

**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)

A.18-07-011  
(Filed July 13, 2018)

And Related Matter.

A.18-07-012

**SUPPLEMENTAL BRIEF OF JOINT CONSUMERS**

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## **SUPPLEMENTAL BRIEF OF JOINT CONSUMERS**

Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the October 24, 2019 Assigned Commissioner’s Amended Scoping Ruling, The Greenlining Institute (“Greenlining”) and The Utility Reform Network (“TURN”) (collectively, “Joint Consumers”), respectfully submit this Supplemental Brief in opposition to the Application in the above-captioned proceeding.

### **I. SUMMARY OF ARGUMENT**

It is generally recognized that the transaction pending before the Commission in this proceeding, a merger between two of the biggest facilities based wireless companies in the country, will have significant impacts on the wireless market and on wireless consumers of all types.<sup>1</sup> This Commission has the statutory mandate to determine whether this transaction between T-Mobile, Sprint and their corporate affiliates is in the “public interest” and whether the anticipated impacts from this merger will benefit California consumers.<sup>2</sup> Joint Consumers urge the Commission to find that this transaction is not in the public interest and to deny the merger under Section 854.

The record developed at the beginning of the year consisted of detailed testimony, cross examination, and briefing that demonstrates that this transaction is not in the public interest because the harms from the merger and subsequent consolidation of the market, especially to

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<sup>1</sup> See, Amended Joint Application for Review of Wireless Transfer, September 19, 2019 at p. 3-7; but see, Opening Brief of Public Advocates, April 26, 2019 at p. 1-3; Opening Brief of the Utility Reform Network, April 26, 2019 at p. 6-14; Pub. Adv Exh. 11-C (Selwyn Reply).

<sup>2</sup> Joint Consumers have already addressed the standards for the scope of review and burden of proof in its prior briefing and will not repeat that discussion here. See, Opening Brief of the Utility Reform Network, April 26, 2019 at p. 2-6; Opening Brief of the Greenlining Institute, April 26, 2019 at p. 2; TURN Reply Brief, May 10, 2019, at p. 5-9.

communities of color and low income and rural customers who already have limited choices for affordable and robust wireless communications, will outweigh any realized benefits.<sup>3</sup> The transaction, however, continues to be a moving target and an ever-changing set of promises and conditions that the companies have negotiated in an attempt to overcome the significant challenges presented by opponents of the merger, including DISH. After the case had been submitted to the Commission for consideration, the parties to the transaction entered into a settlement with the Department of Justice and DISH Network. The terms of this settlement, along with additional commitments made by the companies to the FCC, have the potential to significantly change the dynamics of the transaction and the determination of the “public interest” of the transaction here in California.<sup>4</sup>

The DOJ and FCC both found that the addition of these changes to the transaction mitigate the harms that the agencies found present in the transaction as originally structured. However, the current record here in California, as specifically applied to the diverse and complicated wireless market in California, does not support the same conclusion.

Joint Consumers’ discussion below focuses on the specific issues in the Amended Scoping Memo that touch upon concerns of California consumers, including resilience of the network, emergency services obligations, pricing commitments, supplier diversity, and commitments to serve low income and LifeLine customers. More generally, however, Joint Consumers urge the Commission to find that the introduction of the DOJ and FCC provisions

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<sup>3</sup> Opening Brief of Public Advocates, April 26, 2019 at p. 1-3; Opening Brief of the Utility Reform Network, April 26, 2019 at p. 6-14.

<sup>4</sup> ALJ Ruling Re-Opening Record to Take Additional Evidence, August 27, 2019; Amended Scoping Memo, October 4, 2019.

into the record in this proceeding do not support a finding of public interest by this Commission.

Public Advocate witness Dr. Selwyn puts it quite succinctly when he says,

If DISH cannot or, for whatever reason, does not become this fourth viable MNO, then the market will consist of only three competitors, and the [DoJ] Consent Decree will have failed to overcome the specific negative consequence of the merger that the DoJ has some [sic] forcefully articulated.<sup>5</sup>

Dr. Selwyn goes on to demonstrate that,

there is in fact serious doubt both as to the sufficiency of the proposed divestiture to DISH to enable it to effectively replace Sprint as a fourth national MNO, as well as to DISH's own financial and technical ability to fulfill the competitive role that the Department of Justice has envisioned for it.<sup>6</sup>

While Joint Consumers do not provide an additional detailed economic analysis in this phase of the proceeding, Public Advocate witnesses make the case that it will take many more resources and specific market conditions to even suggest that DISH might fulfill its promises to both the FCC and DoJ.<sup>7</sup> Moreover, even if DISH can build out a facilities based network and move beyond a basic MVNO reseller role in the market, this still does not guarantee DISH's place as a robust facilities based competitor that will put sufficient competitive pressure on the remaining three well-established, behemoth, wireless incumbents. Current market factors such as churn, roaming contracts, insufficient coverage, investment, bundling advantages, retail store presence, and incumbency, will likely line up to serve as barriers to entry for DISH.<sup>8</sup> This complicated market dance with many potential dance partners, scheduled to take place over the course of at

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<sup>5</sup> Pub. Adv. Exh. 11-C (Selwyn Reply) at pg 8.

<sup>6</sup> Pub. Adv. Exh. 11-C (Selwyn Reply) at pg 9.

<sup>7</sup> See, generally, Pub. Adv. Exh. 11 (Selwyn Reply); Pub. Adv. Exh 13 (Odell Reply); Pub. Adv. Exh 20-C (Reed Reply).

<sup>8</sup> Pub. Adv. Exh. 11 (Selwyn Reply) at p. 19-22, 33-38, 55, 75-80.

least five to seven years, cannot and should not serve as the basis for this Commission to find that this transaction is in the public interest.

More concretely, Joint Consumers discuss below, several of these barriers to DISH's active participation in the market include build out challenges, emergency services commitments, pricing and competitive challenges, and public interest factors such as supplier diversity and active participation with low income programs. These barriers, along with the existing record showing that even T-Mobile will have difficulty meeting its requirements and commitments, suggest that this transaction is not in the public interest. As discussed below, DISH's historical performance and expected plans for buildout of its facilities based wireless network, should provide little comfort to the Commission that it will serve as the fourth facilities-based carrier. The bare bones direct testimony and high-level testimony on the stand from the DISH witness means this record does not include sufficient evidence that DISH's entry into the market will mitigate the harms from consolidation. This fact should be viewed in the context that the record already included evidence that New T-Mobile would face its own challenges to building out its 5G network on the scope, scale and timing that it is currently promising.<sup>9</sup>

The Commission should also consider that a critical piece to any network buildout is ensuring network resiliency, redundancy and backup power to provide robust emergency communications throughout the carriers' service territory in California. In this era of Public Service Power Shutoffs and significant natural disasters, the threat to these networks is very real

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<sup>9</sup> Indeed, both the FCC and the DoJ made clear that T-Mobile's application, including subsequent commitments and promises, would not meet their respective public interest standards and each agency imposed additional conditions, commitments and requirements on the transaction. *See* discussion in Pub. Adv. Exh. 11 (Selwyn Reply) 4-6, 8; Jt. Appl. Exh. 19 (FCC Order Granting Transfer); Jt. Appl. Exh. 20 (DoJ PFJ).



and carriers must be prepared to work with the Commission and other emergency services agencies to support robust communications. As discussed below, the DISH commitments, as well as the New T-Mobile commitments do not go far enough to ensure that customers will have choices among network providers for adequate service quality and emergency communications.

The Commission must also critically review the pricing commitments of New T-Mobile to ensure that during this transition, while DISH is (attempting) to put competitive pressure on the three remaining providers, customers have choices of consistent and meaningful low income offerings. Joint Consumers also point out that even with DISH as part of the market, DISH made no written or binding commitments to maintain their prepaid service offerings after the transition period as set forth in the DoJ PFJ and appear to have delayed making critical business plans that would enable it to be a strong prepaid low income provider. This uncertainty leaves low income Californians without a champion in the marketplace.

Finally, as discussed below, even after hundreds of pages of testimony, briefing and hearing transcripts, along with pages of commitments to the FCC and the DoJ, the provisions regarding LifeLine participation remain conditional, time-limited and unclear. While both T-Mobile and DISH claim to be interested in serving low income consumers and T-Mobile has agreed to participate in LifeLine, it is important to note that neither DISH nor T-Mobile have experience or strong commitments to public purpose program participation to date. Couple this historical context with a failure to provide strong written commitments to either the federal or state programs, and the loss of Sprint will surely be felt by the Commission's LifeLine program. Joint Consumers also urge the Commission to find that the difficulty in creating enforceable, concrete, commitments regarding LifeLine is a harbinger that the Commission should heed regarding the transaction's impact on low income consumers generally.

Joint Consumers urge the Commission to deny this transaction and find that it is not in the public interest under Section 854. In the alternative, if the Commission moves forward with this transaction, it must include clarification and accountability for the many conditions and commitments that the record contains, including as to the DISH divestiture and facilities-based commitments.

