

Docket:	<u>A.18-07-011 and A.18-07-012</u>
Exhibit Number:	
Commissioner:	<u>Cal Advocates-</u>
Admin. Law Judge:	<u>C. Rechtschaffen</u>
Cal Advocates Project Manager:	<u>K. J. Bemesderfer</u>
Cal Advocates Legal Counsel:	<u>Shelly Lyser</u>
	<u>Michelle Schafer</u>



**Public Advocates Office**  
**California Public Utilities Commission**

**Reply Testimony**  
**for the Proposed Transfer**  
**of Control of Sprint to T-Mobile**

San Francisco, California  
November 22, 2019

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1 **EXECUTIVE SUMMARY**

2 **I. BACKGROUND**

3 On July 13, 2018, Sprint Spectrum L.P. and Virgin Mobile USA, L.P. (Virgin  
4 Mobile) (collectively Sprint Wireless), Sprint Communications Company L.P. (Sprint  
5 Wireline), and T-Mobile USA, Inc. (T-Mobile USA) (collectively, the Applicants) filed  
6 Applications (A.)18-07-011 and A.18-07-012 (Proposed Merger or Proposed  
7 Transaction). The assigned Administrative Law Judge (ALJ) issued an Amended  
8 Assigned Commissioner’s Scoping Memo and Ruling (Scoping Memo) on October 4,  
9 2018, which stated: “[t]he fundamental issue presented by these applications is whether  
10 the proposed merger of two of the four largest national wireless service providers is in the  
11 public interest of the residents of California”<sup>1</sup> and outlined several topics that would  
12 inform this public interest determination. After testimony was filed and hearings were  
13 held, the Applicants filed for Notice of new agreements and commitments between DISH  
14 Networks (DISH) and the Applicants under a settlement with the United States  
15 Department of Justice (US DOJ).

16 On October 24, 2019, the ALJ issued an Amended Scoping Ruling (Amended  
17 Scoping Memo) to acknowledge that the new agreements “significantly altered the  
18 original proposed transaction.”<sup>2</sup> To determine the impact of these new transactions with  
19 DISH, the Amended Scoping Memo expanded the scope of this proceeding to include  
20 eight additional questions, listed in Table 1 below, that expand the topics identified in the  
21 original Scoping Memo. To inform the Commission’s review of the impact to the public  
22 interest of California customers of the newly proposed transaction with DISH, the Public  
23 Advocates Office provides the attached Reply Testimony and identifies new disputed  
24 facts that would be appropriate for Evidentiary Hearings. This Executive Summary  
25 provides an overview of all analysis and recommendations.

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<sup>1</sup> Amended Assigned Commissioner’s Scoping Memo and Ruling, issued Oct. 4, 2018, at 2 [hereinafter Scoping Memo].

<sup>2</sup> Scoping Memo at 2.

1 **II. DISCUSSION**

2 **A. The deal with DISH would have significant, negative**  
3 **impacts on Californians beyond the harms of the**  
4 **originally proposed transaction.**

5 The transfer of T-Mobile and Sprint’s customers and assets to DISH is highly  
6 likely to increase the harms of the previously Proposed Merger on customer choice and  
7 service quality. It also presents a substantial risk of increased harm to low income  
8 customers and customer data privacy.

9 The Applicants agreed to transfer nine million prepaid customers to DISH,  
10 including customers under Sprint’s Boost Mobile brand, which is currently participating  
11 in the Commission’s LifeLine pilot program. However, DISH has not stated that it  
12 intends to participate in the Boost LifeLine pilot, let alone the full California LifeLine  
13 program, despite theoretically acquiring the Boost customers currently enrolled in the  
14 Boost LifeLine Pilot. While some Applicant witnesses make vague statements about the  
15 potential to continue this pilot under a New T-Mobile brand, the lack of clarity regarding  
16 who will serve these customers and whether they will continue participating in the Boost  
17 LifeLine Pilot is cause for concern.<sup>3</sup> These responses by DISH and T-Mobile contrast  
18 with Sprint’s record of strong support for California LifeLine.

19 Additionally, DISH has provided no information on the rate plans it will offer its  
20 nine million acquired prepaid customers and will not be bound by T-Mobile’s  
21 commitments regarding prices. The record contains no indications from DISH regarding  
22 whether the Proposed Merger will increase prices for these customers.<sup>4</sup> This calls into  
23 question whether the merger is in the public interest for those customers being  
24 transferred, as well as remaining wireless customers, who would be dependent upon  
25 DISH to fill Sprint and T-Mobile’s competitive roles as pricing “mavericks.”<sup>5</sup>

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<sup>3</sup> See Testimony of Eileen Odell at 8-13.

