

Docket:	<u>A.18-07-011 and</u> <u>A.18-07-012</u>
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Commissioner:	<u>C. Rechtschaffen</u>
Admin. Law Judge:	<u>K. J. Bemesderfer</u>
Cal Advocates Project Mgr.:	<u>Shelly Lyser</u>
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Public Advocates Office

California Public Utilities Commission

Public Advocates Office Testimony on the Proposed Transfer of Control of Sprint to T- Mobile: Impacts on Low Income Consumers

- PUBLIC -

San Francisco, California
January 7, 2019

MEMORANDUM

This report was prepared by Eileen Odell of the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) under the general supervision of Program & Project Supervisor Shelly Lyser. Attachment A to this testimony is a statement of qualifications from Eileen Odell. The Public Advocates Office is represented in this proceeding by legal counsel, Travis Foss.

This testimony is comprised of the following chapters:

Chapter	Description
I	Impacts of proposed transaction on low income consumers, highlighting the proposed transaction's impacts on prepaid services and the wholesale market, as related to low income consumers, and on the provision of California LifeLine services.

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1 **SUMMARY**

2 This report presents the analysis and recommendations of the Public Advocates Office on
3 the risk of harm to low income consumers stemming from Applications (A.) 18-07-011¹ and 18-
4 07-012,² the consolidated³ joint applications for transfer of control of Sprint Spectrum L.P. and
5 Virgin Mobile USA, L.P. (Virgin Mobile) (collectively Sprint Wireless), and Sprint
6 Communications Company L.P. (Sprint Wireline) to T-Mobile USA, Inc. (T-Mobile USA)
7 (collectively, the Joint Applicants). The entity that would result from the proposed transaction is
8 referred to in this report as “New T-Mobile.” The October 4, 2018 Amended Assigned
9 Commissioner’s Scoping Memo and Ruling (Scoping Memo), states: “[t]he fundamental issue
10 presented by these applications is whether the proposed merger of two of the four largest
11 national wireless service providers is in the public interest of the residents of California.”^{4,5}
12 The Scoping Memo lists certain factors the Commission will consider in making its public
13 interest determination, including a determination of the relevant markets to consider and an
14 examination of the merger’s impacts on the LifeLine program.⁶ To inform the Commission’s
15 public interest review, this report provides analysis and recommendations regarding the effects
16 of the proposed merger on low income consumers.⁷

17 Per the Public Advocates Office testimony of Dr. Lee Selwyn, the Commission should
18 deny the proposed merger between Sprint and T-Mobile, as “[t]he benefits that the Joint

¹ Application (A.)18-07-011, Joint Application for Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to Public Utilities Code Section 854(a) at 1 (Jul. 13, 2018) [hereinafter A.18-07-011].
² A.18-07-012, Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032 at 1 (Jul. 13, 2018) [hereinafter A.18-07-012]. Decision (D.) 95-10-032, In re Investigation on the Commission’s Own Motion into Mobile Telephone Service and Wireless Communications (Oct. 18, 1995) exempts commercial mobile radio service (CMRS) providers from compliance with §854 except under certain limited circumstances. *See id.* at Ordering Paragraph 3.
³ The assigned Administrative Law Judge consolidated the review of these applications, stating that while the applications “address different requirements of California law, the underlying transaction that gives rise to each of them is the proposed Sprint-T-Mobile Merger and the underlying factual and legal issues are effectively identical.” Administrative Law Judge’s Ruling Consolidating Applications at 1 (Sep. 11, 2018).
⁴ Amended Assigned Commissioner’s Scoping Memo and Ruling at 2 (Oct. 4, 2018) [hereinafter Scoping Memo].
⁵ Cal. Pub. Util. Code §854(a) reads, in pertinent part: “No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission.”

1 Applicants seek to ascribe to the merger easily pale when compared with the significant risks
2 that the merger will create for California consumers, competitors, and state and local
3 economies.”⁸ Additionally, Dr. Selwyn notes that AT&T and Verizon, the “Big Two,” currently
4 maintain price levels that are “well in excess of” the Joint Applicants.”⁹ In the event that New T-
5 Mobile is able to achieve coverage and market share fully comparable to that of the Big Two,
6 post-transaction, there is no reason to expect that New T-Mobile will continue to be compelled to
7 compete on price. In particular, the proposed transaction would lead to increased concentration
8 of and decreased competition in the prepaid and wholesale market segments. As this Testimony
9 goes on to describe, due to the Joint Applicants’ leading roles serving low income consumers, a
10 decrease in competition in either of these areas could have significant negative effects on these
11 customers.

12 As stated in the testimony of Dr. Selwyn, the proposed transaction would result in the
13 merged entity’s “overwhelming dominance of the prepaid services market, which may diminish
14 its interest in supporting MVNOs [in the wholesale market] and enable it to raise prices for
15 prepaid services,” negatively affecting low income consumers.¹⁰ Therefore, the Commission
16 should deny the consolidated applications to protect consumers from the potential harms of the
17 proposed merger, including higher prepaid plan prices, higher wholesale prices, and a diminished
18 California LifeLine program. Should the Commission fail to deny approval of the Joint

⁶ Scoping Memo at 3.

⁷ While this testimony does not limit the scope of the customers to whom it refers to as “low income” to those who qualify for LifeLine, for reference purposes, a customer qualifies for LifeLine at income levels at or below \$38,100 (family of four), \$31,300 (family of three), \$27,000 (family of one or two); alternatively, a customer may also qualify for LifeLine through participation in any of the following programs: Medicaid/Medi-Cal, Low Income Home Energy Assistance Program (LIHEAP), Supplemental Security Income (SSI), Federal Public Housing Assistance or Section 8, CalFresh, Food Stamps or Supplemental Nutrition Assistance Program (SNAP), Women, Infants and Children (WIC) Program, National School Lunch Program (NSLP), Temporary Assistance for Needy Families (TANF), Tribal TANF, Bureau of Indian Affairs General Assistance, Head Start Income Eligible (Tribal only), Food Distribution Program on Indian Reservations, Federal Veterans and Survivors Pension Benefit Program. California LifeLine webpage, <http://www.cpuc.ca.gov/General.aspx?id=2752#qualify>, last visited, Dec. 10, 2018. Additionally, customers may qualify for the federal LifeLine program if they have a gross annual income at or below 135 percent of the federal poverty guidelines. Universal Service Administrative Co. website, <https://www.usac.org/li/program-requirements/verify-eligibility/income-eligibility.aspx>, last visited Dec. 10, 2018.

⁸ Testimony of Dr. Lee Selwyn at ¶ 62.

⁹ Testimony of Dr. Lee Selwyn at ¶ 71.

¹⁰ Testimony of Dr. Lee Selwyn at ¶ 73 (heading).

1 Applications, the Commission should develop and adopt performance-based mitigating measures
2 that are specific, measurable, enforceable, and easily-monitored on an ongoing basis to ensure
3 compliance. The mitigating measures the Commission should develop and adopt must address
4 the following areas:

- 5 • The Joint Applicants’ commitments made related to prepaid pricing, in order to
6 decrease the risk of harm to low income consumers. As discussed further below, T-
7 Mobile has stated that New T-Mobile will <<BEGIN T-MOBILE
8 CONFIDENTIAL>> [REDACTED]
9 <<END T-MOBILE CONFIDENTIAL>>.¹¹ However, this measure is insufficient
10 to fully mitigate the potential harms of the proposed transaction, as such pricing
11 commitments are vague, temporary, and fail to substitute for the elimination of the
12 ongoing downward pricing pressure resulting from Sprint and T-Mobile competing
13 head-to-head for prepaid customers.
- 14 • Requiring that New T-Mobile to honor all existing wholesale agreements and to
15 commit to offering existing and new wholesale partners the best wholesale terms and
16 conditions that are offered individually by each of the Joint Applicants to their
17 wholesale partners.
- 18 • Requiring that New T-Mobile continue participating in the LifeLine program
19 indefinitely, making LifeLine service available to all eligible New T-Mobile
20 customers at terms equal to or better than the terms currently offered by Assurance by
21 Virgin Mobile, with regards to price per unit of use or data.