## **II. HOW DOES THE AGREEMENT WITH DISH AFFECT CUSTOMER SERVICE, CONSUMER PROTECTIONS AND PRIVACY RIGHTS OF CALIFORNIA CONSUMERS?**

### **A. There Is No Evidence to Indicate That Dish Has the Competence to Successfully Create A Viable National Facilities-Based Competitor**

The theory behind the DOJ's idea to transform DISH, a satellite television and video streaming provider, into a fourth nationwide cellular service is that the hypothetical robust fourth national network will bolster competition. The DOJ's plan presumes that DISH, as a fourth national wireless carrier, would increase competition sufficiently to act as a check on prices and enhance the ability of customers to access high quality networks.<sup>10</sup> But this is all predicated on DISH being able to actually create a viable, national network. Based on the evidence in the record there is little reason to assume that is the case. Given DISH's track record in the cellular space, the proposal falls more along the lines of wishful thinking than the surety that this plan could actually result in a robust competitor. If DISH fails, four national carriers would be reduced to three, eliminating the purported benefits of the DOJ deal and leaving Californians with reduced choice.

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<sup>10</sup> Pub. Adv. Exh. 11 at p. 6-7, Reply Testimony of Lee Selwyn, quoting the July 26, 2019 Department of Justice "Competitive Impact Statement" setting forth the basis for its determination that the Stipulation and Order and proposed Final Judgment are designed to preserve competition.

In the six pages of testimony (not including attachments) submitted by DISH, the company informs the Commission of its commitments to deploy 5G pursuant to the FCC and DOJ agreements, emphasizing that failure to meet some of the commitments will result in penalties of up to \$2.2 billion in voluntary contributions and potential license forfeitures.<sup>11</sup> The testimony does not mention that since 2008, DISH and its affiliates have spent \$21.07 billion to acquire CMRS spectrum licenses (with an additional \$4.75-billion in capitalized interest payments associated with the wireless spectrum purchases), but as of September 30, 2019 have done nothing with the spectrum.<sup>12</sup> T-Mobile's President of Technology testified that "DISH has an enormous treasure trove of an enormous volume of mid-band spectrum that is sitting fallow unused."<sup>13</sup> Despite having long controlled a treasure trove of cellular spectrum, DISH is not offering wireless service to a single customer anywhere, including California.<sup>14</sup> DISH hasn't earned a dime from its valuable cellular spectrum holdings, and in fact has been willing to pay twice as much in interest on loans for the spectrum it controls as it would incur in penalties under this deal. One would think that if DISH was able to construct a cellular network it would have done so by now. As Public Advocates Witness Selwyn pointed out in his November 7, 2019 testimony, "DISH has offered no facts or other basis for the Commission to conclude that whatever conditions have thus far prevented DISH from building out a wireless network are materially altered" by the terms of the PFJ.<sup>15</sup>

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<sup>11</sup> DISH Exh. 3 at p 4-6.

<sup>12</sup> Pub. Adv. Exh. 11 (Selwyn) at p. 10, 16-17. DISH witness Blum testified that DISH has invested over \$20 billion in spectrum assets and investments. TR Vol. 9, p. 1585:26-27.

<sup>13</sup> TR Vol. 8, p. 1437:25-28.

<sup>14</sup> TR Vol. 9, p. 1594:21-28.

<sup>15</sup> Pub. Adv. Exh. 11 (Selwyn) at p. 10.

According to its 2018 Form 10-K, in March 2017, DISH told the FCC that it planned to deploy a 5G next generation network and complete the first phase by March 2020. DISH's 2018 Form 10-K provides a laundry list of tasks that DISH stated it would need to undertake in order to implement its plan. DISH stated it would need to make...

...significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate these licenses and related assets, and any additional acquired licenses and related assets; and comply with regulations applicable to such licenses.<sup>16</sup>

While the 2020 buildout has been "paused" pending completion of the proposed transaction, the work generally described in the 2018 Form 10-K is still necessary. DISH further stated that it would "incur significant additional expenses and will have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure."<sup>17</sup> In other words, DISH cannot just snap its fingers and create the fourth great nationwide network out of whole cloth. It is an expensive and complex undertaking.

DISH is planning 50,000 cell sites nationally,<sup>18</sup> with the option to acquire a possible 20,000 decommissioned sites from T-Mobile, pursuant to the PFJ. To create a 5G network, either a DISH employee or contractor on behalf of DISH would have to visit each and every tower and cell site that it plans to use to "provide at least some kind of equipment or make some adjustments" and conduct an analysis for each site.<sup>19</sup> DISH would have to purchase transport-related equipment, new radio equipment, antennas and back-up power for each site. For a cellular network to function, backhaul and transport are essential. Fiber leasing deals will need to be finalized for each tower. DISH could not provide any details about obtaining the backhaul

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<sup>16</sup> Pub. Adv. Exh. 11 (Selwyn) at p. 18.

<sup>17</sup> *Id.*

<sup>18</sup> TR Vol. 9, p. 1591:22-25.

<sup>19</sup> *Id.* at p. 1633: 15-28.

and transport facilities necessary to support a cellular network.<sup>20</sup> DISH has issued an RFP to request bids for fiber, but there are currently no agreements.<sup>21</sup>

DISH witness Blum stated that it is helpful to have the option to obtain decommissioned cell sites, but they are not "critical" for DISH to build out its 5G network and DISH does not need to use the decommissioned cell sites available to it under the deal.<sup>22</sup> They will consider the use of decommissioned sites on a site by site basis.<sup>23</sup> T-Mobile's President of Technology testified that he has heard DISH management set a target of 50,000 cell sites, while the decommissioning volume under the PFJ is 20,000.<sup>24</sup> Whether or not DISH acquires decommissioned cell sites, it is likely that DISH will have to construct new sites in California. Whether a cell site is decommissioned or not, T-Mobile's expert stated that just the cost of backhaul, the connection of fiber to the sites and maintenance on a cell site can average \$100,000 per year, and is probably higher in some California jurisdictions.<sup>25</sup> In addition, DISH would have to purchase transport-related equipment, new radio equipment, antennas and back-up power for each site. T-Mobile's expert stated that "the value of the improvements to secure the cell site could run into hundreds of thousands of dollars."<sup>26</sup> An effort by DISH to create an entirely new network from the ground up will require the ability to undertake network planning, including making decisions about whether to purchase decommissioned cell sites and the transport equipment associated with each site. The terms of the PFJ do not provide the surety necessary for DISH to engage in effective network planning. For example, under the terms of the PFJ, the

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<sup>20</sup> TR Vol. 9, p. 1640: 16-21, 1640:28 - 1641 6.

<sup>21</sup> *Id.*

<sup>22</sup> DISH Exh. 3 (Blum) at p. 1637:6-10.

<sup>23</sup> TR Vol. 9, p. 1629:5-28 - 1630:1-2.

<sup>24</sup> TR Vol. 8, p. 1425:6-28 - 1426:1-16.

<sup>25</sup> TR Vol. 8, p. 1428:9-18.

<sup>26</sup> TR Vol. 8, p. 1441:2-4.

only binding forecast that DISH can use to consider acquiring a cell site for network planning purposes is a six-month minimum notice that a site will be available.<sup>27</sup>

While T-Mobile contends that it has an incentive to give DISH more lead time, that is not a binding commitment. T-Mobile also contends that six months is plenty of time for DISH to make network planning decisions regarding the decommissioned cell sites.<sup>28</sup> But DISH is not T-Mobile, and DISH has no experience constructing or operating a cellular network. Similarly, the PFJ includes language that states that T-Mobile "will vacate a decommissioned cell site *as soon as reasonably possible* after the site is no longer in use" and also "*as soon as reasonably possible*" after making a decommissioned cell site available shall also make decommissioned transport equipment available.<sup>29</sup> This language is extremely vague. It is not clear what "reasonably possible" means or that the term will be interpreted in a way that is sufficient to ensure that DISH can obtain the cell site or transport equipment in a timely manner. For example, while T-Mobile might have a financial incentive to hand over a decommissioned cell site, it might not have an incentive to move quickly to sell a budding competitor the transport equipment necessary to incorporate the cell site into a network.

T-Mobile did not directly respond to a question about whether such vague language is included in commercial agreements, but instead asserted that the DOJ has established a monitoring trustee to ensure that "the terms and intent of the agreement are enforced in a practical and pragmatic way."<sup>30</sup> T-Mobile's expert admits he has never been involved in a deal with the method of oversight described in the PFJ.<sup>31</sup> Under the terms of the PFJ, the monitoring

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<sup>27</sup> TR Vol. 8, p. 1429:16-26.

<sup>28</sup> TR Vol. 8, p. 1430:11-13.

<sup>29</sup> Jt. App. Exh. 20 at p. 15, para. 5 (emphasis added).

<sup>30</sup> TR Vol. 8, p. 1434: 2-22.

<sup>31</sup> TR Vol. 8, p. 1433:28 - 1434:2.

system will be implemented on a nationwide basis, with the monitors responsible for ensuring that all of the decommissioning and availability of cell sites and essential transport equipment will be done "as soon as reasonably possible."<sup>32</sup> This monitoring system has never been applied to the transfer of cell sites or associated equipment. There is no binding requirement in the PFJ specifying a time frame for handing over either decommissioned cell sites or making associated equipment available. And, with up to 20,000 decommissioned cell sites throughout the country and multiple aspects of the PFJ that need to be overseen, it is not clear that the DOJ will succeed in ensuring that DISH receives cell sites or equipment in a timely manner.

When asked why DISH thinks it will be successful, the response was, in essence, that DISH was successful being a low-cost, innovative satellite service that succeeded in taking on the cable industry; and AT&T and Verizon are sitting on "cushy 60 percent margins," while DISH is being successful at 10-20 percent margins.<sup>33</sup> Operating a service relying on satellites located 30,000 miles above the Earth is a far cry from creating and then operating a terrestrial wireless network, with tens of thousands of cell sites, each of which requires engineering, maintenance and individual arrangements for transport and back-up power, and some of which (if DISH is going to be a true nationwide network) will be located geographically challenging and hard-to-reach locations. And while the DISH representative is enthusiastic about his company's ability to thrive in the satellite video business, the company has been steadily losing customers,<sup>34</sup> has experienced a 16% decline in revenue over the last four years,<sup>35</sup> has substantial debt,<sup>36</sup> and has been given a Moody's overall credit rating of "Ba3" which, on the Moody's scale,

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<sup>32</sup> TR Vol. 8, p. 1434: 23 - 1435: 1-2.

