

Docket: A.18-07-011 and A.18-07-012  
Exhibit Number: Cal Advocates –  
Commissioner: C. Rechtschaffen  
Admin. Law Judge: K. J. Bemesderfer  
Cal PA Project Mgr.: S. Lyser  
Cal PA Expert Witness: K. Donnelly



## Public Advocates Office

California Public Utilities Commission

**Reply Testimony  
Of  
Kristina Donnelly  
on the Proposed Transfer of Control of Sprint  
to T-Mobile: Customer Privacy Impacts of Divestiture to  
DISH Network**

**- PUBLIC -**

San Francisco, California  
November 22, 2019

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1 **MEMORANDUM**

2 This report was prepared by Kristina Donnelly of the Public Advocates Office at  
3 the California Public Utilities Commission (“Public Advocates Office”) under the general  
4 supervision of Program & Project Supervisor, Shelly Lyser. Attachment A to this  
5 testimony is a statement of qualifications from Kristina Donnelly. The Public Advocates  
6 Office is represented in this proceeding by legal counsels, Michelle Schaefer and Travis  
7 Foss.

8 This testimony is comprised of the following chapters:

Chapter	Description
I	DISH Network’s Privacy Policy Does Not Provide Customers with Meaningful Options to Control the Collection of Data from Children
II	DISH Network Has Not Established a Customer Location Information Policy, Which Is Critical For Mobile Wireless Customers

1    **I.     SUMMARY**

2           This report presents an additional analysis of the Public Advocates Office on the  
3 risk of harm to customer privacy stemming from Applications (A.) 18-07-011<sup>1</sup> and 18-07-  
4 012,<sup>2</sup> the consolidated joint applications for transfer of control of Sprint Spectrum L.P.  
5 and 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  
7 USA) (collectively, the Joint Applicants). The entity that would result from the proposed  
8 transaction is referred to in this report as “New T-Mobile.” On July 26, 2019, the Joint  
9 Applicants filed a motion to advise the Commission of the terms of a proposed Final  
10 Judgment and related Stipulation and Order filed by the U.S. Department of Justice on  
11 July 26, 2019 in the U.S. District Court for the District of Columbia. Under the Proposed  
12 Final Judgment, DISH Network Corporation will acquire Sprint’s prepaid wireless  
13 businesses (excluding the Assurance Wireless LifeLine business) and obtain additional  
14 rights that will allegedly strengthen DISH’s ability to compete in the retail mobile  
15 wireless services market. Joint Applicants filed an amended application on September 19,  
16 2019, and a second prehearing conference was held on October 10, 2019.

17           On October 24, 2019, Commissioner Rechtschaffen issued an Amended Scoping  
18 Ruling (Amended Ruling) to expand the general scope of the proceeding.<sup>3</sup> The Amended  
19 Ruling quotes this proceeding’s original Scoping Ruling, which states: “[t]he  
20 fundamental issue presented by these applications is whether the proposed merger of two  
21 of the four largest national wireless service providers is in the public interest of the  
22 residents of California.”<sup>4</sup> The Amended Ruling states that the Joint Applicants’ revised

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<sup>1</sup> Application (A.)18-07-011, Joint Application for Approval of Transfer of Control of Sprint Communications Company L.P. July 13, 2018. Pg. 1. [hereinafter A.18-07-011].

<sup>2</sup> A.18-07-012, Joint Application for Review of Wireless Transfer Notification Per Commission Decision 95-10-032. July 13, 2018. Pg. 1. [hereinafter A.18-07-012].

<sup>3</sup> Assigned Commissioner’s Amended Scoping Ruling. October 24, 2019. [hereinafter Amended Ruling].

<sup>4</sup> Amended Assigned Commissioner’s Scoping Memo and Ruling. October 4, 2018. Pg. 2. [hereinafter Scoping Ruling].

1 testimony will be examined to address the specific topics identified in the original  
2 Scoping Ruling,<sup>5</sup> which lists certain factors the Commission will consider in making its  
3 public interest determination, including customer privacy. To inform the Commission’s  
4 public interest review, this report provides analysis and recommendations regarding the  
5 potential effects on customer privacy resulting from the inclusion of DISH in this  
6 proposed merger.