22

¹¹ Exhibit B-1: T-Mobile Response to Public Advocates Office DR 2-8.

1 **I. THE IMPACT OF THE PROPOSED TRANSACTION ON LOW**
2 **INCOME CONSUMERS**

3 The October 4, 2018 Amended Assigned Commissioner’s Scoping Memo and Ruling
4 (Scoping Memo), states: “[t]he fundamental issue presented by these applications is whether the
5 proposed merger of two of the four largest national wireless service providers is in the public
6 interest of the residents of California.”¹² The Scoping Memo lists certain factors the
7 Commission will consider in making its public interest determination, including a determination
8 of the relevant markets to consider and an examination of the merger’s impacts on the LifeLine
9 program.¹³

10 The Commission should include consideration of the proposed transaction’s effects on
11 low income consumers in its public interest review, particularly given the Joint Applicants’
12 leading roles serving low income consumers. Of the four large facilities-based wireless
13 companies in the United States, T-Mobile and Sprint Wireless’s nation-wide post-paid customer
14 bases have <<BEGIN T-MOBILE CONFIDENTIAL>> [REDACTED]
15 [REDACTED] <<END T-MOBILE CONFIDENTIAL>> than observed in
16 AT&T and Verizon’s customer bases; similarly, the customer bases of T-Mobile’s prepaid brand
17 MetroPCS and one of Sprint’s prepaid brands, Boost, each have <<BEGIN T-MOBILE
18 CONFIDENTIAL>> [REDACTED]
19 <<END T-MOBILE CONFIDENTIAL>> than their competitors.¹⁴ Given that the merging
20 entities’ customer bases skew <<BEGIN T-MOBILE CONFIDENTIAL>> [REDACTED]
21 [REDACTED] <<END T-MOBILE CONFIDENTIAL>> it is critical that the
22 Commission examine the impacts of the proposed transaction on low income consumers,
23 particularly with regards to the LifeLine program and the Joint Applicants’ prepaid services.

¹² Scoping Memo at 2.

¹³ Scoping Memo at 3.

¹⁴ Exhibit B-2: T-Mobile Response to Public Advocates Office DR 2-11, CONFIDENTIAL Attachment “TMUS-CPUC-PA-11008100.pdf” at 4, 9. <<BEGIN T-MOBILE CONFIDENTIAL>> [REDACTED]

[REDACTED] <<END T-MOBILE CONFIDENTIAL>>

1 Per the Testimony of Dr. Lee Selwyn, the Commission should deny the subject
2 applications, as “[t]he mobile wireless telecommunications market in California and throughout
3 the US is already highly concentrated, and further market consolidation is neither warranted nor
4 in the public interest.”¹⁵ Dr. Selwyn goes on to conclude that “the benefits that the Joint
5 Applicants seek to ascribe to the merger easily pale when compared with the significant risks
6 that the merger will create for California consumers, competitors, and state and local
7 economies.”¹⁶

8 While this assertion applies to post-transaction prices in general, in focusing on low
9 income consumers, this report begins by centering this dynamic in the context of the prepaid
10 wireless service market,¹⁷ arguing that it must be analyzed as a separate product market (Section
11 A.1). In doing so, this report addresses carrier-branded prepaid services (Section A.2) as well as
12 wholesale services provided to independent reseller prepaid brands, often referred to as Mobile
13 Virtual Network Operators (MVNOs), who in turn market mostly prepaid retail services to
14 consumers (Section A.3). Finally, this report examines the proposed transaction’s effects on
15 LifeLine services (Section B).

16 The Public Advocates Office analyzed A.18-07-011 and A.18-07-012 and supporting
17 exhibits, responses to data requests, and publicly-available information to arrive at the findings
18 and recommendations contained in this chapter.

19 **A. The Proposed Transaction Would Decrease Competition in Both the**
20 **Branded-Prepaid and Wholesale Markets, Negatively Impacting Low Income**
21 **Consumers**

22 The proposed merger implicates the prepaid market in two related ways: first, through the
23 potential elimination of a direct competitor with regards to Sprint and T-Mobile’s own prepaid
24 plans and brands, and second, through the potential elimination of a competing carrier that
25 provides wholesale service to MVNOs and Mobile Virtual Network Aggregators (MVNAs) --

¹⁵ Testimony of Dr. Lee Selwyn at 11 (heading).

¹⁶ Testimony of Dr. Lee Selwyn at ¶ 62.

¹⁷ “Prepaid wireless” refers to a service for which customers may pay in advance for a given denomination of voice minutes, text messages, or data units for use on a mobile phone. This is contrasted with “postpaid services,” for which users subscribe to a plan and are charged for usage at the end of a given billing cycle.

1 wireless service resellers that often cater to the prepaid market.¹⁸ A decrease in competition in
2 either of these areas could ultimately harm low income consumers.

3 **1. The Prepaid Wireless Services May Constitute a Separate Product Market,**
4 **and the Specific Effects of the Proposed Transaction on Prepaid Services**
5 **Should be Examined¹⁹**

6 As discussed in the Testimony of Dr. Lee Selwyn, the Commission should consider the
7 likely effects of the proposed transaction on prepaid services as distinct from the postpaid
8 market. For the reasons summarized below, postpaid services are not readily substituted for
9 prepaid services, and so the two services may constitute separate markets under the framework
10 described in the Department of Justice and Federal Trade Commission’s *Horizontal Merger*
11 *Guidelines*.²⁰ Additionally, treating the two services as interchangeable hides the potential for
12 negative impacts of the proposed transaction on prepaid customers. Thus, even if the
13 Commission fails to define prepaid services as an independent market, it should still consider
14 independently the competitive effects of the proposed transaction on prepaid services, within the
15 broader market. The Joint Applicants fail to present information in their Application specific to
16 the impacts of the proposed transaction on prepaid services. Such a showing fails to consider the
17 impacts of the proposed transaction on low income customers and so the transaction should be
18 rejected.

19 Under the *Horizontal Merger Guidelines*, prepaid services may constitute a separate
20 relevant product market, and so should be analyzed separately to assess likely competitive
21 harms.²¹ The *Guidelines* state that “[m]arket definition focuses solely on demand substitution
22 factors, i.e., on customers’ ability and willingness to substitute away from one product to another

¹⁸ As discussed further below, MVNOs purchase wholesale services from mobile network operators (MNOs) such as T-Mobile and Sprint, and then resell such services to end-user customers. MVNAs purchase wholesale services from MNOs and then sell such services to MVNOs. MVNO typically offers prepaid plans that do not require an annual contract or a credit check, and their larger spread of options for low data-use packages provides flexibility and makes such plans attractive to low income consumers. See section A.2, below.

¹⁹ In the Scoping Memo, the Commission asks what relevant markets it should consider, as a factor of its public interest determination. Scoping Memo at 3.

²⁰ Testimony of Dr. Lee Selwyn at ¶ 51, et seq. See also U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines* at 7 (Aug. 19, 2010) [hereinafter *Horizontal Merger Guidelines*].

²¹ Testimony of Dr. Lee Selwyn at ¶ 54, et seq.

1 in response to a price increase....”²² As discussed further below, a primary appeal of prepaid
2 plans is that they are available without a credit check. A customer unwilling to submit to a credit
3 check or unable to satisfy the requirements of a credit check must be defined as unwilling or
4 unable to substitute a postpaid plan for a prepaid plan. This is true even if, perhaps *especially* if,
5 the price of the prepaid plan is increased.²³ T-Mobile currently has only one postpaid plan
6 available without a credit check advertised on its website. However, this plan, T-Mobile
7 Essentials No Credit Check, requires that a subscriber submit a deposit before service is
8 initiated.²⁴ This is not required of T-Mobile’s prepaid plan subscribers²⁵ and presents another
9 barrier to substitution. Because of this firm barrier to substitution, prepaid subscribers may be
10 unable to substitute postpaid service for prepaid service in response to an increase in prepaid
11 pricing.