<sup>33</sup> TR Vol. 9, p. 1677: 13-28, 1678: 17-20.

<sup>34</sup> Pub. Adv. Exh. 11 (Selwyn) at p. 14.

<sup>35</sup> *Id.* at p. 15.

<sup>36</sup> Pub. Adv. Exh. 11 (Selwyn) at pp. 60-61.

is "judged to have speculative elements and a significant credit risk."<sup>37</sup> This is an interesting approach to "thriving." There is no evidence in the record to support the contention that DISH is capable of creating and operating a robust nationwide wireless network.

**B. Dish Has Not Fully Developed Plans for Emergency Back-Up Power to Cell Sites and Has No Operational Expertise to Ensure a Reliable Wireless Network.**

If this transaction is approved, DISH would hypothetically replace Sprint as the fourth national wireless option for California customers. The ability to step into Sprint's shoes is hypothetical because, as discussed above, it is debatable whether DISH could actually succeed in constructing and operating a nationwide cellular network. Public safety and the reliability of wireless and wireline networks, including during emergencies and prolonged power outages (planned or otherwise), is a matter of utmost importance for customers and for the Commission. The fact that DISH has zero experience in constructing and operating a cellular network should be cause for concern.

The Commission has no basis for determining how DISH as a cellular provider would perform in terms of ongoing network operations or during emergencies.<sup>38</sup> DISH is not currently a cellular provider and as the Public Advocates Office pointed out, "DISH's operational resilience to communications service disruptions and emergencies is uncertain."<sup>39</sup> Under the transaction, the back-up power equipment associated with decommissioned Sprint cell sites will not be transferred to DISH.<sup>40</sup> There are no binding commitments in either the agreement with the FCC or the DOJ regarding resiliency, back-up power at cell sites or providing support to

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<sup>37</sup> Pub. Adv. Exh. 11 (Selwyn) at p. 61.

<sup>38</sup> PA 20, at p. 16.

<sup>39</sup> PA 20, at p. 16.

<sup>40</sup> JA 28, at p. 18.



emergency services officials.<sup>41</sup> DISH has committed to whatever requirements are in "the law."<sup>42</sup> Right now, there is no "law" or even a state regulatory requirement requiring back-up power, and it is not certain that one will be created.

The apparent lack of planning and lack of detail about what DISH intends to actually do to ensure network resiliency is disturbing. When asked what he anticipated DISH would have to engineer, create or design in order to ensure that customers continue to have service in a Public Safety Power Shutoff, DISH's representative responded that "It is something we are working on. It is important to us. We haven't finalized those specific plans."<sup>43</sup> As discussed above, prior to hitting "pause" due to the proposed transaction, DISH had planned on rolling out 5G deployment in March 2020, which is just around the corner. Under cross examination in December 2019, DISH was unable to provide any information about plans for network resiliency, stating only that such plans had not been finalized.<sup>44</sup> It would not be unreasonable to think that if the company had been serious about deploying a network in March 2020, at least some planning would have taken place concerning the planned 5G network resiliency and back-up power prior to August, 2019. Yet apparently such planning has not taken place, or DISH's witness was unwilling to share it with the Commission.

From a resiliency and emergency back-up power standpoint, substituting DISH in place of Sprint would provide customers with a network that is less reliable. The "fourth choice" for Californians would be a network with no operational experience, and an unknown policy with regard to provisioning cell sites with back-up power. Information about the back-up power

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<sup>41</sup> Transcript V. 9, p. 1638: 21-28 1639: 1-2.

<sup>42</sup> Transcript V. 9, p. 1638: 21-28 1639: 1-2.

<sup>43</sup> Transcript V. 9, p. 1644: 4-13.

<sup>44</sup> Transcript V. 9, 1637: 26-27.

provisioned by Sprint and T-Mobile was presented in prior testimony and addressed in TURN's April 26 Opening Brief. The evidence demonstrated that while the back-up power practices of both carriers are insufficient, Sprint's battery back-up was superior to T-Mobile's, and that Sprint had a shorter time frame than T-Mobile for deploying generators.<sup>45</sup> If this transaction is approved, customers opting for the fourth national wireless provider would lose the ability to receive service from a carrier with experience deploying emergency equipment at multiple cell sites and back-up power provisioning practices that are superior to T-Mobile. Instead, they would have the opportunity to receive service from a newly fledged carrier, with no operational experience in emergencies and no assurance that its back-up power practices will be at least as robust as Sprint's.

**C. The Agreement with DISH Fails to Ensure that Contractors of Color Will not be Harmed by the Proposed Transaction.**

As Greenlining has previously noted, and T-Mobile has acknowledged, Sprint is a generally strong performer on supplier diversity.<sup>46</sup> While T-Mobile's supplier diversity performance is improving, its efforts fall far short of Sprint's efforts.<sup>47</sup> T-Mobile's 2017 and 2018 supplier diversity reports indicate that the company does not intend to increase its percentage spending on diverse business enterprises.<sup>48</sup> Accordingly, there is a substantial risk that the proposed transaction will result in decreased spending with companies owned by people of color.

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<sup>45</sup> Opening Brief of the Utility Reform Network, at p. 36-27; Joint Applicants Ex. 3-C, p 51 (Ray); Public Advocates Office Ex. 6-C, p. 37 - 38 (Reed).

<sup>46</sup> Jt. Appl. Exh. 8-C at p. 9:17-18.

<sup>47</sup> See Greenlining Opening Brief at p. 3.

<sup>48</sup> GLI Exh. 4 (Goodman) at p. 3.

The DISH agreements significantly increase this risk, as they would result in the replacement of Sprint with DISH, which has provided no evidence regarding its supplier diversity numbers or, for that matter, whether it has a supplier diversity team at all. Mr. Blum, DISH's only witness, does not work on the supply chain/logistics side of DISH's business and was unaware whether DISH conducted procurement on a national, state, or regional level.<sup>49</sup> While Mr. Blum was generally familiar with the Commission's Supplier Diversity program, he was unsure whether DISH had a supplier diversity team.<sup>50</sup>

Mr. Blum acknowledged that it would need to build out in every PEA.<sup>51</sup> To meet this requirement, DISH will have to do a great deal of contracting with outside vendors, particularly for construction crews.<sup>52</sup> Given the PFA's relatively short timeline for infrastructure buildouts, DISH would need a strong, capable supplier diversity team in place to ensure that DISH worked with companies owned by people of color, women, LGBT individuals, and disabled veterans. DISH has provided no evidence that its entry into the wireless market includes a meaningful supplier diversity plan. The proposed transaction would result in the Commission's replacing a known strong supplier diversity performer with a complete unknown. This creates a substantial risk that the proposed transaction would result in an overall decrease in supplier diversity, which would significantly harm the public interest.

Disappointingly, the FCC's Order declined to impose any conditions related to supplier diversity.<sup>53</sup> Accordingly, it is even more critical that the Commission ensure that diverse

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<sup>49</sup> TR Vol. 9 at p. 1666: 3-9. Mr. Blum did state that DISH issued RFPs that were not limited to national or regional vendors. *Id.* at p. 1666: 9-13.

<sup>50</sup> TR Vol. 9 at p. 1666:18-20.

<sup>51</sup> TR Vol. 9 at p. 1661:11-13.

<sup>52</sup> TR Vol. 9 at p. 1665: 19-23.

<sup>53</sup> *Jt. App. Exh. 19 at ¶ 346 (Fed. Comm' Comm'n, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, In the Matter of Applications of T-Mobile US, Inc. and*

suppliers will not be harmed by the proposed transaction. However, the nature of this transaction makes doing so particularly challenging. As DISH notes, while it is a party to this proceeding, it is not a Joint Applicant.<sup>54</sup> Therefore, to the extent it decides to approve this merger and impose supplier diversity requirements as a condition of the merger, the Commission must explicitly apply these requirements to DISH as part of its decision in this docket. In the absence of the ability to impose any meaningful supplier diversity requirements on DISH, the Commission should deny the transaction. If the Commission does approve the merger, it should require that no less than thirty percent of New T-Mobile and DISH's combined spending be spent with minority business enterprises.

**D. The DISH Agreements Create A Substantial Risk of Harm to Limited English Proficiency Customers.**

Where a community has a large number of households that speak a language other than English, DISH retailers typically hire employees that speak that language.<sup>55</sup> However, DISH customer service is only available in English and Spanish.<sup>56</sup> Mr. Blum testified that when DISH customers have a customer service need, some customers contact their retailer, and some contact DISH directly.<sup>57</sup> There is, therefore, a possibility that a DISH customer could purchase service in their native language, but be unable to speak with DISH's customer service in that same language. This would be problematic for limited English proficiency (LEP) customers, particularly if DISH is their only phone provider. DISH testified that it will aggressively pursue

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Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations and Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time, WT Docket No. 18-197 (November 5, 2019).

<sup>54</sup> DISH Exh. 3 at p.1.

<sup>55</sup> TR Vol. 9 at p. 1664:1-6.

<sup>56</sup> TR Vol. 9 at p. 1664:21-24.

