BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).	Application 18-07-011
And Related Matters.	Application 18-07-012

MOTION OF THE PUBLIC ADVOCATES OFFICE TO COMPEL RESPONSES TO DATA REQUESTS; [PROPOSED] ORDER

I. INTRODUCTION

Pursuant to Rule 11.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission moves to compel responses from applicant T-Mobile USA, Inc. (T-Mobile) to data requests DR-010 and DR-011, which were propounded after the close of hearings. The data requests are relevant to the subject matter of this proceeding, they are tailored at obtaining additional evidence relating to Joint Applicants' rebuttal testimony, and they are timely because of the extension of time granted by Administrative Law Judge (ALJ) Bemesderfer to submit Opening Briefs with new evidence and arguments.[1]

T-Mobile argues, in effect, that the Public Advocates Office's opportunity to present evidence is somehow limited to the evidence already in its possession prior to

[1] On February 26, 2019, ALJ Bemesderfer issued a ruling "*Denying In Part And Granting In Part The Motion Of The Public Advocates Office To Amend And Supplement Testimony And For Additional Hearings; And Revising The Schedule Of This Proceeding.*" (ALJ Ruling)

receiving Joint Applicants' rebuttal testimony. This is illogical on its face and contrary to the February 26, 2019 Ruling.

The Public Advocates Office has broad discretion to compel at any time any information it "deems necessary to perform its duties" in this proceeding.[2] It is necessary to obtain supplemental and clarifying information regarding the voluminous rebuttal testimony served by T-Mobile on January 31, 2019, 4 business days prior to the first day of evidentiary hearings. Discovery has never been deemed closed in this proceeding. Unless the ALJ specifically determines that discovery is closed, Public Utilities Code Section 309.5 allows the Public Advocates Office to propound discovery at any time.

Together with Sprint, T-Mobile (Joint Applicants) served thousands of pages of evidence and testimony in their rebuttal testimony that was not provided in their wireless Application. On February 4,[3] the Public Advocates Office filed a request to amend and supplement its testimony with additional evidence and arguments in response to the testimony it had not seen before, and to hold additional hearings so that such new evidence could be reviewed and entered into the record in this proceeding. In opposition to the motion, Joint Applicants stated "to the extent that Cal PA and other parties wish to comment on any of the testimony introduced in these proceedings to date, including the Joint Applicants' rebuttal testimony, they will be free to do so in their opening and reply briefs."

The Public Advocates Office's motion was partially granted and partially denied. The ALJ did not schedule additional hearings; however, the ALJ granted the Public Advocates Office's request to amend and supplement its testimony with "additional

[2] Pursuant to Public Utilities Code Section 309.5, the Public Advocates Office has broad discretion to at any time "compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission." However, the Public Advocates Office understands the time constraints of this proceeding.

[3] February 4 was the day before hearings, 3 business days after receipt of Joint Applicants' rebuttal testimony.

evidence and arguments," on the condition that it must be included in the Opening Brief.[4] In anticipation that the motion would be granted, after the close of hearings the Public Advocates Office continued to propound discovery aimed to supplement and clarify Joint Applicants' rebuttal testimony in order to provide additional evidence and arguments.[5]

However, in response to the Public Advocates Office's Data Requests to T-Mobile DR-010 and DR-011, T-Mobile provided only objections and no substantively responsive answers. T-Mobile's objections are unfounded and inappropriate. T-Mobile's objections include:[6]

- Not relevant, and not reasonably calculated to lead to the discovery of relevant information because the data request question has no bearing on the merger;
- "Untimely and unduly burdensome" because "Cal PA failed to seek the requested information until after the conclusion of the hearings;"
- "Procedurally improper and inconsistent with basic principles of due process as… all testimony has been submitted and admitted into the record, and the hearings for these proceedings have been concluded";
- "Cal PA was clearly aware of this subject prior to the submission of any rebuttal testimony… there is no justification for seeking such information at this stage in the proceeding;"
- The data request "appears to be an improper attempt to extend the procedural schedule established by the Commission for these proceedings and divert T-Mobile from the important task of preparing its post-hearing brief."
- That the subject matter was generally covered in past responses to data requests (although T-Mobile acknowledged that specific questions were not answered).