12 Even if the Commission fails to define prepaid services as a separate product market, the
13 Commission should still consider the competitive effects of the proposed transaction on the
14 differentiated prepaid market independently, within the context of the overall market effects
15 identified by Dr. Selwyn.²⁶ If not their own separate market, prepaid services certainly
16 constitute a market segment that is marketed and administered separately from postpaid

²² *Horizontal Merger Guidelines* at 7.

²³ See also DISH Reply to Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, noting actual rates of substitution of postpaid services for prepaid services: less than 20 percent of prepaid subscribers that left T-Mobile’s prepaid service in the first half of 2018 upgraded to postpaid service and that figure is just under 5 percent for AT&T. DISH Reply to Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, WT-Docket No. 18-197 at 19.

²⁴ T-Mobile website, https://www.t-mobile.com/no-credit-check?icid=WMD_TMNG_Q318NCCUPD_XTPYCQXZ5YS14234, last visited Dec. 4, 2018.

²⁵ T-Mobile website, <https://support.t-mobile.com/docs/DOC-4826>, last visited Dec. 4, 2018.

²⁶ See FCC Staff Analysis and Findings, WT-Docket No. 11-65 (AT&T Application for Approval to Acquire T-Mobile) at n.97 [hereinafter FCC Staff Analysis of AT&T/T-Mobile Merger], noting that the market for retail mobile wireless services

encompasses differentiated services...and that wireless providers often recognize such distinctions in their internal analyses of the marketplace. [And] [w]hile such distinctions may suggest the possibility of smaller markets nested within the product market we define, we find it unnecessary to examine that possibility in order to analyze the potential competitive effects of this transaction. *We consider these aspects of product differentiation [including postpaid vs. prepaid], as appropriate, when we analyze the competitive effects of the transaction within the markets we define.* (Emphasis added.)

1 services.²⁷ Examining the likely competitive effects of the transaction specifically within the
2 context of prepaid services ensures that the Commission does not risk shifting the cost of any
3 potential alleged-benefits of the transaction to low income customers.

4 **2. The Proposed Transaction Would Decrease Competition in the Prepaid** 5 **Market, Negatively Impacting Low Income Consumers**

6 The Commission should deny the Joint Applications, as their potential effects on the
7 prepaid market, and so on low income consumers, are not in the public interest. Should the
8 Commission fail to deny the proposed transaction, it should develop and impose specific,
9 enforceable, and easily-monitored mitigation measures to decrease the harm to consumers, such
10 as conditioning approval on the Joint Applicants' adherence to prepaid pricing commitments
11 made in discovery throughout the course of this proceeding. Such mitigation measures would be
12 necessary, as the proposed transaction will increase concentration in the prepaid market, will
13 decrease competition, and will make likely certain negative unilateral effects, such as an increase
14 in prepaid prices, ultimately harming low income consumers. The Joint Applicants have stated
15 that the proposed transaction will result in a vastly improved mobile network with additional
16 capacity - efficiencies that create an incentive for New T-Mobile to maintain prices while
17 increasing value or to decrease prices to attract customers to "fill up" that network.²⁸ However,
18 it is not clear that such efficiencies will be realized,²⁹ that the stated incentive to decrease prices
19 will specifically affect prepaid prices, or that incentives to increase prices across the board aren't
20 in fact more likely, following consummation of the proposed transaction. While, for these
21 reasons, conditions on approval of the proposed transaction would be necessary to decrease the
22 risk of harm to low income consumers, they are insufficient to fully mitigate such risk, as they
23 are temporary in nature and fail to fully replace the continuous downward pressure on prices
24 resulting from Sprint and T-Mobile competing head-to-head for new prepaid customers.

²⁷ DISH Network Corporation, Petition to Deny, WT Docket No. 18-197 at 53, (noting that T-Mobile markets, services, and supports its postpaid and prepaid brands separately, citing as an example T-Mobile's recent launch of a new customer service model that is "only available for postpaid customers . . ."), citing Press Release, *T-Mobile's Latest Un-carrier Move: Real People, Not Robots Introducing T-Mobile Team of Experts* (Aug. 15, 2018) <https://www.t-mobile.com/news/introducing-tex>.

²⁸ A.18-07-012 at 30.

²⁹ Testimony of Dr. Lee Selwyn at ¶ 119, et. seq.

1 The effects of the proposed transaction on the prepaid market are direct effects on low
2 income consumers. While <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-
3 MOBILE CONFIDENTIAL>> of postpaid customers make less than \$35,000 per year,
4 <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE
5 CONFIDENTIAL>> of prepaid customers fall under this income threshold. When Sprint and
6 T-Mobile’s numbers are examined, the impact becomes even more clear: <<BEGIN T-
7 MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>> of
8 MetroPCS customers and <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-
9 MOBILE CONFIDENTIAL>> of Boost customers earn less than \$35,000 per year.³⁰

10 T-Mobile serves the greatest number of prepaid customers of the four large wireless
11 carriers (the “Big Four”) and markets its prepaid plans using its T-Mobile and MetroPCS brands.
12 Sprint “market[s] [its] prepaid offerings under the Sprint, Boost Mobile, Virgin Mobile, and
13 Assurance Wireless brands as a means to provide value-driven prepaid plans.”³¹ The table
14 below illustrates the current shares of branded prepaid subscribers of each of the four large
15 facilities-based wireless companies in the United States, per each company’s most recent Annual
16 Report (10k) filing with the Securities and Exchange Commission. The table further
17 demonstrates the drastic increase in market share of prepaid subscribers New T-Mobile would
18 obtain through the proposed transaction, turning a leading market participant into a dominating
19 market participant. Refer also to the Testimony of Dr. Lee Selwyn, for a thorough analysis of
20 the decrease in competition stemming from the proposed transaction particularly for California-
21 specific results.³²

³⁰ Exhibit B-2: T-Mobile Response to Cal Public Advocates DR 2-11, CONFIDENTIAL Attachment “TMUS-CPUC-PA-11008100.pdf” at 4, 9.

³¹ Sprint Corporation Form 10-K for the Fiscal Year ended March 31, 2018 at 3.

³² See Testimony of Dr. Lee Selwyn.

Table 1: Total Branded Prepaid Customers of the Big Four Wireless Carriers³³

Company	Total Subscribers	Percent Share of Total Subscribers	Branded Prepaid Subscribers	Percent Share of Branded Prepaid Subscribers
New T-Mobile	127,166,000	33.0%	29,665,000	58.9%
T-Mobile ³⁴	72,585,000	18.9%	20,668,000	41.0%
AT&T ³⁵	141,567,000	36.8%	15,335,000	30.4%
Sprint ³⁶	54,581,000	14.2%	8,997,000	17.9%
Verizon ³⁷	116,257,000	30.2%	5,403,000	10.7%
Total	384,990,000		50,403,000	

³³ Public Advocates Office was unable to gather analogous California-specific information on this issue. Sprint states that it has nearly <<BEGIN SPRINT CONFIDENTIAL>> ██████████ <<END SPRINT CONFIDENTIAL>> prepaid subscribers in California. Exhibit B-3: Sprint Supplemental Response to Public Advocates Office DR 1-2(g), Confidential Attachment “CA PUC Prepaid Svc Plan Data 201806 – 11.20.2018_CONFIDENTIAL.xls.” T-Mobile provided *some* data regarding the number of customers on each of its plans, but for the <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>> subscribers on plans first offered prior to Jan. 1, 2015, and for <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>>, T-Mobile did not identify whether these customers were on prepaid or postpaid plans. T-Mobile has at least <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>> prepaid subscribers in California. Exhibit B-4: T-Mobile Third Supplemental Response to Public Advocates Office DR 1-2, Confidential Attachment “TMUS-CPUC-PA-12004197_(Highly Confidential – Attorneys Eyes Only).xls.” AT&T and Verizon don’t make public California-specific data on their shares of prepaid subscribers. However, nationwide data is relevant here, as in general, prepaid pricing is consistent nationally, and so national market shares are informative as to how the transaction would affect prepaid pricing.

