COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA, DISTRICT 9 ON PROPOSED DECISION

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Communications Workers of America, District 9 ("CWA") respectfully submits these reply comments on the Proposed Decision Granting Application and Approving Wireless Transfer Subject to Conditions ("PD"). These comments focus on legal and factual errors in the Joint Applicants' Opening Comments on Proposed Decision ("Applicants' Comments").

I. THE APPLICANTS' CLAIM THAT THE COMMISSION HAS NO JURISDICTION OVER THE WIRELESS TRANSACTION IS LEGAL ERROR

The Applicants argue that the PD's conclusion regarding the Commission's jurisdiction over the wireless transaction is legal error.[1] The Applicants are wrong; it is the Applicants' conclusion regarding the Commission's jurisdiction that is legal error. The Commission has full discretion and authority to approve or deny a wireless merger.

Wireless carriers are "telephone corporations" and therefore subject to Commission jurisdiction pursuant to Public Utilities Code sections 216, 233 and 234. Accordingly, the

[1] Applicants' Comments, pp. 2-10.

Commission has asserted its jurisdiction to protect consumers of wireless services. In 1989, the Commission stated, "we reiterate that our primary focus in the regulation of the cellular industry is the provision of good service, reasonable rates, and customer convenience."[2]

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993, which amended the Communications Act to provide that "no state or local government shall have any authority to regulate the entry of or the rates charged by any Commercial Mobile Service or any Private Mobile Service, except this paragraph shall ***not*** prohibit a state from regulating the ***other terms and conditions*** of Commercial Mobile Service."[3] By "other terms and conditions," Congress intended "that the State ***will*** be able to regulate the terms and conditions of these services," including:

> such matters as customer billing information and packaging and billing disputes and other consumer protection matters; facility siting issues (e.g. zoning); ***transfers of control***, bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis and such other matters as fall with the State's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under 'terms and conditions.'[4]

Following the Omnibus Budget Reconciliation Act of 1993, the Commission instituted an investigation of the cellular industry "to develop a comprehensive regulatory framework consistent with the Federal Budget Act" and the Commission's "own statutory responsibilities."[5] The Court of Appeal also confirmed the Commission's jurisdiction over wireless terms and conditions.[6]

Public Utilities Code sections 851-857 require the Commission to review utility mergers

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[2] D.89-07-019.
[3] 47 USC § 332(c)(3)(A) (emphasis added).
[4] House Report No. 103-111 at 251 (emphasis added).
[5] I.93-12-007.
[6] *Pacific Bell Wireless (Cingular) v. CPUC* (2005) 140 Cal.App.4th 718, 738.

and other transfers of control. Section 853(b), however, allows the Commission to exempt a public utility or a public utility class from the requirements of sections 851-857. In a 1995 decision, the Commission found that "[t]he transfer of ownership interests in a CMRS entity is not tantamount to [market] entry, and Commission jurisdiction over such transfers is not preempted under the federal legislation."[7] However, the Commission exercised it authority to "forbear from exercising such authority" and required wireless entities to notify the Commission of proposed mergers.[8] The Commission reasoned that the cellular market was nascent at that time and consumers were not yet highly dependent on wireless services. Thus, the Commission found that, at that time, a "standing" merger review could have disrupted competition in the cellular industry.[9]

The Commission's 1995 decision did not, however, abolish the Commission's authority to approve or deny a proposed wireless merger in the future. Indeed, the 1995 decision went on to find that the Commission is ***not*** preempted by federal law to review wireless mergers in California and reaffirmed the Commission's discretion and authority to impose conditions on wireless mergers where "necessary in the public interest."[10] The Commission has since reaffirmed this finding.[11] The Commission has full discretion and authority to regulate wireless mergers.

[7] D.95-10-032, Conclusion of Law 9.
[8] *Id*., pp. 15-18.
[9] *Id*., p. 16 (standing merger approval process "could inhibit the growth of competition to impose more restrictive requirements on CMRS providers than is necessary to discharge our responsibilities to protect the public interest").
[10] *Id*., pp. 15-18.
[11] D.01-07-030; D.96-12-071 ("we still remain concerned that the terms and conditions of service offered by each CMRS provider continue to provide adequate protection to consumers").

Moreover, considering current market conditions, where the wireless industry is extremely concentrated and most consumers heavily rely on wireless services in their day-to-day lives, it is incumbent upon the Commission to exercise its full authority to regulate this proposed merger pursuant to section 854. The Commission must find that the merger provides short-term and long-term economic benefits to ratepayers, does not adversely affect competition and is in the public interest.[12] The Commission has broad discretion to determine if a merger is in the public interest[13] and 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.[14] The Applicants' claim that the Commission has no jurisdiction over the wireless transaction is legal error.

II. THE APPLICANTS' CLAIM THAT THE COMMISSION CANNOT IMPOSE THE JOBS CONDITION IS LEGALLY AND FACTUALLY WRONG

To help mitigate the merger's adverse impacts on jobs, the PD requires New T-Mobile to have a net increase of 1,000 jobs three years post-merger.[15] The Applicants argue that the Commission is not legally authorized to impose this condition and, even if it were, the condition is not supported by record.[16] The Applicants are wrong on both accounts.