[4] ALJ Ruling dated February 26, 2019.

[5] [cite to comcast merger?]

[6] Copies of T-Mobile's responses to DR-010 and DR-011 are attached to this motion, and include the questions asked. DR-010 was served on February 14, 2019, and DR-011 was served on February 19, 2019.

These objections are unfound and meritless. As discussed below, the data requests are relevant to various aspects of the merger and more specifically relevant to the rebuttal testimony submitted by Joint Applicants. Most of the objections appear to be based on the erroneous premise that the record was established at the hearings and there can be no new evidence introduced after the hearings are concluded. The ALJ's Ruling directly contradicts that premise – it did not close the record, deem the case submitted, or cut off discovery. The ALJ Ruling gave the Public Advocates Office the opportunity to amend and supplement its testimony with "new rebuttal arguments and evidence in its opening brief"[7], therefore it follows that discovery remains open. Submission of new evidence at this point is now timely and permitted because of the ALJ Ruling.

Consistent with the February 26, 2019 ALJ Ruling (ALJ Ruling), the Public Advocates Office staff tailored its new data requests to the subjects covered in Joint Applicants' rebuttal testimony. In general, the Public Advocates Office asked questions about Susan Brye's rebuttal testimony relating to privacy; Neville Ray regarding the 5G network; Michael Sievert relating to in home broadband and other alleged benefits of the merger; and the 5G projected-coverage maps that Mr. Ray prepared for the years 2021 and 2024. The Public Advocates Office also asked one question relating to submissions to the United States Department of Justice (USDOJ) by T-Mobile since January 1, 2019, relating to the merger, in order to potentially rebut T-Mobile's network modeling evidence presented in its rebuttal testimony, which T-Mobile also submitted to the FCC and to the CPUC (but to date has not presented here).

On March 5 and March 6, the Public Advocates Office met and conferred with T-Mobile's attorneys and it was determined that T-Mobile believes the ALJ Ruling limited the Public Advocates Office's discovery rights. In other words, T-Mobile believes that the Public Advocates Office's submission of new evidence and arguments in its Opening Brief is limited to information already in the Public Advocates Office's possession. The parties reached an impasse, necessitating this motion to compel.

[7] ALJ Ruling at 3.

The Public Advocates Office requests that T-Mobile be ordered to provide responses that are responsive to the data requests, and to remove any objections. Timely responses are required immediately in order for the Public Advocates Office to prepare its sur-rebuttal evidence and arguments for its Opening Brief. A proposed order is attached.

II. MEET AND CONFER

Rule 11.3 provides that parties should meet and confer in good faith to informally resolve the dispute prior to a motion to compel. The Public Advocates Office has met this requirement.

The ALJ Ruling partially granting the Public Advocates Office's motion was issued on February 26, 2019. On that day, the Public Advocates Office contacted T-Mobile's attorneys by email and inquired as to whether T-Mobile intended to supplement its responses to data requests, on the grounds that the ALJ Ruling granted the Public Advocates Office's request for more time to submit additional evidence and arguments. The email included a request to meet and confer immediately.

Counsel for T-Mobile indicated that they were out of town and/or unavailable from February 27 to March 4, but that they could meet and confer on March 5. On March 5 and March 6, the Public Advocates Office met with attorneys from T-Mobile to discuss DR-010 and DR-011.

During the meet and confer, T-Mobile indicated that they believe the discovery window is closed, and that it is inappropriate for the Public Advocates Office to propound additional data requests after the hearings have been concluded because the ALJ Ruling did not expressly provide the Public Advocates Office's with the right to seek additional information. T-Mobile stated that the Public Advocates Office's "additional evidence and arguments" for its Opening Brief is limited to information already in its possession. T-Mobile also stated that the general areas of inquiry in the data requests were covered in responses to prior data requests, although they acknowledged that the specific questions were not asked before. T-Mobile further inquired as to the

relevance of the data requests, because they do not understand how the information being sought is relevant to the proposed merger.

