

Docket No.: A.18-07-011 and A.18-07-012  
Exhibit No.: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
Witness: Mark A. Israel \_\_\_\_\_  
ALJ: Karl Bemederfer  
Commissioner: Clifford Rechtschaffen

**SUPPLEMENTAL TESTIMONY  
OF MARK A. ISRAEL**

**ON BEHALF OF JOINT APPLICANTS**

**NOVEMBER 7, 2019**

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1 **I. WITNESS IDENTIFICATION**

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

4 A. My name is Mark A. Israel. I am a Senior Managing Director at Compass  
5 Lexecon, an economic consulting firm located in Washington D.C. My business  
6 address is 555 12<sup>th</sup> Street, NW, Washington DC 20004.

7  
8 **Q. Please describe your professional qualifications and experience.**

9 A. I previously submitted Rebuttal Testimony dated January 29, 2019 (Hearing Ex.  
10 Jt. Appl.7-C) and appeared as a witness at the hearing on February 7, 2019. My  
11 professional qualifications and experience are summarized in Joint Applicants Exhibit  
12 Jt Appl. 7-C.

13  
14 **II. PURPOSE OF SUPPLEMENTAL TESTIMONY**

15  
16 **Q. What is the purpose of your Supplemental Testimony?**

17 A. The purpose of my Supplemental Testimony is to respond to the Assigned  
18 Commissioner's Amended Scoping Ruling dated October 24, 2019

19  
20 **Q. Can you please give a high-level overview of your earlier testimony?**

21 A. I previously testified in this proceeding that the proposed merger will strengthen  
22 competition and benefit California consumers by increasing consumer welfare.<sup>1</sup> As I  
23 testified, consumers will enjoy benefits from the merger, relative to the no-merger  
24 world, because New T-Mobile's planned network will allow the combined firm to  
25 achieve lower marginal costs of providing service, expand capacity, and offer higher  
26 quality services than would either merging party operating on its own. With lower costs  
27 and higher capacity, New T-Mobile's incentives are to lower prices and increase  
28 product quality in order to attract more customers and thereby earn higher profits. New  
29 T-Mobile's ability to offer consumers greater value for their money (sometimes  
30 referred to as lower quality-adjusted prices) will, in turn, exert competitive pressures on

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<sup>1</sup> Hearing Ex. Jt. Appl. 7-C, § VII.

1 rival service providers to respond, through some combination of lower prices and  
2 improved service quality, further benefiting consumers.

3  
4 **Q. Are you aware of the Federal Communications Commission and U.S. Department of  
5 Justice Commitments referenced in the Assigned Commissioners' Amended Scoping Ruling?**

6 **A.** Yes. Since I testified, there have been several post-hearing commitments and  
7 agreements made by the Joint Applicants, including: (i) an *ex parte* filed with the  
8 Federal Communications Commission ("FCC") in connection with that agency's  
9 review of the Transaction (the "FCC Commitments"); (ii) the Proposed Final Judgment  
10 ("PFJ") and the Stipulation & Order ("Stipulation and Order") filed by the U.S.  
11 Department of Justice in the U.S. District Court for the District of Columbia on July 26,  
12 2019 (the "DOJ Commitments"), and (iii) the Asset Purchase Agreement among T-  
13 Mobile, Sprint Corporation and Dish Network Corporation ("DISH") also entered on  
14 July 26, 2019 (the "Asset Purchase Agreement").<sup>2</sup> DISH has also made several  
15 commitments, discussed further below.<sup>3</sup> My prior testimony was obviously not  
16 informed by these subsequent events.

17  
18 **Q. Please summarize your Supplemental Testimony.**

19 **A.** These events do not change my opinion that the merger is procompetitive and  
20 welfare enhancing to California consumers. Given my understanding of the DOJ and  
21 FCC Commitments, those Commitments should, if anything, increase the pro-  
22 competitive and welfare-enhancing effects of the transaction. I provide my  
23 understanding of those Commitments next, followed by my analysis of their effects on  
24 my conclusions.

25  

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<sup>2</sup> See Amended Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032 (September 19, 2019) ("Amended Wireless Notification"), Confidential Exhibit S, (FCC Commitments); *Id.* at Exhibit P (PFJ); *Id.* at Exhibit Q (Stipulation and Order); *Id.* at Exhibit R (Asset Purchase Agreement).

<sup>3</sup> See, e.g., Amended Wireless Notification, Exhibit T (DISH FCC *Ex Parte* (July 26, 2019)).