³⁴ T-Mobile US, Inc. Form 10-K for the Year Ended December 31, 2017, at 37. (Figures as of Dec. 31, 2018). T-Mobile makes the following description of “Total Customers” in its 2017 Annual Report:

A customer is generally defined as a SIM number with a unique T-Mobile identifier which is associated with an account that generates revenue. Branded customers generally include customers that are qualified either for postpaid service utilizing phones, mobile broadband devices (including tablets), or DIGITS, where they generally pay after receiving service, or prepaid service, where they generally pay in advance. Wholesale customers include M2M and MVNO customers that operate on our network, but are managed by wholesale partners. *Id.*

Also refer to section A.3, below, describing how this figure is understated as T-Mobile excludes 4.5 million LifeLine customers of wholesale partners, due to T-Mobile’s belief that “current and future regulatory changes have made the Lifeline program offered by our wholesale partners uneconomical.” *Id.* at n.2.

³⁵ AT&T Inc. Annual Report Year Ended December 31, 2017, Ex. 13 at 15.

³⁶ Sprint Corporation Form 10-K for the Fiscal Year ended March 31, 2018 at 40. Also note that Sprint does not include LifeLine subscribers of its wholesale customers in its “total wholesale and affiliate” or “total” customer counts. *Id.* at 41, n.3.

³⁷ Verizon Communications Inc. Form 10-K for the Period Ending Dec. 31, 2017, at 79 (of PDF 181). Note that Verizon does not provide information relating to the number of end-user subscribers of its wholesale customers, so its “total” customer count figures are not directly comparable to those of the other providers listed and total market share percentages likely skew high for other providers and low for Verizon. Share of branded prepaid customers is unaffected. *See also* Dennis Bournique, First Quarter 2018 Prepaid Mobile Subscriber by Operator, *available at* <https://www.prepaidphoneneews.com/2018/05/first-quarter-2018-prepaid-mobile.html>.

1 These data indicate a substantial increase in T-Mobile’s prepaid subscriber market share
2 following the merger. Dr. Lee Selwyn conducted a market concentration analyses based on these
3 data, concluding that the market concentration in the prepaid market would increase by over
4 1400 points, well-exceeding the *Horizontal Merger Guidelines*’ 200-point increase threshold for
5 concluding that the proposed transaction is presumed to create or enhance market power or
6 facilitate its exercise, creating significant potential for competitive harm to the detriment of
7 consumers.³⁸ Indeed, the *Horizontal Merger Guidelines* note that “[t]he elimination of
8 competition between two firms that results from their merger may alone constitute a substantial
9 lessening of competition.”³⁹ The merger would result in New T-Mobile assuming a market share
10 of total customers roughly equal to that of AT&T and Verizon, and a market share of prepaid
11 subscribers nearly *twice* that of the next leading competitor. It should also be noted that while
12 Verizon is included in the analysis above, Verizon is a minimal competitor in the prepaid
13 market.⁴⁰ Tellingly, commenters in the FCC’s review of the Joint Applicants’ filings at the
14 federal level have referred to the consolidation of the prepaid market resulting from the proposed
15 transaction as essentially a “3 to 2 merger.”⁴¹

16 Despite the Joint Applicants’ assertion that non-traditional carriers such as TracFone
17 serve as competitive checks in the wireless market,⁴² no support is provided for this proposition.
18 The FCC generally excludes non facilities-based providers from its analysis of market
19 concentration.⁴³ MVNOs such as TracFone rely on the Joint Applicants for access to their
20 networks; thus, if TracFone was a threat to the facilities-based providers, those “host” providers
21 would have an increased incentive to increase wholesale prices, or act in other ways in order to

³⁸ Testimony of Dr. Lee Selwyn at ¶¶ 20, 54-56.

³⁹ *Horizontal Merger Guidelines* at 20.

⁴⁰ DISH Network Corporation, Petition to Deny, WT Docket No. 18-197 at 54, n. 208: “Verizon’s former CFO admitted that Verizon is ‘really not competitive in that [prepaid] environment.’ Verizon Communications, Inc., Q1 2016 Earnings Call, Fair Disclosure Wire (April 21, 2016).

⁴¹ See, e.g., DISH Network Corporation, Petition to Deny, WT Docket No. 18-197 at 54-55; Remarks of Jessica Gonzalez, Deputy Director & Senior Counsel, Free Press, made at the CPUC Workshop on Proposed Transfer of Sprint Communications, Dec. 10, 2018: “In the national market this is a four-to-three merger, but it is actually a three-to-two merger in the prepaid market.”

⁴² A.18-07-012 at 31.

⁴³ See FCC Staff Analysis of AT&T/T-Mobile Merger at ¶ 41, n.126.

1 retain revenues in retail categories, rather than ceding them to resellers.⁴⁴ Indeed, as noted in the
2 most recent FCC Wireless Competition Report, the FCC has recognized that “[i]t’s crucial the
3 MVNO does not compete to any meaningful degree with the host.”⁴⁵

4 This drastic decrease in competition makes more likely unilateral anticompetitive effects,
5 exacerbated by T-Mobile and Sprint’s current positions as the low-cost alternatives to AT&T and
6 Sprint.^{46,47} When the products of merging firms are viewed by consumers as close substitutes,
7 the merged firm may be able to profit by unilaterally raising the prices of one or more of the
8 substitutable products; because of the similarities between the merged entities’ products, a
9 portion of the lost sales resulting from the price increase would be diverted to the subsumed
10 entity’s product, “and, depending on relative margins, capturing such sales loss through merger
11 may make the price increase profitable even though it would not be profitable prior to the
12 merger.”⁴⁸ Sprint and T-Mobile currently compete head-to-head for prepaid customers,
13 <<BEGIN SPRINT CONFIDENTIAL>> [REDACTED]
14 [REDACTED] <<END SPRINT CONFIDENTIAL>>⁴⁹ often resulting in lower-priced plans than
15 those offered by AT&T and Verizon.

⁴⁴ See Testimony of Dr. Lee Selwyn at ¶ 83:

. . . [A] substantial element of the competition that prevails in the US wireless market is between Sprint and T-Mobile, and the two firms’ respective MVNO strategies reflect that condition. There is a strong potential for that to change if the merger goes forward and the industry re-forms itself into an oligopoly with three nearly equal size members. Acting in concert, while not necessarily overt[ly], all three firms will acquire an increased incentive to retain the potential revenues available in the retail channel rather than cede that revenue to resellers.

⁴⁵ FCC 20th Wireless Competition Report at n.54.

⁴⁶ Testimony of Dr. Lee Selwyn at ¶ 56: “The huge jump in concentration in the Prepaid market – from 3040 to 4508 – portends price increases for Prepaid services that are provided by MNOs [mobile network operators, like T-Mobile and Sprint] directly to their retail customers as well as via MVNOs.”

⁴⁷ See also Reply of DISH Network Corporation, WT Docket No. 18-197 at 15, describing the high rates at which Sprint and T-Mobile’s customers choose each other when switching carriers. The porting data used in DISH’s analysis was filed as confidential with the FCC. However, DISH’s public summation of the data concludes: “T-Mobile and Sprint are each other’s closest competitors. Consumers leaving each disproportionately go to the other.” *Id.* at 2.

⁴⁸ *Horizontal Merger Guidelines* at 20. See Testimony of Dr. Lee Selwyn at ¶ 54 et seq., discussing the likelihood of prepaid price increases, post-transaction.

