

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Sprint
Communications Company, L.P. (U-5112-C)

and

T-Mobile USA, Inc. a Delaware Corporation,

For Approval of Transfer of Control of Sprint
Communications Company L.P. Pursuant to California
Public Utilities Code Section 854(a)

Application No. A.18-07-011

(Filed July 7, 2018)

**PROTEST OF THE JOINT CONSUMERS TO JOINT APPLICATION FOR
APPROVAL OF TRANSFER OF CONTROL OF SPRINT COMMUNICATIONS
COMPANY L.P. (U-5112-C) PURSUANT TO PUBLIC UTILITIES CODE SECTION
854(A)**

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTIFIED ISSUES 2

 A. STANDARD OF REVIEW 2

 1. The Commission has Broad Authority to Review Requests for Approval of a Transfer of Control Pursuant to Section 854..... 2

 2. The Commission is Compelled to Review the Entire Transaction, Including Impacts to Wireless Markets and Customers and Can Impose Further Conditions 4

 a. The Commission Can and Should Consolidate the Related Applications for A Thorough Public Interest Review 4

 b. The Commission’s 1995 CMRS Decision Requires the Commission to Ensure the Wireless Transaction is in the Public Interest..... 6

 B. APPLICANTS BEAR THE BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST..... 8

 C. APPLICANTS HAVE NOT MET THEIR BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST. 9

 1. Applicants have Not Demonstrated that The Wireline Transaction Serves the Public Interest..... 9

 2. Applicants have not Provided Sufficient Evidence of the Wireless Transaction’s Effects on Competition in California..... 10

 a. Applicants Have Failed to Define a Relevant Market or Markets..... 10

 b. Applicants Have Failed to Provide Sufficient California-Specific Data. 11

 c. Applicants have not Provided Sufficient Evidence of the Transaction’s Effects on “Value Conscious” Customers..... 12

 d. Applicants have not Provided Sufficient Evidence of the Transaction’s Effects on Communities of Color..... 14

 e. Applicants have not Provided Sufficient Evidence of the Transactions’ Effects on Rural Communities. 15

 3. The Proposed Transaction Poses a Risk of Additional Public Interest Harms. 17

 a. Applicants’ Representation that Customers Will Not Be Affected is Illusory. 17

 b. Applicants have not Provided Sufficient Evidence of the Transaction’s Effects on the Availability of LifeLine to Low-Income Consumers. 18

 c. The Proposed Transaction Promises to Harm Diversity and Inclusion Unless the Commission Requires Additional Commitments. 20

 d. Applicants Must Provide Assurances that the Transaction will not Impact Public Safety and Emergency Communications 21

 e. The Purported Benefits of the Proposed Transaction are Not Merger-Specific. .. 23

 D. IF THE COMMISSION DOES APPROVE THE PROPOSED TRANSACTION, IT SHOULD IMPOSE MITIGATION MEASURES TO PROTECT THE PUBLIC INTEREST..... 23

III. PROCEDURAL ISSUES 25

 A. Comments Regarding the Applicants’ Statement on the Proposed Category..... 25

 B. Need for Hearing..... 25

 C. Issues to be Considered..... 25

 D. Proposed Schedule 27

IV. CONCLUSION..... 28

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“the Commission”) Rules of Practice and Procedure, The Greenlining Institute (Greenlining) and The Utility Reform Network (TURN) (collectively, Joint Consumers), protest the above-captioned Joint Application of Sprint Communications Company, L.P. (U-5112-C) Pursuant to Public Utilities Code Section 854(a).¹ The application was filed on July 7, 2018, and first appeared on the Commission’s Daily Calendar on July 12, 2018. Pursuant to Rule 2.6(a), this protest is timely filed.

¹ Hereafter, “Wireline Application.”

II. IDENTIFIED ISSUES

Joint Consumers are currently reviewing the Joint Applications. This protest and the identified issues discussed below are based on an initial and limited review of the filings in A.18-07-011 and A.18-07-012. Joint Consumers may identify and develop other issues as further discovery and analysis is completed. In conducting a public interest evaluation of the proposed transfers, the Commission should specifically ensure that communities of color and other low income and vulnerable California communities receive the benefits of the transaction. This may require that the Commission craft targeted mitigation measures to prevent adverse consequences that would specifically affect these communities.