The Public Advocates Office stated in response that discovery was never closed, and that the ALJ Ruling did not state that the Public Advocates Office was prohibited from seeking additional information. The Public Advocates Office explained that the information being sought is to supplement, verify, and clarify the statements made by T-Mobile in its witnesses' rebuttal testimony, as permitted by the ALJ Ruling. The Public Advocates Office also explained how the information being sought is relevant to the central issue of whether the merger is in the public interest (as defined by the Scoping Ruling).

The parties reached an impasse and it was determined that T-Mobile would not provide substantively responsive answers.

III. T-MOBILE'S GENERAL OBJECTIONS ARE UNFOUNDED AND MERITLESS

T-Mobile made several objections that are not specific to one data request, but are repeated and incorporated by reference in successive responses. These are essentially timeliness objections, resting on the premise that evidentiary hearings automatically cut off discovery, and therefore no new additional information may be presented by the Public Advocates Office. However, these objections are unfounded and contradicted by the ALJ's Ruling. In addition, as noted by the ALJ Ruling the suggestion to put additional evidence and arguments in opening and reply briefs was suggested by T-Mobile.

T-Mobile's general timeliness objections include:

- "Untimely and unduly burdensome" because "Cal PA failed to seek the requested information until after the conclusion of the hearings;"
- "Procedurally improper and inconsistent with basic principles of due process as… all testimony has been submitted and admitted into the record, and the hearings for these proceedings have been concluded";

- "Cal PA was clearly aware of this subject prior to the submission of any rebuttal testimony… there is no justification for seeking such information at this stage in the proceeding;"
- The data requests appear "to be an improper attempt to extend the procedural schedule established by the Commission for these proceedings and divert T-Mobile from the important task of preparing its post-hearing brief."[8]

None of these objections have merit. T-Mobile's objection that the data requests are an improper attempt to extend the procedural schedule is no longer well-taken now that the procedural schedule as been extended by the ALJ Ruling. Parties now have until March 29, 2019 to prepare opening briefs, thus the schedule has already been extended.

The objection that the data requests are untimely and unduly burdensome because hearings have concluded is also unfounded. The motion to amend and supplement testimony was necessitated by the large amount of information provided by T-Mobile 4 business days prior to hearings. As stated in the ALJ Ruling, "the sheer volume of the material together with the complexity of the subject matter has worked a disadvantage to Cal Advocates that requires a remedy." It was not possible to propound new data requests in the 4 days between receiving the rebuttal testimony and the first day of hearings. The ALJ Ruling extended the deadline for submitting new evidence, so the data requests are now timely.

The objection that the data requests are "procedurally improper" because "all testimony has been submitted and admitted into the record" is simply incorrect. The ALJ Ruling grants the Public Advocates Office's request for more time and allows "additional evidence and arguments" to be presented on March 29th – thus keeping the record open for additional evidence.[9] Therefore, it is simply wrong that all testimony and evidence have been submitted into the record.

[8] These objections are stated in response to DR-010, Question 1, and then repeated by reference throughout both DR-010 and DR-011.

[9] February 26, 2019 ALJ Ruling at 3.

Had ALJ Bemesderfer intended to exclude the introduction of new evidence, the February 26, 2019 Ruling would have either specifically stated so or only provided for the introduction of "new rebuttal arguments", rather than "new rebuttal arguments and evidence." Moreover, as a matter of law, providing additional time to review and respond to the voluminous rebuttal testimony would not address the due process infringement without the opportunity to introduce new evidence. Because it is illogical and contrary to both the expressed language and stated intent of the ALJ Ruling, T-Mobil's rationale for refusing to provide discovery ignores the ALJ's ruling and is not well taken.

T-Mobile's argument that the Public Advocates Office was "clearly aware of this subject prior to the submission of any rebuttal testimony" has been rejected. That argument was raised in Joint Applicants' opposition to the motion and not accepted. In any event, the ALJ Ruling renders this argument irrelevant because "regardless of whether Joint Applicants' rebuttal testimony contains new evidence and arguments,"[10] the sheer volume of rebuttal testimony works a "disadvantage" to the Public Advocates Office that requires a remedy. Also, "clearly aware" is not a recognizable legal objection to discovery.