## 7 **II. ANALYSIS**

8 DISH Network (DISH) will receive approximately nine million customers from  
9 Sprint through this revised transaction. These customers will receive wireless service  
10 governed by DISH’s privacy policy. The Public Advocates Office asked DISH to provide  
11 a copy of the privacy policy that will apply to its new wireless customers, and the  
12 company responded by providing its existing DISH Subscriber Policy, which applies to  
13 all users of its direct broadcast satellite television service and “related services such as  
14 video, audio, data, interactive and other programming services.”<sup>6</sup> In its written response,  
15 DISH added, “With regard to future services, DISH continues to analyze and finalize its  
16 business plans and policies.”<sup>7</sup> Because DISH has not yet prepared the policies that will be  
17 necessary when it receives these new customers, the nine million customers DISH hopes  
18 to acquire as a result of the merger could receive lesser privacy protections than current  
19 customers of T-Mobile and Sprint. In this section, we rely on the DISH Subscriber Policy  
20 that the company provided in response to data request from the Public Advocates Office,  
21 as well as publicly available information on other DISH policies and practices, in order to  
22 assess the potential impact of this merger on customer privacy.

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<sup>5</sup> Scoping Ruling.

<sup>6</sup> Exhibit 1: DISH Response to Public Advocates Office DR 001, Attachment “Exh 6 - DISH Privacy Policy.pdf”.

<sup>7</sup> Exhibit 2: DISH Response to Public Advocates Office DR 001, Question 37.

1           **A.     DISH’s Privacy Policy Does Not Provide Customers with**  
2                   **Meaningful Options to Control the Collection of Data**  
3                   **from Children**

4           When asked about its specific practices regarding children under the age of 13,  
5 DISH responded with its Subscriber Policy, which does not mention children.<sup>8</sup> In its  
6 response to a Motion to Compel from the Public Advocates Office, DISH stated that,  
7 when it comes to children, DISH’s privacy policy “remains the most comprehensive  
8 source of information regarding DISH’s privacy practices.”<sup>9</sup>

9           DISH’s Subscriber Policy applies to all users of its direct broadcast satellite  
10 television service and “related services such as video, audio, data, interactive and other  
11 programming services.”<sup>10</sup> However, when it comes to helping parents and guardians  
12 protect the data generated by their children, or to protect their children from targeted  
13 marketing, DISH’s policy is less consumer-friendly than the policies of Sprint and T-  
14 Mobile. While Sprint and T-Mobile allow customers to opt-out of targeted advertising  
15 through the company’s website or directly through the customer’s own account, DISH  
16 requires its customers to submit a request in writing. The policy does not indicate  
17 whether DISH responds to customers who submit requests, for example, to let them know  
18 that the request has been received and processed or how long the process to implement  
19 the customer’s request could take. In addition, DISH’s privacy policy states, “You may  
20 also still receive advertising from DISH or third parties that is customized based on  
21 information we’ve collected or received from or about you or on information about your  
22 online activities from third parties.”<sup>11</sup> Even though its new wireless service may have its  
23 own, separate policy, DISH is not currently capable of receiving and fully complying

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<sup>8</sup> Exhibit 1: DISH Response to Public Advocates Office DR 001, Attachment “Exh 6 - DISH Privacy Policy.pdf”.

<sup>9</sup> DISH Network Corporation’s Response Opposing Motion Of The Public Advocates To Compel Responses To Data Requests. November 13, 2019. Pg. 6.

<sup>10</sup> Exhibit 1: DISH Response to Public Advocates Office DR 001, Attachment “Exh 6 - DISH Privacy Policy.pdf”.

<sup>11</sup> Exhibit 1: DISH Response to Public Advocates Office DR 001, Attachment “Exh 6 - DISH Privacy Policy.pdf”.

1 with digital requests to opt-out. As discussed in previous testimony, this is problematic  
2 for guardians who wish to limit targeting marketing and to control whether and how the  
3 data generated by their children’s use of online services are collected and used.<sup>12</sup>

4 In addition, DISH’s service called “DISH Anywhere,” which allows customers to  
5 stream DISH TV from their Internet-connected devices through a web browser or mobile  
6 app, creates additional concerns. This service operates under a separate privacy policy  
7 and “supplements the DISH Subscriber Policy.”<sup>13</sup> The DISH Anywhere policy is not  
8 included on DISH’s webpage containing copies of its customer service agreements,<sup>14</sup>  
9 which creates a lack of transparency and could potentially cause confusion for customers  
10 who may not realize that they are covered under a separate policy when accessing DISH  
11 TV through DISH Anywhere.<sup>15</sup>

12 Although the DISH Anywhere privacy policy states that the company does not  
13 knowingly or intentionally collect personal information from individuals under the age of  
14 13, DISH Anywhere provides customers the ability to add profiles to their account,  
15 whereby users are required to select the “account type,” with one option being “kid.”<sup>16</sup>  
16 Customers are then required to indicate the age of the child, with the slider ranging from  
17 2 to 13 years old. This indicates DISH may be in violation of its stated policy that it does  
18 not “knowingly” collect information about children.