<sup>4</sup> See Testimony of Eileen Odell at 8-10.

<sup>5</sup> See Reply Testimony of Eileen Odell at 9-10. See also Reply Testimony of Dr. Lee Selwyn.

1           The Applicants also have given DISH the option of purchasing nearly 14 MHz of  
2 800 MHz spectrum and some decommissioned cell towers. These potential transfers  
3 create harms on several fronts. First, the 800 MHz spectrum was originally intended to  
4 support existing 4G LTE customers as other spectrum was utilized to the build the new  
5 5G network.<sup>6</sup> Without this spectrum, service quality is likely to decline for the large  
6 number of 4G LTE customers on the Applicants' new network.<sup>7</sup>

7           The transfer of cell towers to DISH raises concerns about public safety and  
8 network coverage.<sup>8</sup> The sparse coverage of these cell towers would mean DISH would  
9 face difficulty creating viable emergency response procedures or possessing enough  
10 backup power resources to support damaged towers, assuming they are able to become a  
11 fourth facilities-based carrier.<sup>9</sup> Customers on this newly created DISH network would  
12 also experience worse coverage and lower service quality.<sup>10</sup> This could cause permanent  
13 harm to California customers since once transfer of these assets is complete, customers  
14 could permanently lose the benefits of these assets if DISH mismanages or underutilizes  
15 them. DISH also appears to be dependent on T-Mobile to transfer its new customers onto  
16 compatible handsets, which could create a loss of service during an unspecified transition  
17 period.<sup>11</sup>

18           The newly proposed agreement with DISH additionally raises questions about the  
19 ability of DISH to protect the privacy of customer data, particularly the data collected  
20 from children. The Public Advocates Office's analysis reveals that DISH lacks a plan to  
21 handle the data from new wireless telephone customers, and its policies toward data

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<sup>6</sup> See Reply Testimony of Cameron Reed at 6-9.

<sup>7</sup> See Reply Testimony of Cameron Reed at 7-9.

<sup>8</sup> See Reply Testimony of Cameron Reed at 9-22.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Reply Testimony of Cameron Reed at 22.

1 collection from children allows for collection of this data but does not afford it extra  
2 protections.<sup>12</sup>

3 **B. The Deal With Dish Does Not Remedy The Competitive**  
4 **Harms Of The Merger.**

5 As outlined in detail in the Reply Testimony of Dr. Lee Selwyn, the newly  
6 proposed transfers to DISH under the US DOJ’s Proposed Final Judgement do not  
7 alleviate the harms likely to result from the Proposed Merger. The US DOJ  
8 acknowledged the significant and likely harms in its Complaint against the Proposed  
9 Merger, where it noted: “the merger likely would make it easier for the three remaining  
10 national facilities-based mobile wireless carriers to coordinate their pricing, promotions,  
11 and service offerings. The result would be increased prices and less attractive service  
12 offerings for American consumers, who collectively would pay billions of dollars more  
13 each year for mobile wireless service.”<sup>13</sup> However, as outlined in section A above, the  
14 DISH agreements are not only inadequate remedies but make the Proposed Merger  
15 worse. The inability of DISH to serve as a viable fourth national wireless competitor is  
16 outlined further in the Reply Testimony of Dr. Selwyn.

17 **C. The Public Advocates Office Outlines The Harms Of The**  
18 **Newly Proposed Agreement With Dish In Its Responses**  
19 **To The Amended Scoping Memo Questions.**

20 The Public Advocates Office and its consultant Dr. Lee Selwyn respond to claims  
21 by the Applicants and DISH that the newly proposed agreements will not impact the  
22 original transaction between T-Mobile and Sprint. In Table 1, we identify which witness  
23 responds to each new scoping question.

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<sup>12</sup> Reply Testimony of Kristina Donnelly at 5-9.

<sup>13</sup> Complaint by the US DOJ and five state Attorneys General, as quoted in the Reply Testimony of Lee Selwyn at 5.