As the Public Advocates Office argued in its Reply to Joint Applicants' response to the motion, "While some of the information may have been provided in discovery a few weeks prior to the Public Advocates Office's testimony, the narrative descriptions, explanations of benefits, arguments about the new 5G network, and other alleged benefits, were not provided prior to rebuttal testimony." Thus, it is not correct that the Public Advocates Office was "clearly aware" of the specific facts and arguments in Joint Applicants' rebuttal testimony prior to receiving it.

The above objections are unfounded and meritless. The data requests are now timely because the ALJ Ruling permits the Public Advocates Office to submit additional

[10] ALJ Ruling at 3.

evidence and arguments on March 29. T-Mobile should be required to remove them and provide substantive responses.

IV. THE DATA REQUESTS ARE RELEVANT AND AIMED AT SUPPLEMENTING, VERIFYING, AND CLARIFYING T-MOBILE'S REBUTTAL TESTIMONY

T-Mobile also objected on the grounds that the Public Advocates Office's data requests are not relevant. However, all of the data requests were aimed at supplementing, verifying, and clarifying the Joint Applicants' rebuttal testimony, and are relevant to the Commission's inquiry into whether the merger is in the public interest. The data requests DR-010 and DR-011 are attached, and the relevance of the data requests is discussed below.

Privacy. The Public Advocates Office DR-010 includes 18 questions directed at T-Mobile's privacy witness Susan Brye's rebuttal testimony. Questions 10-1 to 10-18 are all relevant to Scoping Ruling Issue #14 "Would the benefits of the merger likely exceed any detrimental effects?" The Public Advocates Office's witness Kristina Donnelly prepared a chapter of testimony entirely relating to privacy concerns if the proposed merger is approved. On February 8, at the close of hearings, her testimony was stipulated to be entered into the record by Joint Applicants without objection. T-Mobile presented testimony from Susan Brye regarding privacy as well. It makes no sense to argue that questions relating to privacy are completely irrelevant, when T-Mobile's own witness devoted an entire chapter about the New T-Mobile's privacy policies in California.

Nevertheless, T-Mobile includes the following general objection (which it repeated for every privacy question, 10-1 to 10-18):

> "T-Mobile further objects to this Data Request on the grounds it seeks information which is neither relevant to the pending Wireline or Wireless Applications nor reasonably calculated to lead to the discovery of relevant information as, among other things, neither T-Mobile's Third-Party Risk Management ("TPRM") Program, nor the number of third-party providers that have been vetted under that Program and thus have access to certain customer data, is merger

dependent and neither have any bearing on the Sprint Wireline Application or any appropriate review of the Sprint Wireless Transfer Notification."

In other words, T-Mobile objects that its TPRM Program nor third-parties that have access to customer data have no relevance to this proceeding. However, this cannot be the case because T-Mobile did not object to Ms. Donnelly's privacy testimony and also provided its own witness on privacy.

The Public Advocates Office's data requests regarding privacy are aimed at supplementing, verifying, and clarifying Ms. Brye's testimony. For example, question 10-8 states: "On page 3, line 23 of Susan Brye's Rebuttal Testimony, Ms. Brye references "other assessments," besides the Cyber Assessment. Please provide a comprehensive list of all assessments T-Mobile conducts when evaluating the risks posed by third-party suppliers.

Question 10-1 requests a list of third-parties that have access to T-Mobile customer data, and 10-2 requests a list of third-party subcontractors that have access to T-Mobile customer data. Similarly, all of the questions in 10-4 to 10-18 relate to T-Mobile's privacy policies. See Attachment A to this motion, which contains a complete copy of all of the requests and responses.

Objections to Questions 10-1 to 10-18 on the grounds of relevance are improper because privacy is a subject matter in the scope of this proceeding; they should be removed, and the questions should be answered.