<sup>57</sup> TR Vol. 9 at p. 1663:13-18. Mr. Blum could not provide a specific percentage of customers that contacted retailers rather than contacting DISH directly. *Id.* at p. 1663:17-19.

additional pre-paid and low-income customers, many of which rely on in-language customer services, especially for critical phone services.<sup>58</sup> If the Commission does decide to approve the proposed transaction, it should require that DISH track which languages its retailers are using to market to customers and should offer customer service in those languages. Whether DISH provides in-language customer service itself or uses a third-party interpreter, it should be at no cost to the customer.

### **III. HOW DOES THE AGREEMENT WITH DISH AFFECT THE CONTINUED AVAILABILITY OF LOW-COST PLANS?**

#### **A. Joint Applicants' Commitments Regarding Pricing are Insufficient to Protect the Public Interest.**

The agreement with DISH seriously threatens to decrease the availability of low-cost plans to consumers. The FCC Order creates a substantial amount of confusion regarding the specific terms of the pricing commitments. Additionally, even interpreted in the light most favorable to consumers, the pricing commitments are insufficient to ensure that the proposed transaction will not reduce the availability of low-cost plans.

##### **1. The FCC Order Suffers from a Lack of Clarity on Joint Applicants' Pricing Commitments.**

Throughout this proceeding, Joint Applicants have emphasized a pricing commitment which would purportedly keep prices stable for three years after the merger closes.<sup>59</sup> However, the specific details of the pricing commitment have been hazy, tentative, and chimerical. Joint Applicants' claims about the details of the pricing commitments do not match up with the conditions imposed in the FCC Order. Additionally, even if Joint Applicants' characterization of

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<sup>58</sup> TR Vol. 9 at p. 1648:3-20. (will grow prepaid and post-paid as quickly as possible. But, see discussion below, DISH acknowledges no legal obligation to offer prepaid indefinitely).

<sup>59</sup> See Jt. Appl. Exh. 34 (Sievert) at p. 5:17-25.

the pricing commitments are accurate, those commitments are insufficiently robust to protect the public interest.

a. The Feb. 4 and May 20 Commitment Letters

Joint Applicants' pricing commitment is memorialized in a Feb. 4, 2019 letter to the FCC.<sup>60</sup> The commitment states that "New T-Mobile will guarantee each [Sprint] customer a rate plan that is equal to or better than the plans they currently enjoy with Sprint."<sup>61</sup> Additionally, New T-Mobile would "make available the same or better rate plans as those offered by T-Mobile or Sprint as of today's date [February 4, 2019] for three years following the merger."<sup>62</sup> New T-Mobile would offer those plans "for three years after the merger or until better plans that offer a lower price or more data are made available, whichever occurs first."<sup>63</sup> In a follow-up letter to the FCC on May 20, 2019, Joint Applicants stated that they "unequivocally reaffirm the February 4, 2019 pricing commitment."<sup>64</sup> Joint Applicants also submitted a letter to the FCC on September 13, 2019, stating that the pricing commitments in the September 4 letter "will cover the Boost, Virgin Mobile, and Sprint prepaid plans only until the Boost, Virgin Mobile, and Sprint prepaid businesses are divested and no longer owned by T-Mobile."<sup>65</sup>

The FCC's Order explicitly acknowledged the Feb. 4 commitments when finding that "Concerns about price effects are also mitigated by the Applicants' commitment to maintain prices at current levels for three years following the closing of the transaction."<sup>66</sup> Additionally, the FCC included the May 20 letter in an appendix memorializing the Joint Applicants'

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<sup>60</sup> Jt. Appl. Exh. 24, Attachment 3 (hereafter, "Feb. 4 FCC Letter.").

<sup>61</sup> Jt. Appl. Exh. 24, Attachment 3 at p. 2.

<sup>62</sup> Jt. Appl. Exh. 24, Attachment 3 at p. 2.

<sup>63</sup> Jt. Appl. Exh. 24, Attachment 3 at pp. 2-3.

<sup>64</sup> Jt. Appl. Exh. 24, Attachment 3.

<sup>65</sup> Jt. Appl. Exh. 34, Attachment D at p. 1.

<sup>66</sup> Jt. App. Exh. 19 at ¶ 344.

commitments. The Order’s ordering clauses explicitly approved the merger subject to “the conditions **specified herein.**”<sup>67</sup>

b. The Feb. 12 Commitment Letter

At the supplemental hearing, Joint Applicants introduced a letter from Joint Applicants to the FCC dated February 12, 2019.<sup>68</sup> That letter responded to, among other arguments, DISH’s argument criticizing the commitment that “Under the pricing commitment, small improvements in network quality [could] justify eliminating a less expensive legacy plan.”<sup>69</sup> The February 12 letter argued, for the first time, that under the terms of the pricing commitment, a better plan would be the same plan with a lower price, the same plan with more data for the same price, or the same plan with a lower price and more data.<sup>70</sup> During the supplemental hearing, Mr. Sievert confirmed that his understanding of the pricing commitment included this definition of a “better plan,”

“...the price commitment says that we will keep our current plan in existence as of the reference date in place for three years following consummation of the merger unless they’re replaced by the same or better plan. And what that means to us is the plan that would replace the one that’s in existence on the reference date would have to be strictly better, not just better in interpretation. And to us what that means is that it would need to be the same plan with the same benefits at a lower price. Or at the same price as the preference plan strictly better benefits like more data at the exact same price or both; the same plan with a lower price and more data.”<sup>71</sup>

While Joint Applicants characterize this definition of what constitutes a better plan as part of the FCC’s conditions of approval, the FCC Order does not include the February 12 letter as an attachment and the DOJ does not include this specific clarification in its PFJ.<sup>72</sup> To make this

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<sup>67</sup> Jt. App. Exh. 19 at ¶ 387 (emphasis added).

<sup>68</sup> TR Vol. 8, p. 1346:16-26.

<sup>69</sup> Jt. Appl. Exh. 26 at p. 3.

<sup>70</sup> Jt. Appl. Exh. 26 at p. 3.

<sup>71</sup> TR Vol. 9, p. 1565:17828, 1566:1-4.

<sup>72</sup> TR Vol. 9, p. 1355:19-28, 1356:1-7.

pricing commitment even more confusing, the FCC references the February 12 letter in a footnote in the body of its Order, but does not discuss whether this clarification will be binding and does not include it in the pricing commitment documents attached to the Order.<sup>73</sup>

Accordingly, based on the plain language of the FCC Order, Joint Applicants are bound **only** to offer its current plans for three years after the merger or until better plans that offer a lower price or more data are made available, whichever occurs first. As noted in TURN's Opening Brief, New T-Mobile could comply with this condition by introducing a plan that cost more but also offered more data.<sup>74</sup> In other words, once the merger closes, New T-Mobile could eliminate low-cost offerings, pricing low-income consumers out of the market.

2. Even if Joint Applicants' Commitments are Enforceable, Those Commitments are Insufficient to Protect Low-Income Consumers.

Preliminarily, it is with noting that over nine million of T-Mobile's pre-paid customers will be migrated to DISH and will accordingly not have the protection of New T-Mobile's pricing commitments.<sup>75</sup> Additionally, the three-year pricing commitment is inadequate to protect consumers. Similarly, any benefits from T-Mobile's recently announced low-cost "T-Mobile Connect" plan are illusory.

a. The Three-Year Pricing Commitment is Insufficient.

As Joint Consumers have already noted, Joint Applicant's pricing commitments and claims of lower prices are insufficient to serve the public interest.<sup>76</sup> The pricing commitments only stabilize plans and prices for three years.<sup>77</sup> As Public Advocates' witness Eileen Odell

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<sup>73</sup> Jt. Appl. Exh. 19 (FCC Order Granting Transfer) at ¶ 211, footnote 704 and 705.

<sup>74</sup> TURN Opening Brief at pp. 17-19.

<sup>75</sup> TR. Vol. 9, p. 1645:7-16.

<sup>76</sup> TURN Opening Brief at pp. 17-20.

<sup>77</sup> TURN Opening Brief at p. 18.



testified, this commitment presumes that within three years of the merger's closing, there will be a fourth provider that is competitive enough to keep prices low.<sup>78</sup> This short time period is inadequate to ensure that the merger will result in long-term merger efficiencies and sufficient competitive pressure.<sup>79</sup> Additionally, as TURN has previously noted, it would be difficult for the Commission to monitor and enforce this commitment.<sup>80</sup>

b. Joint Consumers are not Required to Continue Offering the T-Mobile Connect Service.

Mr. Sievert testified that on December 2<sup>nd</sup>, T-Mobile committed to offer "T-Mobile Connect," a low-priced offer targeted at low-income households "without eligibility requirements, meaning less red tape for everyone."<sup>81</sup> The T-Mobile Connect offering will cost fifteen dollars a month for talk, text, and two gigabytes of data, with automatic data increases over the next five years.<sup>82</sup> While this offer may be promising, it is important to note that under the terms of the FCC Order, New T-Mobile could discontinue this offering at any time, because the FCC pricing commitment only applies to plans already in existence on February 4, 2019.<sup>83</sup> Accordingly, the T-Mobile offering does nothing to ensure that the proposed transaction will preserve the availability of low-cost plans.

3. Joint Applicants' Pricing Commitments are Insufficient to Protect the Public Interest.

Joint Applicants argue that the FCC Order somehow binds them to pricing commitments which are not specifically enumerated in the Order itself. Additionally, even if the FCC Order

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<sup>78</sup> TR Vol. 9., p. 1341:19-27.