1 **Table 1: Amended Scoping Memo Questions and Public Advocates Office Witness**

	<b>Question<sup>14</sup></b>	<b>Staff/Consultant Testimony, Location of Analysis</b>
1	What changes are required to previously submitted written or oral witness testimony resulting from Sprint, T-Mobile or Dish Network entering into the DOJ and FCC Commitments? The changes must be identified in new testimony from the same witness who submitted the original testimony.	Reply Testimony of Lee Selwyn, Reply Testimony of Cameron Reed
2	What changes are required to the terms of the Memorandum of Understanding between T-Mobile and CETF resulting from Sprint, T-Mobile or Dish Network entering into the DOJ and FCC Commitments?	Reply Testimony of Eileen Odell, Reply Testimony of Cameron Reed
3	What are Dish Network’s California service obligations?	Reply Testimony of Lee Selwyn, Reply Testimony of Cameron Reed
4	How does the proposed transfer of spectrum to Dish Network impact the quality and extent of New T-Mobile’s existing 4G network and its planned 5G network?	Reply Testimony of Lee Selwyn, Reply Testimony of Cameron Reed
5	How does the divestiture of Sprint, Boost and Virgin pre-paid businesses impact California customers who are currently receiving services from one or another of these providers?	Reply Testimony of Eileen Odell, Reply Testimony of Lee Selwyn, Reply Testimony of Kristina Donnelly
6	How does the requirement that New T-Mobile make its network available to Dish Network for up to seven years impact the quality and extent of New T-Mobile’s existing 4G network and its planned 5G network?	Reply Testimony of Cameron Reed, Reply Testimony of Lee Selwyn
7	In what other ways, if any, could the DOJ and FCC commitments change the benefits that applicants have claimed California customers will receive from the proposed transaction?	Reply Testimony of Lee Selwyn, Reply Testimony of Cameron Reed
8	With reference to the Network and In-Home commitments set forth for New T-Mobile’s Nationwide 5G Network Deployment at pages 1-3 of Attachment 1, provide all of the same information in the same format as contained in Sections I, II and III of Attachment 1, specifying the commitments for deployment in California rather than nationwide.	N/A

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<sup>14</sup> Amended Scoping Memo at 3-4.

1           The Amended Scoping Memo includes topics identified in the original Scoping  
2 Memo, which covers the issue of customer data privacy. The Reply Testimony of  
3 Kristina Donnelly addresses the privacy impacts on customers that will be transferred to  
4 DISH as a result of the proposed divestiture.

5           **D.     There Are Multiple Disputed Facts That Warrant**  
6           **Evidentiary Hearings.**

7           The Public Advocates Office disputes the claims presented by DISH and the  
8 Applicants in their Supplemental Testimony. These disputed facts should be addressed in  
9 additional Evidentiary Hearings. The disputed facts include the following:

- 10           1. Whether the newly proposed agreement with DISH will substantially  
11           alleviate the competitive harms of the Proposed Merger;
- 12           2. Whether the optional transfer of 800 MHz spectrum to DISH  
13           agreements will negatively impact service quality for customers in  
14           California;
- 15           3. Whether the newly proposed pricing commitment that allows New T-  
16           Mobile to retire lower-cost legacy plans at its discretion sufficiently  
17           protects consumers from the competitive harms of the merger;
- 18           4. Whether the Boost Pilot Program customers will be transferred to DISH  
19           or retained by New T-Mobile and whether the Commission’s Boost  
20           Pilot Program will continue;
- 21           5. Whether the newly proposed agreement with DISH will have a negative  
22           impacts on customer protections, including privacy of customer data.
- 23           6. Whether DISH can become a viable fourth-largest facilities-based  
24           wireless carrier in a reasonable time period.

25           **III.   CONCLUSION**

26           As outlined in the Reply Testimony of Public Advocates Office witnesses, the  
27 Proposed Merger will significantly harm the public interest of California customers and  
28 the newly proposed agreement with DISH will exacerbate these harms. The Public  
29 Advocates Office requests Evidentiary Hearing in this proceeding to cross-examine the  
30 Applicants and DISH witnesses regarding their claims that the Proposed Merger and  
31 newly proposed agreement with DISH will create any benefits for California consumers.



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



1 A4: For this proceeding, I was the oversight Supervisor responsible for  
2 overseeing the analysis and testimony produced by the policy analysts,  
3 engineer, and expert consultant.  
4

5 Q5: Does this complete your testimony at this time?  
6

7 A5: Yes, it does.