5G Network. DR-011, Questions 11-1 through 11-6, directly relate to Mr. Ray's rebuttal testimony regarding the proposed 5G network. During the hearings, there was a substantial amount of cross-examination of Mr. Ray about the projected 5G coverage maps by California county for T-Mobile, Sprint, and the New T-Mobile, which Mr. Ray included in his rebuttal testimony. Although some of the count maps had been provided previously, Mr. Ray's testimony about the maps, as well as the alleged benefits of the projected 5G network rollout, had not been previously provided. The Public Advocates

Office's questions relating to Mr. Ray's testimony are all aimed at supplementing, verifying, and clarifying Mr. Ray's rebuttal and cross-examination testimony.

For example, 11-1 states: "Provide the dollar amount of the investment that standalone T-Mobile projects it will make in 5G facilities to achieve the 5G coverage shown on the map for each California county through and including the time frame identified as "2021"."

T-Mobile objected on the grounds that the data request is:

> "neither germane to the pending Wireline or Wireless Applications nor is reasonably calculated to lead to the discovery of relevant information as projected county-specific capital expenditure – even if such information existed which it does not – has no reasonable bearing on whether the transfer of Sprint Wireline is adverse to the public interest or to any appropriate review of the Sprint Wireless Transfer Notification."

In other words, T-Mobile objects that its dollar investments to achieve 5G coverage are irrelevant. However, T-Mobile has repeatedly touted the dollar amount of investments it will make after the merger to bring about a 5G network. In the wireless Application, Joint Applicants state: "New T-Mobile will use these synergies to invest nearly $40 billion to bring the Combined Company into the 5G era over the next three years."[11] Furthermore, Joint Applicants compare and contrast their investment post-merger with what it would be if there is no merger: "The merger provides over $43 billion … to accelerate and deliver a superior 5G network that will be better and more expansive than anything the companies could deliver on their own."[12] Clearly, questions regarding planned investments by the standalone companies in the 5G network are relevant to this proceeding.

In-home broadband. T-Mobile did not object on relevance grounds to the data requests relating to Mr. Sievert's rebuttal testimony (10-21 through 10-25, and 10-32).

[11] Wireless Application 18-07-012 at 3.

[12] Ibid.

USDOJ documents. In data request 10-20, the Public Advocates Office requested all documents relating to the merger that T-Mobile has provided to the USDOJ after January 1, 2019. T-Mobile objects to 10-20 on the grounds that it:

> "seeks information which is neither relevant to the pending Wireline or Wireless Applications nor reasonably calculated to lead to the discovery of relevant information. Among other things, all of the T-Mobile and Sprint testimony in these proceedings has been submitted and there is no reference to any document provided to the Department of Justice in that testimony that has not already been produced in this proceeding."

In effect, T-Mobile believes that no documents provided by T-Mobile to the USDOJ have any relevance here, merely because they have never been provided to the Commission before. However, the Public Advocates Office's data request is limited to the time period AFTER January 1, 2019, so it does not include documents submitted last fall to the FCC (which have already been provided).

Although the objection mentions "relevance", this objection is not because the documents themselves are inadmissible. The objection appears to be based solely on the fact that they have not been introduced here to date, which is not a reasonable relevance objection.

V. THE DATA REQUESTS ARE NOT SO VAGUE AND AMBIGUOUS THAT THEY CANNOT BE ANSWERED

T-Mobile objects to many words and phrases that have ordinary, common sense meanings. For example, T-Mobile objects that the phrases "third-party companies" and "access" are so vague and ambiguous that the questions cannot be answered.[13] T-Mobile also objects that the following terms are too vague and ambiguous to understand: "documents You produced"; "all communications"; "data"; "evidence"; "above figures". T-Mobile objected to the phrase "first create" in the question "When did T-Mobile first create the 4G LTE network model on page 26 of Mr. Ray's testimony?"; and also to the

[13] In context, the question is: "How many third-party companies have access to T-Mobile customer data?"

phrase "dollar amount of the investment" that T-Mobile will make in "5G facilities to achieve 5G coverage shown on the map for each California county." However, these terms and phrases are commonly used and T-Mobile can give them normal everyday meaning in their answers. The terms are not so vague and ambiguous that they cannot be understood.