1 **Q: Can you direct the Court to portions of your previously submitted testimony that require**  
2 **updating?**

3 A: My previous testimony is consistent with the conclusions I offer here and thus  
4 does not require updating. In this supplemental testimony I explain the reasons why  
5 subsequent events, in particular the relevant DOJ and FCC commitments, do not  
6 change my conclusions.

7  
8 **Q: Was this Supplemental Testimony prepared by you or under your direction and are the**  
9 **responses you have provided true and correct and complete to the best of your knowledge?**

10 A. Yes, this Supplemental Testimony was prepared by me or under my direction and the responses  
11 I have provided are true and correct and complete to the best of my knowledge. I have attached a  
12 declaration to that effect to confirm the same. See Attachment A.

13  
14 **III. AMENDED SCOPING RULING – QUESTION NO. 1, CHANGES TO REBUTTAL**  
15 **TESTIMONY**

16  
17 **Q: The first question identified in the Amended Scoping Ruling is “What changes are required**  
18 **to previously submitted written or oral witness testimony resulting from Sprint, T-Mobile or Dish**  
19 **Network entering into the DOJ and FCC Commitments?” Can you please respond?**

20 A. Yes. For the reasons I explain below, my conclusions that the proposed merger will  
21 benefit consumers remain unchanged. The immediate change resulting from the commitments is  
22 that Sprint prepaid customers will be divested and so will not be customers of New T-Mobile. I  
23 discuss below the expected welfare effects related to those divested customers.

24  
25 **Q. Could you elaborate?**

26 A. Yes. First, I will answer that by providing my understanding of the various  
27 commitments at a high level, but I stress that this summary is not intended to be  
28 encyclopedic. Rather, I intend it to highlight certain aspects that inform my subsequent  
29 discussion.

30 **First**, the Joint Applicants have committed to the FCC that 1) “New T-Mobile  
31 will make available the same or better rate plans as those offered by T-Mobile or Sprint

1 as of [February 4, 2019] for three years following the merger,”<sup>4</sup> and 2) “T-Mobile and  
2 Sprint legacy rate plans will continue as New T-Mobile plans for three years after the  
3 merger or until better plans that offer a lower price or more data are made available,  
4 whichever occurs first.”<sup>5</sup>

5 **Second**, the Joint Applicants have made various build-out commitments to the  
6 FCC and DOJ, including deploying low-band 5G coverage to at least 97 percent of the  
7 U.S. population within three years of the proposed transaction.<sup>6</sup>

8 **Third**, DISH will acquire Sprint’s prepaid customer accounts, will be provided  
9 access to New T-Mobile’s network through an MVNO agreement, and will have the  
10 option of acquiring a variety of assets that would otherwise be decommissioned by  
11 New T-Mobile, including cell site assets and retail locations.<sup>7</sup>

12 I understand that DISH will use the acquired assets to begin selling mobile  
13 wireless service in 2020, supported by its wholesale agreement with Sprint and T-  
14 Mobile, which provides DISH with access to the New T-Mobile Network.<sup>8</sup> I  
15 understand that DISH has also made specific network build-out commitments to the  
16 FCC.<sup>9</sup>

17  
18 **Q. How do these commitments and plans affect your prior testimony?**

19 **A.** The pricing and build-out commitments by the Joint Applicants formalize what  
20 New T-Mobile already has incentives to do in any case, as I discussed in my prior  
21 testimony. The Joint Applicants’ willingness to undertake these commitments thus  
22 reinforces my prior testimony.

23 The divestiture of some assets and customers to DISH does not change my  
24 conclusions. The retail store and cell site assets would otherwise have been

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<sup>4</sup> See Amended Wireless Notification, Confidential Exhibit S (FCC Commitments).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Exhibit P (PFJ) at § VIII.A.

<sup>7</sup> *Id.* at Exhibit R (Asset Purchase Agreement).

<sup>8</sup> See, e.g., DISH Network Corporation FQ2 2019 Earnings Call Transcript, July 29, 2019, and DISH Press Release, “DISH to Become National Facilities-based Wireless Carrier,” July 26, 2019.

<sup>9</sup> Amended Wireless Notification, Exhibit T (DISH FCC *Ex Parte* (July 26, 2019)).

1 decommissioned (and thus did not contribute to my assessment of New T-Mobile's cost  
2 or quality), New T-Mobile was not planning to use the 800 MHz spectrum that DISH  
3 has the option to obtain to deploy its 5G network, and the DISH wholesale traffic does  
4 not materially affect network efficiencies that I discussed.