<sup>79</sup> Pub. Adv. Exh 11-C (Selwyn Reply) at p. 9-13; Pub. Adv. Exh 20-C (Reed Reply) at p. 14-20; Pub. Adv. Exh. 13-C (Odell Reply) at p. 5.

<sup>80</sup> TURN Opening Brief at p. 18.

<sup>81</sup> TR Vol. 9, p. 1549:19-28.

<sup>82</sup> TR Vol. 9, p. 1550:1-9.

<sup>83</sup> Jt. Appl. Exh. 24, Attachment 3 at p. 2.

does bind Joint Applicants to commitments beyond the four corners of the Order, those commitments are insufficient to protect low-income consumers from increased prices. Accordingly, the Commission should deny the merger. If, however, it does approve the merger, the Commission should include mitigation measures which, at a minimum, explicitly bind Joint Applicants to their claimed pricing commitments.

**B. Under the Terms of the Proposed Transaction, DISH Is Not Required to Offer Prepaid Service Going Forward.**

Prepaid customers tend to have limited budgets, less stable housing, and simpler wireless demands.<sup>84</sup> Prepaid customers often face barriers to switching to postpaid service, including affordability, documentation, credit, and billing issues.<sup>85</sup> Any competitive harms resulting from the proposed transaction would disproportionately harm low-income customers, who disproportionately rely on Sprint and T-Mobile’s prepaid offerings.<sup>86</sup> Accordingly, the consolidation of Sprint and T-Mobile would eliminate competition in the prepaid market and harm prepaid customers.

The DISH agreement does nothing to obviate these harms, because DISH is not required to offer prepaid services post-merger. Jeff Blum, DISH’s Senior Vice President of Public Policy and Government Affairs, testified that DISH “anticipates offering a prepaid mobile wireless service in California after the closing of the divestiture assets.”<sup>87</sup> Mr. Blum stated that if the merger were approved, DISH would want to sign up as many new California prepaid customers as soon as possible.<sup>88</sup> However, Mr. Blum acknowledged that neither the PFJ nor the FCC’s

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<sup>84</sup> TURN Opening Brief at p. 9.

<sup>85</sup> TURN Opening Brief at p. 9.

<sup>86</sup> Pub. Adv. Exh. 13 at p. 4.

<sup>87</sup> DISH Exh. 3 at p. 2. This plan was tentative, as DISH has not yet completed analyzing or finalizing its business or deployment plans. *Id.*

<sup>88</sup> TR Vol. 9, p 1647:17-20.

Order created a **legal obligation** for DISH to offer prepaid service,<sup>89</sup> that DISH had not made any public commitments about the terms and conditions of prepaid service,<sup>90</sup> and that DISH was still working out the details of its relationship with Boost dealers.<sup>91</sup>

In the absence of any condition in the PFJ or the FCC’s Order, there is no obligation for DISH to offer prepaid service indefinitely. Accordingly, there is a significant risk that DISH could eliminate prepaid offerings and focus on higher revenue post-paid customers. This would likely result in higher prices and poorer service offerings to prepaid customers, creating significant public interest harms.

### **C. The Cost of 5G Handsets Will Place 5G Service Out of the Reach of Low-Income Consumers.**

Joint Applicants claim that a benefit of the proposed transaction will be ubiquitous access to 5G services. For example, Mr. Sievert testified that “Every single customer of T-Mobile including, for example, Metro by T-Mobile customers are eligible for 5G **if they have a compatible handset.**”<sup>92</sup> However, Joint Applicants appear to conflate access to 5G services with the **affordability** of 5G services. Mr. Sievert noted that, at least in the near term, 5G-compatible handsets would be very expensive.<sup>93</sup> Even if, as Joint Applicants claim, the proposed transaction results in more affordable 5G service, low-income consumers may not be able to obtain 5G service simply because they cannot afford a 5G handset. This is particularly concerning because

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<sup>89</sup> TR Vol. 9, p. 1648:21-23.

<sup>90</sup> TR Vol. 9, p. 1650:19-27.

<sup>91</sup> TR Vol. 9, p. 1653:20-28, 1654:1-6.

<sup>92</sup> TR Vol. 9, p. 1545:12-15 (emphasis added).

<sup>93</sup> TR Vol. 9, p. 1545:16-21: “Now, it’s not common for customers—and I don’t expect it to be common for a while—for customers with the tightest means to actually have 5G handsets because in the early-going they will be very high-end handsets.”

DISH is planning to build out a 5G only network, creating a substantial risk that low-income consumers will not be able to take advantage of any merger benefits.

**D. The DISH Agreements Increase the Risk of Harm to Low-Income Consumers.**

The specific terms of Joint Applicants' pricing commitments are unclear, and in any event are not robust enough to protect low income consumers. Under the terms of the proposed transaction, DISH is not required to offer prepaid service going forward, creating a substantial risk that consumers will have significantly fewer prepaid options. The initial high cost of 5G handsets will be a significant barrier to low income consumers subscribing to 5G service, even if the service itself is affordable. Accordingly, the DISH agreements promise to reduce the availability of low-cost plans.

**IV. ARE ANY LIFELINE CUSTOMERS AT RISK OF LOSING THEIR SUBSIDIES IF THE PROPOSED MERGER IS CONSUMMATED?**

The Scoping Memo asks whether LifeLine customers will be at risk of losing their subsidies if the proposed merger is consummated.<sup>94</sup> The record demonstrates that the unequivocal answer to this question is “yes.” Concerns about the LifeLine program and the impact on the most vulnerable of California wireless consumers contribute to the inevitable conclusion that approving this merger is not in the public interest. The proposed transaction puts current LifeLine participants, in addition to millions of Californians who are eligible to participate,<sup>95</sup> at risk of losing access to robust, affordable voice and broadband communications services.

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<sup>94</sup> Amended Assigned Commissioner's Scoping Memo and Ruling, October 4, 2018 at p. 3.

<sup>95</sup> The Commission acknowledges that many more California consumers are eligible to participate than are currently on the program. For example, in 2015 the program served 2.25 million wireline customers, over a million more than participate today and the Commission's electric low income program serves 4.49

The addition of DISH Network as an MVNO reseller serving prepaid carriers and, ultimately serving as a facilities based carrier in California, does not appear to bolster or enhance the record with regard to support for the LifeLine program and, in fact as discussed below, may further weaken the current T-Mobile commitments. Sprint is the only party to this transaction that is currently committed to either the state or federal LifeLine program; and, yet, Sprint is the corporate entity that is disappearing into the giant corporate structure of T-Mobile USA, Inc and its ultimate parent Deutsche Telekom.<sup>96</sup> Joint Consumers believe that the impacts to the LifeLine program from this merger should serve as a “canary in the coal mine” of sorts; because, while the number of impacted LifeLine customers might be relatively small, the companies’ approach and commitment to this important social services program can be a mirror for how the companies will serve the broader low income customer base. It is critical to recognize that, after Sprint is absorbed, meaningful LifeLine participation would represent a significant departure from current corporate priorities and practices for the remaining companies. As a result, DISH and T-Mobile have only presented complicated, tentative, and conditional commitments to low income consumers and to participation in the state and federal LifeLine programs.

#### **A. Importance of a Strong LifeLine Program to the Public Interest Analysis**

It is critical to the Commission’s universal service goals and its statutory mandates under Sections 854 and 871 of the Public Utilities Code, that the Commission consider the impact of this proposed merger on the state and federal LifeLine programs and on eligible California LifeLine customers to determine whether this transaction is in the public interest.<sup>97</sup> For years,

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million customers using slightly different eligibility criteria. TURN Exh. 7 (D.19-04-021, Boost Pilot) at pp. 14, 16.

<sup>96</sup> Amended Joint Application for Review of Wireless Transfer (A.18-07-011/012), September 19, 2019 at pp. 13-14. Opening Brief of the Utility Reform Network, April 26, 2019 at p. 20.

<sup>97</sup> Amended Assigned Commissioner’s Scoping Memo and Ruling, October 4, 2018 at p. 3 (acknowledging that LifeLine issues must be part of the Commission’s Section 854 “public interest”

Joint Consumers have dedicated resources to working with the Commission and stakeholders to ensure that low income consumers have access to a robust LifeLine program that provides meaningful access to affordable, quality communications services. While it has been challenging to administer the program, the Commission is committed to this program and acknowledges that the program is designed to help the Commission meet its universal service and public policy goals and “ensure that high quality basic service remains affordable for low-income Californians” and “preserve consumer choice, promote competition and ensure just and reasonable prices.”<sup>98</sup> The record developed in this docket demonstrates that this transaction will likely have a disproportionate impact on low income and prepaid wireless customers throughout California as the market loses a fourth facilities based carrier that currently has a strong presence (1) in the prepaid market, (2) in unique geographic areas of the state, and (3) in the wholesale market as a provider to prepaid resellers that create choices for low income and vulnerable communities.<sup>99</sup>

The LifeLine program currently serves over a million of the most vulnerable California low income customers, including those in rural areas, with disabilities, communities of color and limited English speaking populations, and it has the capacity to serve millions of other eligible

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analysis); Pub. Util. Code §854(b)(3) and (c)(6) (requiring Commission to ensure the transaction does not adversely impact competition, and is beneficial on an overall basis to communities served by the utility), Pub. Util. Code §871 et seq. (Commission must employ every means available to ensure that households receive access to an affordable Lifeline class of service).