⁴⁹ See, e.g., Exhibit B-5: Sprint Response to Public Advocates Office DR 1-2, Confidential Attachment “Pricing File.xlsx, at tab: (Prepaid Offers by Brand →) “Boost”, wherein Sprint notes that certain plans are a <<BEGIN SPRINT CONFIDENTIAL>> [REDACTED] <<END SPRINT CONFIDENTIAL>>

1 For example, for a prepaid plan with unlimited talk, text and high-speed data, <<BEGIN
2 T-MOBILE CONFIDENTIAL>> [REDACTED]
3 [REDACTED] <<END T-MOBILE
4 CONFIDENTIAL>>,⁵⁰ T-Mobile’s MetroPCS charges \$50 per month⁵¹ and Sprint’s Boost
5 Mobile also charges \$50 per month,⁵² both with taxes and fees included. T-Mobile itself has a
6 \$60 unlimited talk, text and data prepaid plan, taxes and fees not included.⁵³ These price points
7 stand in contrast to AT&T and Verizon’s most-comparable unlimited data plans. Both plans are
8 offered at \$65, and taxes and fees are not included; Verizon’s plan price increases to \$70 if the
9 customer is not enrolled in autopay.^{54, 55} AT&T’s prepaid brand Cricket offers its high-speed
10 prepaid unlimited plan at \$60 per month, decreasing to \$55 per month when the customer signs
11 up for autopay, still not matching the prices of the comparable plans from Sprint and T-Mobile’s
12 prepaid offshoots under the same terms.⁵⁶

⁵⁰ Exhibit B-4: T-Mobile Third Supplemental Response to Public Advocates Office DR 1-2, Attachment “TMUS-CPUC-PA12004197 (Highly Confidential – Attorneys Eyes Only).xlsx.”

⁵¹ Metro by T-Mobile website, <https://www.metropcs.com/shop/plans>, last viewed Dec. 4, 2018.

⁵² Boost Mobile website, <https://www.boostmobile.com/plans.html>, last visited Dec. 4, 2018.

⁵³ T-Mobile website, <https://s3-us-west-2.amazonaws.com/images.rebellion.prod/General/Prepaid/marketing/Compare-plans.pdf>, last visited Nov. 28, 2018.

⁵⁴ AT&T website, <https://www.att.com/prepaid/index.html>, last visited Nov. 28, 2018. *See also* <https://www.att.com/legal/terms.prepaidAutoPayTerms.html>, last visited Dec. 10, 2018.

⁵⁵ Verizon website, <https://www.verizonwireless.com/prepaid/>, last visited Nov. 28, 2018; autopay discount described on Verizon website, <https://www.verizonwireless.com/support/prepaid-plans-and-service-faqs/>, last visited Nov. 28, 2018. *See also* <https://www.verizonwireless.com/legal/notices/customer-agreement/>, last visited Dec. 10, 2018.

⁵⁶ Cricket website, https://www.cricketwireless.com/cell-phone-plans?woo_campaign=Internal&woo_source=Homepage&woo_medium=TopBanner2&woo_content=Browse_Plans, last visited Dec. 4, 2018. *See also* Cricket website, <https://www.cricketwireless.com/support/account-management/charges-and-fees/customer/charges-and-fees.html>, last visited Dec. 10, 2018.

Table 2: Comparison of Prepaid Unlimited High-Speed Plans of the Big Four Wireless Carriers and Their Prepaid Brands

Brand	Price	Price w/AutoPay	Taxes and Fees Included
MetroPCS (T-Mobile)	\$50	n/a	Yes
Boost Mobile (Sprint)	\$50	n/a	Yes
T-Mobile	\$60	n/a	No
Cricket (AT&T)	\$60	\$55	Yes
AT&T	\$65	n/a	No
Verizon	\$70	\$65	No

Critically, T-Mobile and Sprint are each other’s closest competitors and the loss of one decreases competitive pressure on the remaining entity. New T-Mobile would have the ability to unilaterally raise the price of one or more of its prepaid services or brands, and customers would continue to have the incentive to switch between former T-Mobile/Sprint products, rather than to AT&T/Verizon services.

T-Mobile and Sprint have publicly stated that they will “maintain the Boost Mobile, Virgin Mobile USA, and MetroPCS brands as separate brands” following any consummation of the transaction and that they will <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>>⁵⁷ As an example of this, T-Mobile states that “it is expected that New T-Mobile will <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>> in the prepaid market.”⁵⁸ However, simple retention of these separate brands within the same firm does not replace the competition that currently exists between them under separate firms, as there would be no outside competitor that appears willing to undercut New T-Mobile on price. Further, these assurances do not preclude the possibility of increased pricing of other New T-Mobile branded prepaid plans. Finally, as

⁵⁷ Exhibit B-1: T-Mobile Response to Public Advocates Office DR 2-8.

⁵⁸ Exhibit B-1: T-Mobile Response to Public Advocates Office DR 2-8; this response goes on to note that MetroPCS’s price will <<BEGIN T-MOBILE CONFIDENTIAL>> ██████████ <<END T-MOBILE CONFIDENTIAL>>, though the quality of service to MetroPCS customers “will increase substantially as a result of New T-Mobile’s supercharged network.” *Id.*

1 these promises to <<BEGIN T-MOBILE CONFIDENTIAL>> [REDACTED]
2 [REDACTED] <<END T-MOBILE CONFIDENTIAL>> are not enforceable
3 absent Commission action, there is simply no reason to believe that, despite statements to the
4 contrary,⁵⁹ once it has achieved the share and scale of Verizon and AT&T, New T-Mobile won't
5 discard the "maverick" pricing schemes that have so far allowed them to be leaders in the
6 prepaid field and engage in anticompetitive, coordinated behavior with the higher-priced
7 remaining carriers.⁶⁰

8 These real threats of competitive harms to the prepaid market would concentrate the
9 negative effects of the merger on low income consumers. The Joint Applicants have made no
10 commitments that the merger's efficiencies, speculative as they may be, would mitigate the risk
11 of competitive harms to the prepaid market. Because the proposed transaction would lead to
12 consolidation of and decreased competition in the prepaid market, it would decrease incentives
13 for the Joint Applicants to maintain their prepaid plan prices. Should the Commission fail to
14 reject the proposed transaction, the Commission should develop and adopt specific, measurable,
15 enforceable commitments, including the Joint Applicants' commitments made related to prepaid
16 pricing, noted above, in order to partially mitigate harm to low income consumers. However,
17 even these mitigation measures would not replace the continuing downward pressure on prices
18 that has resulted from T-Mobile and Sprint competing head-to-head for prepaid customers.

19 **3. The Proposed Transaction Would Decrease Competition in the Wholesale**
20 **Market, Harming Low Income Consumers**

21 The Commission should deny the consolidated, Joint Applications as the loss of Sprint
22 and T-Mobile as competitors for wholesale customers could lead to increased prices for or
23 decreased willingness to provide wholesale services, the negative effects of which would trickle
24 down to end users.⁶¹ Because wholesale customers reselling mobile voice or data access often

⁵⁹ See, e.g., A.18-07-012 at 4.

⁶⁰ Testimony of Dr. Lee Selwyn at ¶¶ 64-72: "The Joint Applicants portray New T-Mobile as maintaining its 'Un-carrier' disruptive competitive initiatives following the merger, but there is, in fact, far more reason to expect New T-Mobile to 'join the club' rather than continue to maintain its (and Sprint's) current 'outsider' posture." *Id.* at ¶ 66.

⁶¹ Testimony of Dr. Lee Selwyn at ¶ 74, et seq.: "A facilities-based carrier's incentives to allow and to affirmatively support resale of their service diminishes as its market power increases." *Id.* at ¶ 74 (heading).

1 provide solely prepaid services and can be active LifeLine providers in California,⁶² implications
2 of the proposed transaction on the wholesale market impact low income consumers.

