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

RESPONSE OF THE COMMUNICATIONS WORKERS OF AMERICA DISTRICT 9 TO THE MOTION OF THE PUBLIC ADVOCATES OFFICE TO AMEND AND SUPPLEMENT TESTIMONY AND FOR ADDITIONAL HEARINGS

February 12, 2019

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Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, the Communications Workers of America District 9 (CWA) submits this response in support of the February 4, 2019 Motion of the Public Advocates Office to Amend and Supplement Testimony and for Additional Hearings.

A merger applicant bears the burden of proof for its application[1] and an incomplete application is grounds for the Commission rejecting it.[2] On July 13, 2018, T-Mobile and Sprint filed their merger application. The application was scant – ***less than 100 pages of text and attachments (and no testimony) for a proposed $26.5 billion merger***. The application claimed merging the companies'

[1] Pub. Utilities Code § 854(e).
[2] D.95-01-044.

"complementary and essential assets" would provide "massive synergies" and "unprecedented services," but provided no California-specific data to support these claims. Instead, the applicants alleged that "[t]here is no California-specific data available."[3] The application also claimed that the merger would create more than 600 new stores and 11,000 jobs nationally, but declared that the stores and jobs had "not yet been broken down by location or state."[4] The applicants effectively asked the Commission to blindly trust that the purported national benefits of the merger would trickle down to California consumers and workers.

The Assigned Commissioner issued an Amended Scoping Memo on October 4, 2018 that outlined issues (most of which were not addressed in the application) relevant to evaluating whether the proposed merger is in the public interest. The applicants never supplemented their application to address the issues outlined in the Amended Scoping Memo. Instead, three weeks after intervenors served their testimony and ***one week before evidentiary hearings, the applicants served their case in chief – 1,000 pages of testimony and exhibits that incorporated an additional 3,000 pages of materials*** that the applicants submitted to the FCC.

Justifying an application for the first time with 4,000 pages of "rebuttal testimony" is entirely improper and violates intervenors' due process rights. The Commission has held that "[p]roviding the basic justification in rebuttal is unfair, since parties are not generally given the opportunity to respond to rebuttal with

[3] Application, p. 23.
[4] *Id.*, p. 25.

testimony of their own."[5] Further, "[w]hen the utility has the evidentiary burden, we caution against the use of rebuttal testimony to provide the basic justification. As a matter of fairness, ***we must seriously consider either striking such testimony or extending the proceeding, at the utility's risk, to allow for responsive testimony from the other parties***."[6]

CWA agrees with the Public Advocates Office that to ensure due process, the Commission should allow intervenors additional time to review and analyze the applicants' case in chief (which was provided one week before evidentiary hearings), to conduct additional discovery, to prepare supplemental testimony and to conduct additional cross-examination. CWA proposes the following schedule:

- Supplemental testimony due no less than 30 days from the ruling on the Public Advocates Office's motion;
- Additional hearings no less than 21 days following service of supplemental testimony;
- Concurrent opening briefs due no less than 30 days following hearings; and
- Concurrent reply briefs due no less than 21 days following the filing deadline for opening briefs.

If supplemental testimony and additional hearings are not granted, CWA requests that the current briefing schedule be modified as follows to allow intervenors time

[5] D.04-03-039, p. 84.
[6] *Id.*, p. 85 (emphasis added).

to complete their review and analysis of the applicants' case in chief (which was served one week before evidentiary hearings):

- Concurrent opening briefs due no earlier than April 1; and
- Concurrent reply briefs due no less than 21 days following the filing deadline for opening briefs.

Dated: February 12, 2019

Respectfully submitted,

/s/

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