<sup>98</sup> D.18-12-019 (R.11-03-013) at p. 6. (Decision establishing criteria for pilot programs describing Commission approach to LifeLine). See also, D.14-01-036 (R.11-03-013), p. 120 (“Fulfilling California’s universal service ambitions in an interconnected world [through the LifeLine program] will also promote full economic participation by qualified low-income Californians, and thereby help meet minimum communications needs for all residents of California”).

<sup>99</sup> Opening Brief of TURN, April 26, 2019, p. 20-21, 26; Opening Brief of the Public Advocates Office, April 26, 2019 at p. 1-2; Pub Adv Exh. 11-C (Selwyn Reply) at p 47-50.

communities.<sup>100</sup> Therefore, while current LifeLine participants are only a small percentage of the customers impacted by this merger, this small percentage represents a much larger and diverse customer base of LifeLine eligible and low income customers, and the Commission should view any changes in commitments or attempts to narrow the commitments as a reflection of the company's larger commitment to low income customers. It is critical to take special care to determine if the transaction will be in the public interest and, if it is determined not to be in the public interest, whether any conditions or actions taken by the companies would mitigate the harm, such that the transaction could be in the public interest.

## **B. The Record Shows Current Commitments Have Continually Shifted and Remain Insufficient to be in the Public Interest**

### **1. The Initial Application did not Include Meaningful Commitments Regarding Lifeline.**

The initial Application included a short and high-level commitment that the merged entity would, “continue the LifeLine services currently provided by Virgin Mobile.”<sup>101</sup> Joint Consumers protested this Application on the grounds that the Applicants' commitment was unduly vague, limited in both “time” and “scope,” and failed to meet their burden to demonstrate commitment to LifeLine and low income consumers in California.<sup>102</sup> Joint Consumers expressed concern that the Applicants failed to corroborate even this limited commitment with the public statements and lack of participation by T-Mobile in federal or state LifeLine programs up to that time. Joint Consumers further noted that Applicants must meet their burden under the statute to show that the transaction would not reduce competition for LifeLine customers or negatively

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<sup>100</sup> TURN Exh. 7 (D.19-04-021 Boost Pilot), p. 14-16; D.14-01-036 (R.11-03-013), p. 1, 4 (background and goals of the program).

<sup>101</sup> Joint Application for Review (A.18-07-012), July 13, 2018 at p. 25.

<sup>102</sup> Protest of the Joint Consumers, August 16, 2018, at p. 18-19.

impact the value of the program to eligible customers to therefore allow the Commission to find this transaction to be in the public interest.<sup>103</sup> Tellingly, the Applicants’ relied on legal objections and claims of preemption to reply to these initial concerns about the treatment of LifeLine customers, and argued that any required commitments to LifeLine “are not required or necessary” to satisfy a wireless notification review. The only substantive comment regarding LifeLine in their reply was relegated to a footnote where they stated that they “stand by” the statements in their initial Application.<sup>104</sup>

2. Joint Applicants failed to Remedy the Shortcomings of the Initial Application in their Initial Round of Testimony and Opening Briefs.

While Applicants chose to minimize their commitment to LifeLine, the Administrative Law Judge explicitly included issues regarding LifeLine in the scope of the proceeding as part of a list of “significant factors” for the determination of the public interest of this transaction.<sup>105</sup> Joint Consumers and Public Advocates both found that the Applicants’ subsequent testimony, cross examination, and briefing did not meet the their burden to demonstrate that this transaction is in the public interest for LifeLine customers.<sup>106</sup> Instead, the commitments to LifeLine remained lacking and high level, despite the Applicants’ more general claims that low income customers, including LifeLine customers, would benefit from the “broad and deep” 5G coverage to many parts of California and that low income customers, including LifeLine customers, would benefit from the increased capacity in the network and the resulting low costs and lower rates.<sup>107</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> Applicants’ Reply to Protests, August 27, 2018, at p. 18.

<sup>105</sup> Amended Assigned Commissioner’s Scoping Memo and Ruling, October 4, 2018 at p. 2-3.

<sup>106</sup> Opening Brief of TURN at pp. 20-24; Opening Brief of Public Advocates at p. 2, 26-27, 28.

<sup>107</sup> Opening Brief of the Joint Applicants, April 26, 2019, at p. 3-5.



Despite these claims, the record appeared to limit LifeLine offerings only to the newly acquired Assurance brand, did not clearly set out the intended geographic coverage of the offerings, did not make commitments for specific service offerings beyond the “status quo,” and did not commit merger synergies or savings to be used for improved customer service, marketing, community outreach, branding or regulatory work regarding the company’s LifeLine participation.<sup>108</sup> Joint Applicants also noted that the testimony and cross examination provided no commitments or discussion of the Commission’s proposed pilot program with Sprint subsidiary Boost Mobile to serve many LifeLine eligible customers.<sup>109</sup>

### **C. Current Commitments and Addition of Divestiture of Prepaid Customers Do Not Satisfy Section 854**

#### **1. The DOJ Proposed Final Judgment and FCC Order Do Not Contain Sufficient Protections for LifeLine Customers.**

In July, Joint Applicants and DISH entered into a settlement approved by the Department of Justice (DOJ Proposed Final Judgment or DOJ PFJ), requiring the Applicants to divest all of Sprint’s prepaid customers, except for Assurance customers. In this settlement, there is no mention of either T-Mobile or DISH’s participation in the federal or state LifeLine program.<sup>110</sup> Indeed, despite the fact that DISH has now committed to serving over 9 million prepaid retail customers nationwide, and to serve low income customers throughout its new service territory,

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<sup>108</sup> Opening Brief of TURN at p. 21-23, 26. See also, Pub. Adv. Exh. 4 (Odell) at p. 26; Jt. Appl. Exh. 8 (Sylla Dixon) at p. 3; TR Vol. 7, pp. 880:19-881:14. Joint Consumers also raised concerns regarding the impact of the loss of Sprint on reseller MVNO carriers that serve thousands of LifeLine customers in California. Joint Consumers continue to have these concerns even in light of the DISH transaction. The record does not reflect a strong commitment by DISH to be a robust wholesale provider in California even when, and if, it becomes a viable fourth facilities based competitor.

<sup>109</sup> Opening Brief of TURN at p. 24; but see, Opening Brief of Joint Applicants, at p. 83, committing to continuing “Boost’s participation” in the pilot after the merger.

<sup>110</sup> Jt. Appl. Exh. 20 (DOJ PFJ); See also, CETF Exh. 4 (McPeak Supplemental) at p. 4-6 (noting that the DISH transaction does not impact buildout under the CETF MOU and that CETF is “satisfied” that the pricing commitments will only apply to remaining T-Mobile customers after prepaid customer divestiture).

none of its commitments through the Department of Justice, the FCC, or its own pronouncements provide any assurance that it will become a meaningful and robust competitor in either the federal or state LifeLine programs. DISH's written direct testimony does not discuss the company's plans to provide federal or state LifeLine either as an MVNO reseller or as a facilities-based carrier and neither the T-Mobile nor DISH witnesses would commit DISH to provide LifeLine when asked in cross examination.<sup>111</sup>

The record shows that DISH will not provide additional competitive choice for eligible California LifeLine customers and that T-Mobile's commitment to LifeLine will not match the current efforts under Sprint.<sup>112</sup> Therefore, while it may be the case that the DISH transaction does not directly impact T-Mobile's commitments for LifeLine because T-Mobile will continue to serve Assurance customers, it is equally true that the DISH transaction does not help or mitigate the loss of a LifeLine competitor, the harmful impact of this transaction on LifeLine, and the elimination of a strong LifeLine provider in California. Only to the extent that the Applicants and DISH have demonstrated a strong commitment to offer LifeLine and that the entry of DISH as a retail wireless reseller and, ultimately, facilities based provider will support competition for very low income customers, including communities of color, disabled customers, limited English speaking customers and rural customers, would the Applicants have met their burden to show this transaction was in the public interest.

**D. Joint Applicants' LifeLine Commitments Memorialized in the CETF MOU are Insufficient to Protect the Public Interest**

Almost ten months after filing their initial Application, during the reply round of briefing, Applicants included additional commitments to the LifeLine program through its agreement with

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<sup>111</sup> DISH Exh. 3 (Blum Supplemental); TR Vol. 9, p. 1525:7-15 (Sievert), p.1564:25-1565:7 (Blum).

<sup>112</sup> DISH Exh. 3 (Blum Supplemental); Pub. Adv. Exh. 13-C (Odell Reply) at p. 10-11.

the California Emerging Technologies Fund (“CETF”).<sup>113</sup> In previous comments, Joint Consumers found that the commitments in the CETF Memorandum of Understanding (MOU) helped to focus T-Mobile’s commitment to low income and LifeLine customers, but that even these commitments failed to adequately protect LifeLine customers because of vague wording, multiple exceptions, inclusion of non-LifeLine customers to meet stated targets, and time-limited commitments.<sup>114</sup>

While over the past several months the Applicants’ commitments to LifeLine have been clarified and, in some cases, strengthened, they also demonstrate that Applicants’ commitments do not go far enough and are not reliable enough to support California LifeLine customers in the face of market consolidation. The subsequent introduction of the DOJ PFJ and the divestiture of all of Sprint’s prepaid customers but for Assurance wireless to DISH, only complicates the implementation and interpretation of these CETF MOU commitments.