3 Facilities-based service providers such as the Joint Applicants, Verizon, and AT&T sell
4 access to their wireless networks to resellers, including MVNOs, on a wholesale basis,
5 controlling the infrastructure necessary for smaller carriers to participate in the wireless
6 market.⁶³ The Big Four carriers individually negotiate wholesale agreements with each of their
7 reseller-customers. While they trail AT&T and Verizon in overall customer counts, Sprint and
8 T-Mobile may have larger shares of the wholesale market, based on number of end users of
9 wholesale customers,⁶⁴ though due to differences in how the carriers present subscribership data,
10 it is difficult to present an apples-to-apples comparison of market share figures.⁶⁵ T-Mobile's
11 wholesale customers collectively serve roughly 13.9 million retail subscribers⁶⁶ and Sprint's
12 wholesale customers serve roughly 13.5 million retail subscribers nationwide.⁶⁷ T-Mobile and
13 Sprint both exclude the LifeLine subscribers of MVNOs from these figures, each citing
14 "regulatory changes" that T-Mobile states "made the Lifeline program offered by its wholesale
15 partners uneconomical."⁶⁸ In T-Mobile's case, this understates its wholesale share by 4.5
16 million customers.⁶⁹ AT&T serves only 9.3 million wholesale customers⁷⁰ and Verizon does not
17 disclose this information to the SEC.

⁶² See e.g., Tracfone website, <http://www.tracfonewirelessinc.com/en/brands/>, last visited Dec. 5, 2018. Tracfone's website lists all the brands through which it offers service; clicking through to the pages of each brand, one can see that solely prepaid plans are offered. Tracfone is the largest MVNO in the nation, based on number of subscribers. FCC 20th Wireless Competition Report at 9.

⁶³ FCC 20th Wireless Competition Report at 9.

⁶⁴ Testimony of Dr. Lee Selwyn at Table 14.

⁶⁵ See also Petition to Deny of Free Press, WT Docket 18-197 at 26. ("Verizon only reports retail connections, and does not report wholesale or connected device counts. AT&T does report "reseller" connections; but it is unclear how much, if any, of its connected device count is attributable to reseller connections. Sprint and T-Mobile also do report wholesale connections, but both companies no longer include such connections sold by a Lifeline reseller.")

⁶⁶ T-Mobile US, Inc. Form 10-k for the Year Ended December 31, 2017 at 37.

⁶⁷ Sprint Corporation Form 10-K for the Fiscal Year ended March 31, 2018 at 40.

⁶⁸ Sprint Corporation Form 10-K for the Fiscal Year ended March 31, 2018 at 41, n.3. T-Mobile US, Inc. Form 10-k for the Year Ended December 31, 2017 at 37, n.2.

⁶⁹ T-Mobile US, Inc. Form 10-k for the Year Ended December 31, 2017 at 37, n.2.

⁷⁰ AT&T Inc. Annual Report Year Ended December 31, 2017, Ex. 13 at 15.

1 The proposed transaction’s increase in market concentration in an already-concentrated
2 market could lead to negative unilateral impacts as well as coordinated effects, negatively
3 impacting MVNOs.⁷¹ For example, while T-Mobile and Sprint are referred to as “the major,
4 disruptive partners of MVNOs today, and have been known for providing reasonable MVNO
5 agreements[,]”⁷² New T-Mobile could find it economical to increase prices or offer less-
6 favorable terms and conditions, in absence of competition from Sprint. Further, to whatever
7 extent that T-Mobile and Sprint *do* consider MVNOs to be their competition,⁷³ MVNOs could be
8 subject to increased prices for wholesale service or a decreased willingness to facilitate
9 wholesale service at all.^{74, 75}

10 The harms listed above would be felt disproportionately by low income consumers.
11 While, as noted above, MVNOs cannot be considered sufficient competition to the Big Four and
12 so are typically excluded from market share analyses, they often service low income customers
13 by filling in gaps in Big Four service offerings, such as through the provision of ultra-low priced,
14 low-GB data plans the Big Four may consider uneconomical to offer. The FCC notes that this
15 “may occur when the MVNO has better access to some market segments than the host facilities-
16 based service provider, and can potentially target specific market segments such as low-income

⁷¹ Testimony of Dr. Lee Selwyn at ¶¶ 83, 87-88.

⁷² Reply of Altice, USA Inc., WT Docket 18-197 at 13, n.36 (internal citations omitted). Altice is a provider of broadband and video services, and is a “full infrastructure-based MVNO.” Petition to Deny of Altice, USA Inc., WT Docket 18-197 at i. In support of the proposition stated above, Altice notes:

Many commenters urged the Commission to consider the impact of the loss of these two individual mavericks, which compete today for MVNO business, on the ability of MVNO partners to obtain nationwide, long-term, reasonable MVNO agreements. *See* RWA Petition at 12; American Antitrust Institute Petition at 4, 14; C Spire Petition at 11; Free Press Petition at 20; Common Cause Petition at 28; Union Telephone Petition at 39. The American Antitrust Institute explains that “[t]he merger eliminates head-to-head competition between the two disruptive rivals in the national U.S. wireless market . . . Such competition, and the benefits it delivers to consumers, would be lost by the merger.” American Antitrust Institute Petition at 4. The list of commenters concerned about this issue goes on – Charter, C Spire, Free Press, The Common Cause Petitioners, and the Union Telephone Petitioners echoed the harms resulting from the loss of these particularly important “maverick” competitors for the MVNO market.

⁷³ A.18-07-012 at 31, listing MVNO Tracfone as a competitor.

⁷⁴ Testimony of Dr. Lee Selwyn, ¶¶ 83, 87-88.

⁷⁵ Petition to Deny of the American Antitrust Institute, WT Docket 18-197 at 10. (“Potential anticompetitive coordinated conduct would not be limited to retail wireless subscribers. It could extend to fixing wholesale prices for MVNOs, jointly developing rules governing MVNO access to infrastructure, or even a group boycott of MVNO resellers in gaining access to the resources necessary to compete at retail.”)

1 consumers or consumers with low-usage needs.”⁷⁶ For example, while Verizon offers an
2 unlimited talk and text, 500MB prepaid plan at \$30 per month,⁷⁷ Tracfone offers a 500MB plan
3 (200 voice minutes and 500 texts) at \$15 per month, as well as a 500MB plan (500 voice
4 minutes/1000 texts) at \$25.⁷⁸ Additionally, Sprint’s Virgin Mobile is the only facilities-based
5 wireless LifeLine provider in California. Because MVNOs don’t own or operate their own
6 networks, they “do not engage in non-price rivalry by creating capacity through network
7 investments, network upgrades, or network coverage.”⁷⁹ These factors have spurred an increase
8 in consumer choice, allowing price-conscious customers to pay for features and allowances that
9 make sense to them. These benefits to low income consumers that trickle down from having two
10 robust competitors in the wholesale market could disappear if the wholesale providers merge.

11 The ability of New T-Mobile to act in anti-competitive ways in both the prepaid market,
12 discussed above, and the wholesale market present significant risk to low income consumers.
13 However, should the Commission fail to reject the proposed transaction, wholesale market
14 protection safeguards are necessary to decrease the risk of harm to these consumers, likely to
15 occur through further consolidation of the wholesale market. The Commission should develop
16 and adopt specific, measurable, enforceable, and easily monitored commitments in the following
17 areas:

- 18 • A requirement that New T-Mobile honor existing wholesale agreements;
- 19
- 20 • A requirement that New T-Mobile offer new and existing wholesale partners, for
21 the full term of existing agreements, or for ten years post-transaction, whichever
22 is applicable and occurs later, the best wholesale terms and conditions that are
23 offered individually by each of the Joint Applicants to their wholesale partners;
- 24 • A requirement that New T-Mobile offer these terms to LifeLine resellers
25 indefinitely.

26 Adherence to such safeguards would need to be monitored regularly by the Commission for
27 several years following consummation of the transaction, with opportunity for wholesale partners
28 to provide input regarding compliance, though, again, such safeguards are insufficient to forestall

⁷⁶ FCC 19th Wireless Competition Report at 7.

⁷⁷ Verizon website, <https://www.verizonwireless.com/prepaid/>, last visited Dec. 5, 2018.

⁷⁸ Tracfone website, <https://www.tracfone.com/shop/plans>, last visited Dec. 5, 2018.