A. STANDARD OF REVIEW

1. The Commission has Broad Authority to Review Requests for Approval of a Transfer of Control Pursuant to Section 854

Under Public Utilities Code section 854(a), acquisitions of public utilities must be approved by the Commission.² “The Commission has broad discretion to determine if it is in the public interest to authorize a proposed transaction pursuant to Public Utilities Code section 854, subdivision (a).”³ In addition, “where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.”⁴ Joint Applicants acknowledge in its Wireline Application that the “primary question” for the Commission’s review of the transaction is whether the transaction is in the public interest and that the

² *Decision Granting Conditional Approval of the Acquisition of PacificCorp by MidAmerican Energy Holdings Company*, D.06-02-003, p. 23 (Feb. 16, 2006).

³ *Id.*

⁴ In re Joint Application of Citizens and GTE to Sell and Transfer Assets, Decision No. 01-06-007, 2001 Cal. PUC LEXIS 390, *15.

Commission “may consider a broad range of criteria” when determining whether a transaction is in the public interest pursuant to Section 854.⁵

Within the scope of the Commission’s discretion to review these transactions, however, the Commission has a statutory mandate to consider specific criteria as part of its public interest analysis where the parties to the transaction meet certain revenue thresholds.⁶ Moreover, the Commission has found that under the public interest analysis pursuant to § 854(a), “it is reasonable for the Commission to assess the public interest factors enumerated in § 854(c) and undertake an analysis of antitrust and environmental considerations [under §854(b)].”⁷ Indeed, the Commission consistently finds that the public interest criteria set forth in Section 854 (b) and (c) serve as a useful framework for a general public interest analysis under Section 854 (a), regardless of the complicated corporate structures and strategic financial reporting that often allows many of these transactions to fall outside of the threshold for strict application of these criteria, as Applicants claim here.⁸

⁵ Wireline Application at p. 12; *See also*, discussion in the Wireless Application of the “host of compelling benefits to consumers in California” summarizing the benefits pursuant to the criteria in Section 854, pp. 13-26.

⁶ Pub. Util Code §854 (b) and (c).

⁷ *In the Matter of the Joint Application of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI) to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI*, D.05-11-029, Conclusion of Law 8 (November 18, 2005).

⁸ Wireline Application at p. 12; Wireless Application at p. 1, note 1. *See, for example*, Interim Opinion Approving, with Conditions, Transfer of Indirect Control and Authorizing, With Conditions, Exemption from Public Utilities Code Section 852 For Some Investors in Knight Holdco, D.07-05-061, (A.06-09-016, et al., filed, September 18, 2006), p. 24; Decision Granting Conditional Approval of the Acquisition of PacificCorp by MidAmerican Energy Holdings Company, D.06-02-033, p. 23 (Feb. 16, 2006); Northern California Power Agency v. Public Utilities Commission (1971) 5 Cal.3d 370, 377 (“antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.”); *In the Matter of Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction* D.10-10-017, p. 15 (October 15, 2010); Charter/TimeWarner D.16-05-007, p. 20, COLs 2, 3; *In re Joint Application of Citizens and GTE to Sell and Transfer Assets*, Decision No. 01-06-007, 2001 Cal. PUC LEXIS 390, *22.

Joint Consumers urge the Commission to conduct a detailed analysis of the entire transaction, including both wireless and wireline entities. Although Joint Applicants attempt to argue that two of the biggest facilities-based, national wireless carriers consisting of billions of dollars of wireline and wireless assets and millions of impacted California customers, do not meet the intrastate revenue thresholds or are not otherwise required to submit to a public interest review,⁹ the Commission should use the Section 854 (b) and (c) criteria to determine if the transaction is adverse to the public interest or might require certain conditions to “protect and promote the public interest.”¹⁰ Therefore, as discussed below, Applicants must provide further data, information and descriptions of the California-specific benefits and impacts of the merger before the Commission can find that the Applicants have met their burden pursuant to Section 854(a).

2. The Commission is Compelled to Review the Entire Transaction, Including Impacts to Wireless Markets and Customers and Can Impose Further Conditions
 - a. The Commission Can and Should Consolidate the Related Applications for A Thorough Public Interest Review

The Joint Applicants attempt to bifurcate the Commission’s review of its transfer of control transaction into two separate applications. One application (A.18-07-011) requests approval pursuant to Section 854 of the transfer of control of Sprint Communications Company to T-Mobile USA (not to be confused with T-Mobile US, the parent company.) Sprint Communications Company is a wireline competitive local exchange company and nondominant local interexchange carrier with a long-standing record of service in California. The second application (A.18-07-012), which the Joint Applicants craft as a “Notification” pursuant to

⁹ Wireline Application at p. 12-14; Wireless Application at p.1, note 1.