1. The CETF MOU Conflates Low Income Customers and LifeLine Subscribers.

For example, the CETF MOU appears to allow T-Mobile to conflate “low income” and “LifeLine” customers to meet stated targets and goals. The CETF MOU requires T-Mobile to add 332,500 additional new adoptions of “low-income households” generally, through *either* Assurance Wireless and LifeLine *or* through “other non-LifeLine offers” that are capped at \$20.<sup>115</sup> This same language flows through the commitments to develop a strategic plan and to spend \$5 million over 5 years to promote “LifeLine offers and enroll eligible California LifeLine

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<sup>113</sup> Jt. Appl. Exh. 23-C (CETF MOU) at p. 4-7.

<sup>114</sup> Reply Brief of TURN, May 10, 2019, at p. 9. *See also*, Response of the Joint Consumers to Joint Motion to Reflect Memorandum of Understanding, April 23, 2019.

<sup>115</sup> Jt. Appl. Exh. 23-C (CETF MOU), Section III A. & B, p 5-6.

*and* Low-Income customers.”<sup>116</sup> Moreover, because the CETF MOU LifeLine commitments are tied to the commitment to serve “no less than” 675,000 LifeLine *or* low income households, this does not require T-Mobile to support LifeLine specifically. Compounding the concern that committing to serve 675,000 “low income households” represents only a fraction of low income households in California, the CETF MOU allows T-Mobile to reduce its promotion and outreach efforts after these benchmarks are met, but before the five years or \$5 million is spent, through a combination of LifeLine and non-LifeLine customers.<sup>117</sup>

2. The LifeLine Commitments in the CETF MOU are Vague, Confusing, and Speculative.

It is also telling that the CETF MOU has no requirement to serve LifeLine customers at specific speeds or with a specific level of service quality. On the stand, Mr. Sievert clarified that it will offer LifeLine throughout its service territory in California and that while LifeLine services will not be 5G capable for quite some time, there will be “complete overlap of the coverage footprints” and LifeLine will be available “everywhere 5G is available.”<sup>118</sup> However, this high level commitment of “coverage” only goes so far, and Mr. Sievert also admitted that LifeLine services will not be 5G capable and presumably not on the 5G network, in part, because it won’t be “common for customers – and I don’t expect it to be common for a while—for customers with the tightest means to actually have 5G handsets because in the early-going they will be very high end handsets.”<sup>119</sup>

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<sup>116</sup> Jt. Appl. Exh. 23-C (CETF MOU), Section IV (emphasis added). If this commitment is intended to allow T-Mobile to use this money to also set up processes to “enroll” customers, as opposed to dedicating the money to outreach, that weakens the commitment even further.

<sup>117</sup> Jt. Appl. Exh. 23-C (CETF MOU), Section IV.

<sup>118</sup> TR Vol. 9, 1546:9-1547:6.

<sup>119</sup> TR Vol. 9, p. 1545: 16-21, p. 1546: 2-8

Also on the witness stand, T-Mobile witness Sievert attempted to clarify some elements of the CETF MOU but merely highlighted the fact that the commitments to LifeLine continue to be vague and conditional and not fully embraced by the executives of the company. Mr. Sievert could not clarify how the company would count “new” households in light of the frequent churn on and off the program by the same households,<sup>120</sup> nor did he know whether non-LifeLine households would count toward the total commitment of 675,000, despite clear language supporting this interpretation.<sup>121</sup> Further, Mr. Sievert admitted that the company has not determined how it will conduct its outreach and develop its processes to participate in LifeLine including whether to keep the Assurance brand itself or to brand any LifeLine offerings with the much more visible T-Mobile or MetroPCS brands.<sup>122</sup>

### 3. The CETF MOU’s “Material Change” Provision Renders the LifeLine Commitment Meaningless.

The CETF MOU also includes a “material change” provision that allows T-Mobile to renegotiate the terms of the MOU for “appropriate relief” from the requirement to offer LifeLine in the event there are “material changes in the LifeLine programs at either the state or federal level.”<sup>123</sup> While material change provisions are not unusual in these types of agreements, Joint Consumers believe that this provision is an example of the vague and high level commitments T-Mobile has made around LifeLine. This provision fails to acknowledge that LifeLine, at both the state and federal levels, has been under constant “material” change for many years. There are significant changes to eligibility, subsidy amounts, and service standards already approved for the next several years and many more changes being discussed at the state and federal levels

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<sup>120</sup> TR Vol. 9, p. 1529:7-1530:25.

<sup>121</sup> TR Vol. 9, p. 1533: 2-8.

<sup>122</sup> TR Vol. 9, p. 1533:9-26.

<sup>123</sup> Jt. Appl. Exh 23-C (CETF MOU), Section V. at p. 7.

currently.<sup>124</sup> It is troubling that the MOU does not address or anticipate these known changes nor does it clarify that these changes will *not* trigger this provision and allow New T-Mobile to request changes, or elimination, of the requirement.

When asked about this provision, and its impact on the T-Mobile commitment to LifeLine, T-Mobile witness Mr. Sievert stated he was knowledgeable about the program but “not aware of all the history” of state and federal LifeLine rules and “not expert enough” to know whether the currently planned and adopted changes to the federal program would trigger the material change provision of the CETF MOU.<sup>125</sup> Indeed, Mr. Sievert admits that the FCC’s requirement that wireless carriers increase their LifeLine service offerings to include 8GB of data, calculated using a formula adopted by the FCC adopted in 2016, could have triggered this material change clause and allowed T-Mobile to negotiate “appropriate relief” from its LifeLine commitments.<sup>126</sup> Mr. Sievert’s interpretation of the MOU must be understood in the context that the FCC and this Commission have adopted many changes to the program (like the 8GB data requirement) that have not yet gone into effect and these agencies are considering many additional proposed changes to the LifeLine program, and each of these material changes could trigger changes to the T-Mobile LifeLine commitment.

The Commission must discount any commitment to the state or federal LifeLine programs that includes a large loophole that allows T-Mobile to request “appropriate relief” as a

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<sup>124</sup> See, for example, D.18-02-006 (R.11-03-013) at p. 8-17 (discussing changes in eligibility and Commission response); see also, *In the Matter of LifeLine and Linkup Reform and Modernization*, WC Docket No. 11-42 et al., Third Report and Order, FCC16-38 at ¶¶ 69-126.

<sup>125</sup> TR Vol. 9, pp. 1559:11-1560:17.

<sup>126</sup> TR Vol. 9, pp. 1562:26-1563:21; See, also, *In the Matter of Lifeline and Link up Reform and Modernization*, WC Docket 11-42, et al., Order Granting CTIA Petition, FCC19-116, released November 19, 2019 at paragraph 4 (noting that the FCC was to impose a requirement for wireless carriers to offer 8.75 GB of data to receive the federal LifeLine subsidy).

result of a material change that both parties to the agreement already knew would happen or is currently being considered.

**E. Joint Applicants' Commitment to Participate in the Boost Mobile Pilot is Unclear.**

Similarly, the companies' commitments to a Commission project designed to increase LifeLine participation has been unclear. On May 3, 2019, the Commission adopted the rules and funding for a pilot program that allows Boost Mobile to receive subsidy funding from the LifeLine program, to serve low income customers with discounted services.<sup>127</sup> This pilot program makes all of Boost's regularly offered plans available at a discount to customers who are referred from partner social services agencies. The Boost pilot program not only provides \$15 per month per customer to Boost, but it commits the Commission to spending \$6 million in funding to promote LifeLine and this Boost pilot.<sup>128</sup> While neither T-Mobile nor Sprint witnesses initially seemed familiar with the development of the pilot and made no commitments to serve these customers after the Boost pilot customers are transferred to T-Mobile, the Applicants' brief discusses the pilot and the CETF MOU included the non-LifeLine customers that participate in this pilot as eligible to be part of the 675,000 target low income households.<sup>129</sup>

However, after agreeing to participate in the pilot, T-Mobile agreed to divest all Boost customers to DISH Network through the DOJ settlement process. In supplemental testimony, T-Mobile emphasized that because these pilot participants are not considered LifeLine customers, Mr. Sievert believed that the divestiture of Boost would not impact the LifeLine program.<sup>130</sup> However, Sievert's testimony made no mention of the impact of divestiture on the Boost pilot

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<sup>127</sup> TURN Exh. 7 (D.19-04-021 Boost Pilot).

<sup>128</sup> TURN Exh. 7 (D.19-04-021 Boost Pilot) at p. 7, 11.

<sup>129</sup> Jt Appl. Exh. 23C (CETF MOU) at p. 5; Opening Brief of TURN at p. 24.

<sup>130</sup> Jt. Appl Exh. 34 (Sievert Supplemental) at p. 7.

participants themselves and, instead, T-Mobile agreed to “become a pilot participant” if the “Commission wishes.”<sup>131</sup>

DISH similarly provided no information regarding the impact of the divestiture on the Boost pilot participants themselves who, presumably, would be transferred to DISH as non-LifeLine customers. DISH did not make a firm commitment to continue participation in this pilot program in its supplemental testimony, leaving these customers without a home for their pilot plan. Indeed, as discussed above, DISH has not decided whether it will participate in LifeLine or even what the terms and conditions will be for its prepaid services, must less how to protect the services of a small pilot project.<sup>132</sup> Instead, only on the stand, did both DISH’s and T-Mobile’s witnesses agree to serve these customers and both noted that T-Mobile would need DOJ approval if those customers are not to be divested to DISH.<sup>133</sup>

DISH witness Blum admitted that although his “preference” is to continue the Boost pilot under the any conditions that the Commission may want, DISH was only making that claim “before his Honor right now,” and DISH has not been in discussions with the Commission on this issue and that DISH has not “made any final decisions about the Boost pilot.”<sup>134</sup> In general, it appears DISH has made no business plans to serve this Boost pilot, but is willing to consider the

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<sup>131</sup> Jt. Appl Exh. 34 (Sievert Supplemental) p. 7.