⁷⁹ FCC 19th Wireless Competition Report at 7.

1 the likely competitive harms stemming from the proposed transaction, and the Commission
2 should deny the Joint Application.

3 **B. The Proposed Transaction Presents Risks to the LifeLine Program, Harming**
4 **Low Income Customers**

5 In addition to posing harm to the overall prepaid market, the proposed transaction
6 presents specific risk to the California LifeLine program. Should the Commission fail to deny
7 authorization for the proposed transaction, the Commission should require New T-Mobile to
8 offer LifeLine service and “transitional service”⁸⁰ comparable to or better than the LifeLine and
9 transitional services currently provided by Virgin Mobile to all eligible customers throughout its
10 new service territory, in order to decrease the risk of harm to low income consumers attendant to
11 the proposed transaction. The California LifeLine/federal Lifeline (LifeLine) programs provide
12 discounts on phone service to qualifying low income consumers in order to ensure continued
13 access to high-quality basic telephone service at affordable rates.⁸¹

14 Of the Joint Applicants, Sprint Wireless CA-entity Virgin Mobile is the only entity
15 currently providing LifeLine in California.⁸² Under the trade name of “Assurance Wireless
16 brought to you by Virgin Mobile,” Virgin Mobile serves roughly 482,000 LifeLine wireless
17 customers in California, over 200,000 more customers than the next largest LifeLine wireless
18 carrier, and more than all LifeLine wireline carriers combined.⁸³

19 Virgin Mobile offers superior California LifeLine plans. Virgin Mobile offers two
20 prepaid LifeLine wireless plans, one with mobile data and one without, as well as one prepaid
21 “transitional” wireless plan (exclusively for customers formerly-subscribed to LifeLine).⁸⁴ Both

⁸⁰ Virgin Mobile currently offers a transitional service—a low-cost service that is only available to customers who formerly qualified for California LifeLine, but that is not subsidized by the California LifeLine program. See Virgin Mobile USA, L.P., U-4327-C, Advice Letter (AL) 27, Attachment 1 (Oct. 18, 2018).

⁸¹ Pub. Util. Code § 871.7(a); 47 U.S.C. § 254 (b).

⁸² T-Mobile does not and has not ever provided LifeLine services in California. Exhibit B-6: T-Mobile Response to Public Advocates Office DR 1-114.

⁸³ CPUC Website, “Total Approved LifeLine Subscribers in California by Carrier, as Reported by Conduent State and Local Solutions, Inc. 2018,” available at <http://www.cpuc.ca.gov/general.aspx?id=1100> (links to annual customer count files found at the bottom of the page). Figures noted are average 2018 figures, as of Nov. 15, 2018.

⁸⁴ See Virgin Mobile USA, L.P., U-4327-C, AL 27, Attachment 1.

1 of Virgin Mobile’s California LifeLine plans feature unlimited domestic voice minutes and
2 unlimited domestic texts messages, at no cost to the consumer. Virgin Mobile does not charge
3 its LifeLine customers activation fees or a fee when a customer converts from another California
4 LifeLine carrier’s plan to a Virgin Mobile California LifeLine plan.⁸⁵ At the time the Joint
5 Applicants filed their applications in this proceeding, Virgin Mobile’s California LifeLine plan
6 with data allowed customers 2GB of data per month, at no cost to the consumer.⁸⁶ However,
7 since that time, Virgin Mobile filed Advice Letter (AL) 27 in order to increase the data allotment
8 included in its free plan from 2GB to 3GB per month, though existing customers must contact
9 Virgin Mobile to benefit from the plan upgrade.⁸⁷ Less than two months later, TracFone⁸⁸ and
10 TAG Mobile, LLC also filed advice letters requesting authority to offer 3GB no-cost data plans
11 to LifeLine subscribers, though TracFone’s no-cost 3GB plan is not “high speed” and TAG
12 Mobile’s offer does not come with a free handset.⁸⁹ While the various wireless LifeLine
13 providers charge different amounts for additional data, at the \$0.00 per-month payment level,
14 Virgin Mobile and TracFone now offer the most data while still offering consumers a free
15 handset.⁹⁰

16
17
18
19

⁸⁵ Certain LifeLine activation fees are eligible for reimbursement from the California LifeLine fund; however, Virgin Mobile states that it “will not seek or otherwise ask a LifeLine Service customer, whether a new LifeLine service customer or an existing LifeLine service customer who is ‘converting’ from another LifeLine provider to [Virgin Mobile], to pay an Activation Fee, even if [Virgin Mobile] subsequently learns that the Activation is not eligible for reimbursement from the LifeLine Fund.” Virgin Mobile USA, L.P. U-4327-C, AL 27, Attachment 1 at 4.

⁸⁶ See Virgin Mobile USA, L.P., U-4327-C, AL 21, Attachment 1 (Jan. 10, 2018).

⁸⁷ Virgin Mobile USA, L.P., U-4327-C, AL 27 at 1; Attachment 1 at n.4.

⁸⁸ TracFone Wireless, Inc. dba SafeLink, U-4231-C, AL 27, Attachment A-2 (Nov. 30, 2018).

⁸⁹ Tag Mobile, LLC, U-4411-C, AL 25, Exhibit B (Nov. 29, 2018).

⁹⁰ TruConnect Communications, Inc. also recently filed an advice letter requesting authority to increase the data in its free plans from 1GB to 2GB, and from 2GB to 3GB when the customer brings their own device. TruConnect Communications, Inc., U-4380-C, AL 27, Exhibit A (Nov. 9, 2018).

1

Table 3: LifeLine Wireless Data Plans Offered at No-Cost to Consumers

California LifeLine Wireless Carriers	Data Included in \$0.00 Monthly Plan⁹¹
Assurance Wireless by Virgin Mobile⁹²	3GB
TracFone dba SafeLink ⁹³	3GB with free handset; 4GB for first three months without free handset, 3GB thereafter
AirVoice Wireless dba Feel Safe Wireless ⁹⁴	2GB
Amerimex dba SafetyNet Wireless ⁹⁵	2GB with free handset; 2.5GB without free handset for first four months, 2GB thereafter
Global Connection dba StandUp Wireless ⁹⁶	2GB
iWireless dba Access Wireless ⁹⁷	2GB
TruConnect ⁹⁸	2GB with free handset, 3GB without free handset
Tag Mobile ⁹⁹	500 MB for first three months, 1GB thereafter with free handset, 3GB without free handset
Telrite dba Life Wireless ¹⁰⁰	500MB if AT&T is host network, 2GB if T-Mobile is host network
American Broadband and Telecommunications ¹⁰¹	500MB
Blue Jay Wireless ¹⁰²	500MB
Boomerang Wireless dba enTouch Wireless ¹⁰³	500MB

2

⁹¹ Unless otherwise indicated, plan comes with a free handset. Whether free handset is “basic,” “smartphone,” or “refurbished” varies based on carrier.

⁹² Virgin Mobile USA, L.P., U-4327-C, AL 27, Attachment 1.

⁹³ TracFone Wireless, Inc. dba SafeLink, U-4231-C, AL 27, Attachment A-2.

⁹⁴ AirVoice Wireless, LLC, U-4451-C, AL 24, Attachment A (Nov. 29, 2018).

⁹⁵ AmeriMex Communications Corp. dba SafetyNetWireless, U-4458-C, AL 23, Attachment A (Nov. 30, 2018).

⁹⁶ Global Connection Inc. of American dba StandUp Wireless, U-4423-C, AL 22, Attachment A (Dec. 4, 2018).

⁹⁷ i-wireless, LLC, U-4372-C, AL 23, Attachment A (Dec. 4, 2018).

⁹⁸ TruConnect Communications, Inc., U-4380-C, AL 28, Exhibit B (Dec. 5, 2018).

⁹⁹ Tag Mobile, LLC, U-4411-C, AL 25, Exhibit B (Nov. 29, 2018).

¹⁰⁰ Telrite Corporation dba Life Wireless, U-4442-C, AL 25A, Exhibit A (Nov. 8, 2018).