19 Like the Network Subscriber Privacy Policy, the DISH Anywhere privacy policy  
20 similarly leaves children vulnerable to the predatory practices described in my opening

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<sup>12</sup> Public Advocates Office Testimony on Privacy for the Proposed Transfer of Control of Sprint to T-Mobile. January 7, 2019. Pp. 20-21.

<sup>13</sup> Exhibit 3: DISH Anywhere Privacy Policy.

<sup>14</sup> Exhibit 4: DISH Network Service Agreements Webpage - Screenshot.

<sup>15</sup> Although the introductory section of DISH’s Network Subscriber Policy states that it does not apply to any “product or service provided by DISH that is covered by a separate privacy notice,” and lists a few examples of such products (including EchoStar Corporation, Sling TV service, dishNET satellite service, and dishNET wireline service), it does not mention DISH Anywhere explicitly.

<sup>16</sup> Exhibit 5: DISH Anywhere Support Webpage - Screenshots.

1 testimony.<sup>17</sup> The policy states that DISH may use the customer information it collects “to  
2 deliver targeted or other customized advertising, offers and other services...and as  
3 otherwise deemed necessary by us to develop, improve or otherwise provide our DISH  
4 ANYWHERE or DISH ONEPOINT Services and/or for any other legitimate business  
5 purposes.” The policy goes on to state that third parties “may have access to the  
6 information we collect about you, may be allowed by us to collect information about you,  
7 and may receive information about you authorized to be shared with them by us.”

8 DISH Anywhere does not provide customers the ability to opt out of the third-  
9 party data collection and ad targeting practices and does not provide a comprehensive list  
10 of third-party entities collecting data from DISH Anywhere consumers. Instead, the  
11 policy directs customers to the privacy policies of only a sample of its business partners,  
12 including Nielsen, ComScore, FreeWheel, and Tremor. Because DISH Anywhere’s  
13 policy states that companies like FreeWheel and Tremor are merely two examples of the  
14 *kinds* of businesses that enable DISH to “manage and monetize online video advertising,”  
15 customers wishing to opt out would not have sufficient information to do so, because the  
16 companies listed are merely examples, rather than an exhaustive list. The policy further  
17 states that “most opt-outs available to you...will not stop targeted advertisements served  
18 by companies that do not participate in the applicable opt-out that you select.” This  
19 means that these third-party businesses could collect and use children’s data without any  
20 recourse for customers wishing to opt-out.

21 **B. DISH Has Not Established a Customer Location**  
22 **Information Policy, Which Is Especially Critical For**  
23 **Mobile Wireless Customers**

24 As described in my supplemental declaration, recent reports indicate that a variety  
25 of actors – including bounty hunters, bail bondsman, stalkers, and domestic abusers –  
26 have been able to purchase or access wireless customer location information from all of  
27 the major wireless companies; allegedly, some of this information included highly-

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<sup>17</sup> Public Advocates Office Testimony on Privacy for the Proposed Transfer of Control of Sprint to T-Mobile. January 7, 2019. Pp. 20-21.

1 accurate location data, the use of which is restricted by federal law.<sup>18</sup> The Public  
2 Advocates Office asked DISH to provide a copy of the privacy policy that will apply to  
3 its new wireless customers; however, the company responded by providing its existing  
4 privacy policy, which does not mention location information, even though DISH does  
5 apparently collect this information.<sup>19</sup> The company also stated, “With regard to future  
6 services, DISH continues to analyze and finalize its business plans and policies.” DISH  
7 failed to demonstrate that it either currently has in place, or otherwise plans to develop,  
8 customer protections for the geolocation information of the wireless customers it would  
9 receive under this proposed transaction.