¹⁰ In re Joint Application of Citizens and GTE to Sell and Transfer Assets, Decision No. 01-06-007, 2001 Cal. PUC LEXIS 390, *15.

Commission Decision 95-10-032, describes the transfer of control of the Sprint Wireless Entities to the same T-Mobile entity, T-Mobile USA. Both of these applications, however, make it clear that there is essentially a single “parent level only” transaction involving both the wireline and wireless assets of each company.¹¹

Joint Consumers acknowledge the Joint Applicants’ good faith effort to be transparent and gain regulatory certainty through the submission of their request for review of the wireless transaction. However, it is unclear exactly what the Joint Applicants are requesting the Commission do by filing the Wireless Application as a “notification” but under the guise of an application. Joint Consumers respectfully request that the Commission reject this separate application/notification and, instead, consolidate the Wireless Application with the concurrently filed application for approval regarding the wireline transaction.

Although the Wireline Application attempts to head off any argument for consolidation by claiming the discussion of wireless-related public benefits in the Wireline Application is for “informational purposes” only,¹² Joint Consumers note that the discussions of benefits and synergies put forth by the Joint Applicants in the two applications are inevitably and inextricably linked between the wireline and wireless transactions and the wireless transaction dwarfs any wireline-specific synergies or benefits.¹³ Indeed, the Wireline Application’s demonstration of affirmative benefits and synergies specifically for the customers of the wireline entity is

¹¹ Wireline Application at p. 3 and Wireless Application at p. 10. Joint Consumers note that Joint Applicants have asked the FCC to consider the transfer of Sprint’s wireless and wireline assets to T-Mobile as a single transaction. FCC Application at pp. 3-8.

¹² Wireline Application at p. 15, note 37.

¹³ Wireline Application at p. 9, notes that Sprint does not separate financial reporting for its wireline entities making confirmation of separate wireline benefits all but impossible. The Wireline Application at p. 3, 15-15, also notes that the \$40 billion in synergies from the merger will be invested to accelerate and deliver a superior 5G network and relies on the combined company to “unlock synergies” to build a robust 5G network and disrupt the wireless industry.

practically limited to a page and half where the Application notes that T-Mobile does not provide wireline services in competition with Sprint and that “the transfer will increase the managerial, technical and financial resources available to Sprint Wireline.”¹⁴ In contrast the benefits of the wireless transaction go on for almost 18 pages.¹⁵

To ensure a meaningful review of the issues, craft a clear scope to the proceeding, develop an adequate record, and conserve Commission resources, the Commission may consolidate proceedings involving related questions of law or fact.¹⁶ The Wireless Application explicitly notes that the transfer “is part of a broader transaction which also involves the transfer of control of Sprint’s certificated wireline company” and that ultimately both the Sprint wireline and wireless affiliates will become wholly owned subsidiaries of T-Mobile USA. The Commission must look at this transaction holistically or risk relying on an incomplete and inadequate analysis of the potential impacts from this transaction to approve the transfer of control transaction.

b. The Commission’s 1995 CMRS Decision Requires the Commission to Ensure the Wireless Transaction is in the Public Interest

Applicants crafted their request for review of the wireless transaction around the Commission’s 1995 decision that requires wireless entities to notify the Commission of their intent to enter into transactions for transfer of ownership involving CMRS carriers.¹⁷ While the Commission found that there was a nascent cellular market in 1995 and consumers did not yet depend on wireless services to carry out almost every aspect of their day to day lives, the 1995

¹⁴ Wireline Application at p. 14-15.

¹⁵ *Id.* at pp. 13-31.

¹⁶ Cal. Pub. Util. Code §1711 (requiring the Commission to broadly “seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding” prior to issuing a scoping memo).

¹⁷ Wireless Application at p. 1 note 1 (see D.95-10-032, COL 15, 16, 18).