¹⁰¹ American Broadband and Telecommunications Company, U-4457-C, AL 9 (Mar. 19, 2018).

¹⁰² Blue Jay Wireless, LLC, U-4437-C, AL 14, Exhibit A, (Nov. 15, 2016).

¹⁰³ Boomerang Wireless, LLC dba enTouch Wireless, U-4436-C, AL 32, Exhibit A (Nov. 7, 2018).

1 Virgin Mobile’s share of California LifeLine customers and its superior plan offering
2 demonstrate the importance of its role in the LifeLine program. Whether T-Mobile will be a
3 similar good steward of the program in the future is certainly debatable. T-Mobile’s ongoing
4 lack of participation in the California LifeLine program,¹⁰⁴ prior requests to cease providing
5 federal Lifeline altogether,¹⁰⁵ and statements T-Mobile has made concerning the “uneconomical”
6 nature of the LifeLine services provided by its wholesale customers¹⁰⁶ indicate that T-Mobile is
7 not committed to the LifeLine program or at the very least that the program has a better steward
8 under Sprint. Additionally, every wireless LifeLine TracFone states that its underlying network
9 is “primarily T-Mobile” and “AT&T or Verizon in limited circumstances.”¹⁰⁷

10 The Joint Applicants state that, as a benefit of the proposed transaction, New T-Mobile
11 will continue the Lifeline services currently provided by Virgin Mobile,¹⁰⁸ though no expansion,
12 modification and/or promotion plans with respect to LifeLine services have been developed for
13 New T-Mobile, post-merger.¹⁰⁹ The Commission should be clear on this point: continuation of
14 the LifeLine program, post-merger, is not a merger-specific benefit or efficiency—not a a but-for
15 positive result of the merger and the Joint Applicants have made no attempt to justify listing it as
16 such.¹¹⁰ Further, like other claimed benefits of the proposed transaction, this statement is not
17 enforceable; to cease offering LifeLine services, New T-Mobile need only provide its customers

¹⁰⁴ Remarks of Catherine Sandoval, Associate Professor, Santa Clara University School of Law and Former CPUC Commissioner, made at the CPUC Workshop on Proposed Transfer of Sprint Communications, Dec. 10, 2018: “If you were to see this entity merged, I particularly worry [] about the commitment to California LifeLine. I must say with T-Mobile, I talked to T-Mobile many, many, many times, to encourage them to participate in California LifeLine. And their participation was never forthcoming the way Sprint’s was.”

¹⁰⁵ T-Mobile Notice of Relinquishment of LifeLine-Only Eligible Telecommunications Carrier Designations, WC Docket No. 09-197 (Sept. 12, 2014).

¹⁰⁶ T-Mobile US, Inc. Form 10-k for the Year Ended December 31, 2017 at 37 n.2.

¹⁰⁷ TracFone Wireless, Inc. dba SafeLink, U-4231-C, AL 27, Attachment A-2 (Nov. 30, 2018).

¹⁰⁸ A.18-07-012 at 4.

¹⁰⁹ Exhibit B-7: T-Mobile Response to Public Advocates Office DR 1-116.

¹¹⁰ *Horizontal Merger Guidelines* at 30: “[Regulators] credit only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects.”

1 with 30-days' notice.¹¹¹ T-Mobile's current non-participation in LifeLine raises questions about
2 its future stewardship of the program.

3 Should the Commission fail to deny approval for the proposed transaction, as a part of a
4 set of specific, measurable, enforceable, and easily monitored market-improving requirements,
5 including making the Joint Applicants' specific application commitments enforceable, the
6 Commission should require New T-Mobile to continue offering Virgin Mobile's LifeLine
7 services of the same quality to all eligible customers throughout the proposed New T-Mobile
8 service territory.

9 The following requirements are necessary to limit the negative impact of the proposed
10 transaction on low income consumers:

- 11 • New T-Mobile must commit to participating in LifeLine and offering transitional
12 service for a Commission-determined period;
- 13 • The price per unit of data or service of the LifeLine or transitional service paid by
14 consumers may not increase over that time period.

15

16 **C. Conclusion**

17 The proposed transaction will increase concentration and decrease competition in the
18 prepaid and wholesale sectors; this will likely lead to increased prices in these market segments.
19 Conditions on approval are unlikely to fully mitigate the harms of T-Mobile and Sprint no longer
20 competing head-to-head for prepaid and wholesale customers. Further, the proposed transaction
21 puts at risk California LifeLine subscribers that benefits from Sprint's leading role in the
22 program. Therefore, the transaction should be rejected.

23 Should the Commission fail to deny approval of the Joint Applications, the Commission
24 should develop and adopt performance-based mitigating measures that are specific, measurable,
25 enforceable, and easily-monitored on an ongoing basis to ensure compliance. The mitigating
26 measures the Commission should develop and adopt must address the following areas:

- 27 • The Joint Applicants' commitments made related to prepaid pricing, in order to
28 decrease the risk of harm to low income consumers. As discussed further below, T-

¹¹¹ CPUC General Order (GO) 153 §4.7.

1 Mobile has stated that New T-Mobile will <<BEGIN T-MOBILE
2 CONFIDENTIAL>> [REDACTED]

3 <<END T-MOBILE CONFIDENTIAL>>.¹¹² However, this measure is
4 insufficient to fully mitigate the potential harms of the proposed transaction, as such
5 pricing commitments are temporary and fail to substitute for the elimination of the
6 ongoing downward pricing pressure resulting from Sprint and T-Mobile competing
7 head-to-head for prepaid customers.

- 8 • Requiring that New T-Mobile to honor all existing wholesale agreements and to
9 commit to offering existing and new wholesale partners the best wholesale terms and
10 conditions that are offered individually by each of the Joint Applicants to their
11 wholesale partners.

- 12 • Requiring that New T-Mobile continue participating in the LifeLine program and
13 continue offering transitional service for a set period, making LifeLine service
14 available to all eligible New T-Mobile customers at terms equal to or better than the
15 terms currently offered by Assurance by Virgin Mobile, with regards to price per unit
16 of use or data.

¹¹² Exhibit B-1: T-Mobile Response to Public Advocates Office DR 2-8.

ATTACHMENTS

ATTACHMENT A

Statement of Qualifications and Experience

My name is Eileen Odell. I am currently employed by the CPUC as a Public Utilities Regulatory Analyst IV, assigned to the Public Advocates Office's Communications and Water Policy (CWP) Branch. For this proceeding, I was responsible for submitting testimony on the impacts of the proposed transaction on low income consumers.

I graduated from the University of California, San Diego with a Bachelor of Arts degree in International Studies and Political Science. I later graduated from the University of California, Hastings College of the Law with a Juris Doctor degree. I am admitted to the California State Bar. I attended the 36th Western National Association of Regulatory Utility Commissioners/Michigan State University Utility Rate School in 2015 and the Institute of Public Utility's Advanced Regulatory Studies program at Michigan State University in 2018.

With the Public Advocates Office's CWP branch, I have previously submitted testimony on the impacts of two telecommunications mergers on low income programs. I have submitted testimony in three general rate cases (GRC), analyzing revenues and rate design for Class A water utilities and for one small local exchange carrier. Additionally, I was the lead analyst for and developed testimony for an intra-GRC cycle water utility Application, again focusing on revenues and rate design. I have analyzed and prepared protests for Advice Letters seeking CPUC approval for telecommunications rate increases as well as for drought-related issues. Additionally, I have analyzed project proposals for the California Advanced Services Fund (CASF) infrastructure grant program as well as for the CASF public housing account program. Prior to joining the CPUC, I was employed by the Office of Sonoma County Counsel for one year, serving as a Senior Law Clerk. I also was employed by San Francisco Public Utilities Commission for one year as an Aide in the Real Estate Services division. I served as a Law Clerk for the City Attorney of San Francisco, in its Land Use and Environment team as well as its Public Utilities Commission team.