10 As described in the previous section, customers may stream DISH TV from a web  
11 browser or mobile app through the DISH Anywhere service. The DISH Anywhere  
12 privacy policy states that location information is “automatically collected and associated  
13 with your account” and that DISH may use customer location information “to deliver  
14 targeted or other customized advertising, offers and other services” and “as otherwise  
15 deemed necessary by us...for any other legitimate business purposes.” The policy goes  
16 on to say that third parties “may have access to the information we collect about you,  
17 may be allowed by us to collect information about you, and may receive information  
18 about you authorized to be shared with them by us.”<sup>20</sup>

19 As described in the previous section, DISH Anywhere does not provide customers  
20 the ability to directly opt-out of the third-party data collection and ad targeting that the  
21 company employs, but instead directs customers to investigate the privacy policies of  
22 some of its business partners, including: Nielsen, ComScore, FreeWheel, Tremor, and

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<sup>18</sup> Supplemental Declaration of Kristina Donnelly of The Public Advocates Office. April 26, 2019.

<sup>19</sup> DISH Network provided the Public Advocates office with a document indicating that it collects  
[BEGIN CONFIDENTIAL] [REDACTED] [END  
CONFIDENTIAL]. Moreover, visitors to dish.com are asked automatically whether to allow DISH to  
access their location. See: Exhibit 6: DISH Supplemental Response to Public Advocates Office DR 001,  
Attachment “DR 001 - Supp Third Party Information Security and Data Privacy Questionnaire  
v20191024.pdf”, pg. 3; and Exhibit 7: dish.com Homepage - Screenshot.

<sup>20</sup> Exhibit 3: DISH Anywhere Privacy Policy.

1 other advertising-related services, technology platforms, networks, and other solutions.  
2 Because DISH Anywhere’s policy states that companies like FreeWheel and Tremor are  
3 merely two examples of the *kinds* of businesses that enable the company to “manage and  
4 monetize online video advertising,” customers wishing to opt out would not have  
5 sufficient information to do so. Therefore, it is not possible for a customer to determine  
6 all third-party companies that use their location information collected from them when  
7 using the DISH Anywhere service to access the DISH TV Network. These customers  
8 would thus not be able to inspect the privacy policies of all its advertising-related  
9 business partners, let alone opt out.

### 10 **III. CONCLUSION**

11 DISH has not demonstrated that it is prepared to become a wireless service  
12 provider with adequate policies and practices that enable customers to ensure the privacy  
13 of their children and their location information. The privacy policies it currently has in  
14 place do not allow customers to exercise meaningful control over how their data are  
15 collected and used. Transparency about data collection and use is particularly important  
16 when it comes to location information and the data generated by children. The nine  
17 million customers DISH will inherit from Sprint as a result of this merger should receive  
18 as much, if not more, protection and control over their privacy; DISH has failed to  
19 demonstrate that this will be the case.

**ATTACHMENT A**  
**QUALIFICATION OF WITNESS**

1                                   **PREPARED TESTIMONY AND QUALIFICATIONS**  
2   **OF**  
3   **KRISTINA DONNELLY**

4  
5   Q1: Please state your name and business address.  
6

7   A1: My name is Kristina Donnelly. My business address is 505 Van Ness  
8       Avenue, San Francisco, California, 94102.  
9

10   Q2: By whom are you employed and in what capacity?  
11

12   A2: I am a Public Utility Regulatory Analyst with the California Public Utilities  
13       Commission (“CPUC”) in the Communications and Water Policy Branch  
14       of the Public Advocates Office.  
15

16   Q3: Briefly state your educational background and experience.  
17

18   A3: I received a Bachelor of Science Degree in Mathematics from American  
19       University in Washington, D.C. in 2005 and a Master of Science degree in  
20       Natural Resources and Environmental Management from the University of  
21       Michigan in Ann Arbor in 2008.  
22

23       I joined the Public Advocates Office in March 2018, where I work to  
24       advance the organization’s mission and advocate on behalf of public utility  
25       customers. In my time with the Public Advocates Office, I have performed  
26       extensive research and analysis on a wide array of communications issues  
27       to inform decision-making and policy positions. I have also authored and/or  
28       contributed analysis to numerous Public Advocates Office comments,  
29       reports and filings on communications issues related to customer privacy  
30       (P.18-03-014), affordability of utility services(R.18-07-006), and the  
31       California Advanced Services Fund (CASF) (R.12-10-012). Prior to my  
32       time with the Public Advocates Office, I was a researcher with a variety of  
33       non-profit organizations, where I conducted water and energy policy  
34       research and analysis.  
35

36   Q4: Does this complete your testimony at this time?  
37

38   A4: Yes, it does.