<sup>132</sup> DISH Exh. 3 (Blum Supplemental); Tr. 1647:24-1648:23 (no legal obligation to offer prepaid); Tr.1650:19-1651:27 (no specific plans for terms and conditions of prepaid service); 1664:25-1666:5 (no commitment to LifeLine).

<sup>133</sup> TR Vol. 9, 1553:5-1554:8 (Sievert); Tr. 1657:19-1658:21. Both T-Mobile and DISH acknowledge that if T-Mobile plans to serve the current pilot participants, the DOJ would have to approve those Boost customers staying with T-Mobile and not divesting to DISH. Both agreed the DOJ would likely give their approval.

<sup>134</sup> TR Vol. 9, 1658:1-4.



opportunity when presented. Hardly a ringing endorsement to support, and even pursue, low income customers participating in a subsidy program.

As discussed above, while on the stand, Mr. Sievert also introduced a new service offering that T-Mobile plans to offer to California customers that would be “targeted at low income households.”<sup>135</sup> And yet, this offer would also be “available to everyone” and clearly not intended to support the LifeLine program. None of the Applicants’ witnesses include written testimony about this new plan. Joint Consumers support the effort to develop new plans that appeal to low income communities; however, without specific and enforceable commitments, these plans can vanish as quickly as they appeared. Despite being a voluntary offering, subscribers to this plan that are identified as “low income” will likely help satisfy T-Mobile’s commitments under the CETF MOU. In contrast to the language of the CETF MOU, however, Mr. Sievert testified that any marketing efforts to promote this new low cost plan would not be included in the commitments in the CETF MOU to market and promote LifeLine and other low income plans, leaving the \$5 million over five years for Lifeline specific outreach.<sup>136</sup>

While Joint Consumers support a commitment by T-Mobile to commit resources to serve low income customers, these commitments are not LifeLine specific and allow T-Mobile to paint a very broad brush to serving low income customers. While this is a concrete commitment, it will hardly mitigate the damage done, as demonstrated in the record, to the low income community in California from the loss of Sprint

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<sup>135</sup> TR Vol. 9, 1549:15-1550:25.

<sup>136</sup> TR Vol. 9, 1552:7-23.

**V. TO MITIGATE HARMS FROM THIS TRANSACTION, THE COMMISSION MUST HOLD THE COMPANIES TO ALL OF THEIR COMMITMENTS.**

As discussed above, the T-Mobile commitments on pricing, LifeLine, network buildout and many other elements of the transaction have been a moving target. If, instead of denying the merger under Section 854, as Joint Consumers proposed, the Commission intends to approve the merger with conditions, then the Commission must clarify and define these commitments.

For example, in addition to commitments made in written testimony regarding LifeLine, T-Mobile has further committed to not only keeping Assurance Wireless LifeLine customers after the divestiture of other Sprint customers, but more importantly, to “grow the customer base.” On the stand Mr. Sievert confirmed that this commitment applies specifically to LifeLine customers, and not low income customers in general as the CETF MOU reads.<sup>137</sup> In addition Mr. Sievert also committed to a broad service area where LifeLine will be available, “everywhere 5G is available” with 5G and 4G service areas completely overlapping.<sup>138</sup> Mr. Sievert also noted his understanding that the CETF MOU commits the company to serve 675,000 *LifeLine* customers, and would not include non-LifeLine customers that generally qualify as “low income.”<sup>139</sup> This commitments are not clearly set out in testimony and must be clarified if adopted as conditions.

As another example, based on the dismal performance of the wireless industry in California during the recent planned power shutoffs, it is clear to Joint Consumers that the existing situation cannot stand and we hope that the Commission will move quickly to implement backup power and outage notification requirements. However, in the meantime, Sprint's approach is far better than DISH's undefined measures and superior to T-Mobile's.

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<sup>137</sup> Jt. Appl. Exh. 34 (Sievert Supplemental) at p. 6-7; TR Vol. 9, p. 1544:1-28.

<sup>138</sup> TR Vol. 9, p. 1546:9-1547:6

<sup>139</sup> TR Vol. 9, pp. 1547:28-1548:6

Therefore, as a condition of approval, the Commission should also require that DISH provide back-up power at cell sites, at least as robust as that currently provided by Sprint. T-Mobile should also be required to adopt Sprint's practices regarding increased battery life and deployment of generators. Further, DISH and Joint Applicants should be required to provide state and local Office of Emergency Services (OES) officials and the Commission with real-time data regarding communications outages that occur either in declared states of emergency or that involve 60,000 user minutes. This would include a requirement that during a major emergency, both carriers would (1) have a representative located at the California OES ("CAL OES") headquarters, (2) provide a 24 hour contact for county OES in every county they serve in California, and (3) within 30 days of an outage, provide a report to the Commission with details about the location of the outage, cause, duration, impact on public safety, impact on public services and impact on residential and business customers.

These are just examples of two areas where the Commission should impose conditions on this transaction to the extent the Commission moves forward to approve. Below is a summary of other proposed conditions discussed above. This list is not meant to be exhaustive, and does not, for example, include conditions suggested by other stakeholders in this process or conditions Joint Consumers have suggested in earlier pleadings.

### **Supplier Diversity**

- DISH should be required to develop a meaningful supplier diversity plan. The plan should include establishing a strong, capable supplier diversity team in place to ensure that DISH worked with companies owned by people of color, women, LGBT individuals, and disabled veterans.
- If the Commission does approve the merger, it should require that no less than thirty percent of New T-Mobile and DISH's combined spending be spent with minority business enterprises.

## **Pricing Commitments**

- The Joint Applicants' pricing commitment should be modified to last for a minimum of five years.
- The Commission should require that under the Joint Applicants pricing commitment, a "better plan" for replacing a customer's existing service should include the same plan with a lower price, the same plan with more data for the same price, or the same plan with a lower price and more data. The requirement for a "better plan" cannot be satisfied by substituting a plan with more data at a higher price.
- The Joint Applicants' pricing commitment should be modified to include continued offering of the T-Mobile Connect Service for a minimum of five years, thereby ensuring that T-Mobile customers will continue to have a low cost option.

## **Requirement to Offer Prepaid Services Going Forward**

- The Commission should require DISH to continue offering prepaid service, including as a facilities-based provider

## **In-Language services for Limited English Speaking Customers**

- DISH and T-Mobile should track which languages its retailers and corporate marketing services are using to market to customers and should offer customer service and written materials including contracts in those languages.
- Whether DISH or T-Mobile provide in-language customer service itself or uses a third-party interpreter, it should be at no cost to the customer.

## **LifeLine Service**

- DISH and the Joint Applicants should be required to offer LifeLine Service for a minimum of five years and the "material change" section should be drafted to exclude conditions and changes already adopted by the FCC or the Commission prior to the close of the transaction.
- T-Mobile and DISH should ensure that their LifeLine services are offered throughout the service territory with services branded through MetroPCS and Assurance, at a minimum. Within one year from close of the transaction, MetroPCS and DISH should make at least one 5-G capable handset available to LifeLine customers for free.
- T-Mobile should be required to commit \$5 million in investment over five years to promote LifeLine-specific services and this commitment should not expire.
- The Commission should clarify that T-Mobile is committing to serve 675,000 LifeLine customers or customers participating in a Commission-approved pilot program to serve low income customers within three years of the close of the transaction, and to participate in the LifeLine program for a minimum of five years after this benchmark is attained using best efforts to maintain the number of LifeLine and pilot program customers at 675,000.

- T-Mobile should be required to participate in the Commission's pilot programs adopted in D.19-04-021 and should jointly, with DISH, petition the DoJ to allow the current pilot participants to stay with T-Mobile.

### **Public Safety**

- The Commission should require that DISH provide back-up power at cell sites, at least as robust as that currently provided by Sprint. T-Mobile should also be required to adopt Sprint's practices regarding increased battery life and deployment of generators.
- DISH and Joint Applicants should be required to provide state and local Office of Emergency Services (OES) officials and the Commission with real-time data regarding communications outages that occur during emergencies, regardless of whether a state of emergency has been declared. This would include a requirement that during a major emergency, both carriers would have a representative located at the California OES ("CAL OES") headquarters, both carriers would provide a 24 hour contact for county OES in every county they serve in California, and both carriers would, within 30 days, provide a report to the Commission with details about the location of the outage, cause, duration, impact on public safety, impact on public services and impact on residential and business customers.

## **VI. CONCLUSION**

The Assigned Commissioner's November 26, 2019 ALJ's Ruling Confirming Evidentiary Hearings and Establishing Their Scope asks a number of questions focusing on one key issue in this proceeding: whether agreements between Joint Applicants, DISH Network, the Federal Communications Commission, and the Department of Justice are sufficient to ensure that the proposed transaction is in the public interest. They are not. The DISH agreements fail to mitigate the substantial public interest harms that Joint Consumers have previously demonstrated will come from this transaction. Additionally, in some instances, the DISH agreements significantly increase the risk that California consumers, particularly consumers of color and low-income consumers, will be harmed by the proposed transaction.

The proposed transaction raises a host of competitive harms, which Joint Consumers expect will be addressed by other parties to the proceeding. However, the proposed transaction also threatens serious harms to stakeholders which the Commission has always prioritized, including diverse suppliers, consumers with limited English proficiency, low-income consumers, and subscribers to California's LifeLine program. Joint Consumers respectfully request that Commission deny the proposed transaction.

Respectfully submitted,

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