VI. THE DATA REQUESTS HAVE NOT BEEN ANSWERED IN PAST RESPONSES FROM T-MOBILE

Finally, T-Mobile objects on the grounds that many of the data requests have already been responded to, and provides a list of citations to prior responses. However, the Public Advocates Office has carefully reviewed each of the citations, and none of them provide the information sought in the data request.

In the meet and confer, counsel for T-Mobile acknowledged that the specific data being sought had not been provided previously. Instead, T-Mobile stated that the objections were intended to point out that the general topic of the data request had been covered previously.

For example, 10-3 asks: "Please provide a detailed description of how T-Mobile tracks and monitors its third-party relationships." In response, T-Mobile objected that: "T-Mobile further objects to this Data Request to the extent it is duplicative of Cal PA's numerous privacy-related DRs, including but not limited to DRs 1-82 to 1-84, 1-96 to 1-111, 2-33, 4-22, 4-24 to 4-27 and 7-3 to 7-25." T-Mobile repeated this objection by reference for every privacy-related data request. When asked whether T-Mobile intended to say that somewhere in this list of responses to data requests, there was an answer to the question about how it tracks its third party relationships. Counsel for T-Mobile stated that no answer had been provided, but the general topic had been covered (in their opinion).

Based upon the review by the Public Advocates Office staff, none of the citations by T-Mobile provide answers to its questions.

VII. CONCLUSION

The deadline for opening briefs is March 29, 2019, and the Public Advocates Office staff requires immediate answers to its data requests (which are already well past due). T-Mobile's argument that no new evidence is allowed after the hearings is simply not supported by the ALJ Ruling, and makes no sense. The ALJ Ruling expressly permits the Public Advocates Office to include new additional evidence in the opening briefs. The Public Advocates Office is not limited to evidence which it already had in its possession prior to receiving the rebuttal testimony (which was the underlying cause of the motion for additional time to amend and supplement testimony in the first place). The voluminous rebuttal testimony submitted only 4 business days before the hearings made it impossible for the Public Advocates Office to adequately present a response, because it allowed for no time to do additional data requests or conduct any meaningful analysis. The ALJ Ruling provided additional time, and thus new discovery is necessary, as permitted by Section 309.5 which contains no time limits on the Public Advocates Office's authority to obtain information.

Respectfully submitted,

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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[PROPOSED] ORDER GRANTING MOTION TO COMPEL

On March 7, 2019, the Public Advocates Office filed a motion to compel responses to data requests against T-Mobile USA, Inc. (T-Mobile). Parties have met and conferred and have been unable to resolve their differences.

Public Utilities Code Section 309.5(e) authorizes the Public Advocates Office to obtain "any information it deems necessary to perform its duties," without limitation by time. T-Mobile states that discovery is closed after the conclusion of hearings in this proceeding, and therefore the data requests propounded by the Public Advocates Office after the hearings are untimely. However, on February 26, 2019, I granted a motion by the Public Advocates Office for additional time to digest the voluminous amount of new information provided by Joint Applicants, and permitted the Public Advocates Office to include new additional evidence and arguments in its opening briefs. Therefore, the discovery window remains open and the data requests are not untimely. The Public Advocates Office may obtain new information that it does not currently have in its possession, and provide it in its opening brief.

I have reviewed the Public Advocates Office's data requests and find that they comply with my direction in the Ruling granting additional time, because they are tailored to T-Mobile's rebuttal testimony.

In addition, T-Mobile's other objections regarding relevance and vagueness are not well founded. The data requests are within the scope of this proceeding and are not so vague and ambiguous that they cannot be answered. Therefore, those objections are denied.

IT IS RULED that T-Mobile must immediately provide substantive responses to the Public Advocates Office's DR-010 and DR-011. The objections or limitations on T-Mobile's answers stated in its response to the data requests are hereby overruled. T-Mobile is hereby ordered to respond immediately.

Dated March ___ , 2019, at San Francisco, California.

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Kark J. Bemesderfer
Administrative Law Judge