5 In addition, based on my understanding of the commitments described above,  
6 the divested customers are likely to benefit, both directly and indirectly, from the  
7 merger, for several reasons.

8 **First**, the customers acquired by DISH will have access to the New T-Mobile  
9 network via DISH's wholesale agreement.

10 **Second**, those customers should benefit from lower prices due to competition  
11 with New T-Mobile. As I explained in my prior testimony, with lower costs and higher  
12 capacity, New T-Mobile will have an incentive to lower prices and increase product  
13 quality in order to attract more customers and thereby earn higher profits. The  
14 competitive pressure generated on rival service providers including DISH by these New  
15 T-Mobile strategies should benefit their customers as well.

16 **Third**, DISH should have very low marginal costs for serving new customers on  
17 its new network. As I discussed in my initial testimony, marginal cost is the cost of  
18 adding an incremental customer and marginal costs are relevant because they directly  
19 impact retail prices.<sup>10</sup>

20 DISH will start with only around 9.3 million subscribers—a small number  
21 relative to its substantial spectrum holdings.<sup>11</sup> But DISH has build-out commitments  
22 for both its previously held spectrum and the new spectrum it will acquire as part of this  
23 transaction.<sup>12</sup> Once DISH is working on the cell sites for its new network, I understand  
24 that the incremental costs of deploying spectrum, *e.g.*, adding an additional radio on  
25 that site, are low. So with the low cost of deploying additional spectrum and DISH's  
26 commitments to both deploy a new network and put its spectrum into use, it is

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<sup>10</sup> See, *e.g.*, Hearing Ex. Jt. Appl.7-C, 3 n. 4, 17.

<sup>11</sup> Amended Wireless Notification, Exhibit R (Asset Purchase Agreement), and DISH 10-K for the Fiscal Year Ended December 31, 2018.

<sup>12</sup> DISH 10-K for the Fiscal Year Ended December 31, 2018, and Amended Wireless Notification, Exhibit T (DISH FCC *Ex Parte* (July 26, 2019)).

1 reasonable to expect DISH will have substantial spectrum in service.<sup>13</sup> Thus, in light of  
2 DISH's commitments to building out a national footprint of cell towers utilizing its  
3 substantial spectrum holdings, DISH should have substantial capacity relative to  
4 expected traffic.<sup>14</sup> That capacity will provide both very low marginal cost for handling  
5 additional traffic and a high-quality service in terms of high expected throughput.

6 In addition, in setting near-term prices, DISH will have to take into account the  
7 fact that it will have these very low marginal costs on its new network in the near  
8 future. Since it takes time to attract new customers, there are advantages to obtaining  
9 new customers prior to completion of the new network in order to take immediate  
10 advantage of that new network once it comes on line. DISH will therefore have  
11 incentives to attract new customers through attractive pricing both before and after  
12 completion of its new network. Furthermore, lost customers can be costly to reacquire,  
13 so DISH will also have incentives to retain existing Sprint prepaid customers through  
14 attractive pricing.

15 Thus, it is reasonable to expect the divestiture to be procompetitive.  
16

#### 17 **IV. AMENDED SCOPING RULING – QUESTION NOS. 2-8.**

18  
19 **Q. The Assigned Commissioner's Amended Scoping Ruling also includes seven (7)**  
20 **other questions. Do you have any comment on those questions?**

21 **A.** No. I have no particular response to any of the other questions beyond my responses  
22 above. I understand those questions are being addressed by other witnesses for T-Mobile.  
23

#### 24 **V. CONCLUSION**

25  
26 **Q. Does this conclude your supplemental testimony?**

27 **A.** Yes, it does.  
28

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<sup>13</sup> G. Michael Sievert and Neville Ray have testified extensively on these concepts. See, e.g., Sievert Hearing Testimony, pp. 311-312 explaining that once a firm is working on a tower, there is very little incremental cost to deploy all of the available spectrum rather than just a portion of it.


<sup>14</sup> *Id.*



1 **ATTACHMENT A: DECLARATION**

2 I, Mark A. Israel, have reviewed the responses to the questions posed in the  
3 accompanying Supplemental Testimony and declare under penalty of perjury under the laws of  
4 the State of California that the responses to the questions posed are true and correct to the best of  
5 my knowledge, information and belief, and if called to testify thereon I am prepared to do so.

6  
7  
8 Dated: November 7, 2019

A handwritten signature in cursive script that reads "Mark A. Israel". The signature is written in black ink and is positioned above a horizontal line.

9 Mark A. Israel