A. The Commission is Legally Authorized to Mitigate Harms to Utility Workers

Before authorizing a merger, Public Utilities Code section 854 requires the Commission to find, based on record evidence, that the merger is in the public interest.[17] The Commission

[12] Pub. Utilities Code §§ 854(a)-(c).
[13] D.06-02-003, p. 23.
[14] Pub. Utilities Code §§ 854(c)(1)-(8).
[15] PD, Ordering Paragraph 25.
[16] Applicants' Comments, pp. 17-18.
[17] Pub. Utilities Code §§ 854(b) and (c).

must consider, on balance, a range of criteria, including whether the merger is fair and reasonable to utility employees, and whether it provides measures to mitigate "significant adverse consequences that may result."[18] Thus, the Commission not only can – but ***must*** – ensure, by imposing conditions, that the merger is in the public interest. Moreover, the record fully supports the need to mitigate the merger's impacts on utility workers. Overwhelming record evidence shows that the merger would harm Sprint and T-Mobile retail workers in California by eliminating more than 3,000 California jobs from retail store closures, depressing industry wages and violating workers' rights.

B. Record Evidence of Thousands of Job Losses Supports a Jobs Requirement to Protect Utility Workers

Record evidence showed that 902 of 3,241 (28%) stores in California would close from the merger, eliminating 3,342 California jobs.[19] Indeed, the record reflects that store closures are a key element of the projected cost savings from the proposed merger,[20] and that T-Mobile acknowledged the merger would result in a significant number of postpaid store closings in California.[21] For postpaid retail jobs, the record evidence showed that the merger would result in a net loss of 1,707 jobs in California.[22] For prepaid retail jobs, record evidence showed that the merger would result in closing 545 Metro and Boost Mobile stores and 1,635 associated retail job losses in California.[23]

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[18] *Id.,* §§ 854(c)(1)-(8).
[19] Exh. CWA-1, p. 52.
[20] *Id*., citing New Street Research "Sprint/T-Mobile Redux: Refreshing Synergies and Scenarios," p. 28 (April 15, 2018).
[21] Exh. CWA-2, p. 6.
[22] Exh. CWA-1, p. 54; Exh. CWA-18, p. 6.
[23] *Id.*

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,"[24] the record showed that T-Mobile's plan would only apply to direct internal employees (i.e. ***not*** employees of contractors or authorized dealers).[25] The record showed that at least 83% of T-Mobile stores are authorized dealer stores.[26] T-Mobile's job plan would apply to ***none*** of the employees at authorized dealer stores, which make up virtually all of the prepaid retail stores in California.[27] Moreover, Boost has made no job commitments.[28]

Without commitments by T-Mobile and DISH to preserve jobs, record evidence showed that "thousands of jobs in Boost and Metro stores continue to be at risk as a result of this transaction."[29] The record also showed that between the announcement of the proposed merger in April 2018 and November 2019, the Applicants closed a net 225 prepaid retail locations.[30] 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 in Boost locations.[31] 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.

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[24] Exh. Jt. Appl.-2, p. 38 (emphasis in original).
[25] 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.
[26] 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.
[27] Exh. CWA-2C.
[28] *Id.* at 1574:21-27, 1574:10-12; 1578:18-22; 1575:23 – 1576:2 (Blum).
[29] Exh. CWA-18, p. 7.
[30] *Id.* Quite notably, since November 2019, there have been 110 additional store closings.
[31] *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.

In short, overwhelming record evidence fully supports conditioning the merger on a jobs requirement. However, to meaningfully address the merger's harms to utility employees, Ordering Paragraph 25 should be revised as follows:

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.

These revisions are necessary to protect the employees that will be harmed the most – direct external employees. In addition, since hundreds of retail locations have closed (and nearly associated 900 jobs lost)[32] since the April 2018 merger announcement, the transaction closing date is neither a protective nor appropriate headcount baseline. For these same reasons, Ordering Paragraphs 40 and 41 should also be revised as follows:

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.

[32] 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.

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.

C. Record Evidence of the Merger's Adverse Effect on Wages Supports an Additional Condition to Protect Utility Workers

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."[33] The record showed 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).[34] Record evidence from the FCC showed that New T-Mobile "will be able to reduce dealer commission rates because of the increased volumes after closure of duplicative retail locations"[35] and "is likely to achieve reduced commission rates due to greater store level productivity at increased average volumes per store."[36] 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" and "the Applicants' plans to reduce dealer commission rates will directly translate to lower compensation levels for

[33] CWA-1, pp. 57-59.
[34] *Id.*, p. 59; Exh. CWA-18, p. 8.
[35] 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.
[36] Exh. CWA-19, p. 137.

retail workers."[37] Indeed, T-Mobile conceded that authorized dealers may earn "a lower commission per transaction."[38] This means that, post-merger, employees of authorized dealers will have to complete ***more*** transactions to earn as much as their pre-merger wages. This overwhelming evidence supports this additional condition to protect utility employees' wages:

- 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.

D. Record Evidence of T-Mobile's Violations of Workers' Rights Supports Additional Conditions to Protect Utility Workers

Record evidence showed why T-Mobile's claim that it "has an impressive history of employee satisfaction…"[39] is patently false and its long history of employment law and workers' rights violations "speaks volumes" about the company's "trustworthiness and corporate character."[40] Record evidence showed that T-Mobile has been found guilty of violating U.S. labor law seven times since 2015,[41] 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

[37] Exh. CWA-18, pp. 8-9.
[38] Tr. Vol. 9 at 1515:1-7, 1516:16-25 (Sievert).
[39] Exh. Jt Appl-8, p. 13.
[40] Exh. CWA-1, p. 61.
[41] *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).

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.[42]

This substantial record evidence supports the following additional conditions to protect utility workers:

- 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.

III. CONCLUSION

The Commission has full discretion and authority to approve or deny a wireless merger, and to impose conditions to mitigate a merger's public interest harms. 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, and record evidence fully supports imposing conditions to mitigate these harms. 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.

[42] 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.

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Respectfully submitted,

/s/

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