Decision does not limit the Commission’s authority as the Joint Applicants suggest nor does it take a *laissez faire* approach toward wireless transfer transactions.¹⁸ Instead, the Decision finds that the Commission is not preempted by federal law to review the transfer of control applications involving wireless entities in California and reaffirms the discretion and authority to review wireless mergers and to impose conditions where “necessary in the public interest”.¹⁹ While reserving its authority generally, the Commission uses its discretionary authority under Section 854 (b) to “forebear” from strict merger review requirements as a matter of public policy because it believed that a “standing” merger review obligation could disrupt the development of competition in the cellular industry and was not “necessary” in the public interest at that time.²⁰

Therefore, over twenty years later and with the exponential growth in the importance of wireless services to residential customers, D.95-10-032 does not and should not serve as a barrier to a full review of the wireless transaction by the Commission. Instead, the Commission’s statutory mandate pursuant to Section 854 and its reserved authority under D.95-10-032 require that the Commission consolidate the Wireline and Wireless Applications and conduct a review with sufficient analysis and data to understand the synergies and impacts of this transaction and ensure that the transaction is in the public interest.

Taking up a review and analysis of the Wireless Application is required pursuant to the Commission’s exercise of its clear and broad authority to protect California wireless customers.²¹

¹⁸ D.95-10-032, p. 15-16.

¹⁹ D.95-10-032, reaffirmed in I.11-06-009 (AT&T/T-Mobile).

²⁰ D.95-10-032, p. 16-18.

²¹ D.89-07-019 (32 CPUC2d 271, 281) (“Finally, we reiterate that our primary focus in the regulation of the cellular industry is the provision of good service, reasonable rates, and customer convenience.”) *See also*, D.01-07-030 (R.00-02-004), (Wireless generally subject to consumer protection statutory provisions and finding wireless customers should be protected from unauthorized charges on their bills); D.06-03-013(R.00-02-004) (acknowledging authority to impose consumer protection principles on wireless carriers); D.10-10-034 (cramming regulations); D.08-10-016 (R.07-01-021, protections for Limited English Proficiency consumers); D. 16-08-021 (R.11-12-001) (G.O. 133-D requiring wireless to report

Wireless carriers are “telephone corporations” and therefore public utilities under Public Utilities Code Sections 216, 233 and 234. The operating entities at issue here- Sprint Wireless Entities (including Sprint Spectrum L.P. and Virgin Mobile USA, L.P.) and T-Mobile West, LLC- hold Wireless Registration numbers and some are Eligible Telecommunications Carriers approved by the Commission.²² The potential impact of this transaction on millions of California customers makes it imperative that the Commission move forward with a consolidated application and conduct a detailed review using the public interest criteria under Sections 854 (b) and (c) as a framework. As discussed below, the Joint Applicants do not adequately demonstrate that the transaction is in the public interest and the Applications should thus be subject to further review and analysis.

B. APPLICANTS BEAR THE BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

In an application for approval of a transfer of control transaction, the applicants bear the burden of proof that the transaction meets the required statutory requirements discussed above.²³ When evaluating a proposed transaction under § 854(a), “[t]ypically the Commission has required an applicant to show that a proposed transfer is ‘not adverse to the public interest’ though occasionally the Commission has articulated the standard as requiring a showing that the transfer is ‘in the public interest.’”²⁴ Under § 854, subdivisions (a), (b), and (c), if the

major service outages and acknowledging jurisdiction to do so); and I.11-06-009 (authority to review AT&T/T-Mobile merger as a wireless transaction pursuant to D.95-10-032).

²² See, Wireless Application at pp. 6-7, describing the operating entities in California including, T-Mobile West, LLC (U-3056-C) and MetroPCS California, LLC (U-3079-C), Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C). Virgin Mobile is also an approved Eligible Telecommunications Carrier (T-17284). Various corporate affiliates and parent companies of these entities will be directly impacted by this transaction.

²³ *Joint Application of Sierra Pacific Power Company (U903E) and California Pacific Electric Company, LLC for Transfer of Control and Additional Requests Relating to Proposed Transaction*, D.10-10-01, Oct. 14, 2010 at 16.

²⁴ *Id.* at 11.

Commission finds that a proposed transaction is adverse to the public interest, applicants do not meet the burden of proof.

C. APPLICANTS HAVE NOT MET THEIR BURDEN OF PROVING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

1. Applicants have Not Demonstrated that The Wireline Transaction Serves the Public Interest.

The Wireline Application discussion of public interest impacts consists of one and a half pages asserting that Sprint Wireless will have access to additional resources and that there is no risk of competitive harm because T-Mobile does not offer wireline service in California.²⁵ While the Wireline Application makes a rather puzzling reference to the public interest benefits of the wireless merger, it also states that the Commission cannot consider those benefits in reviewing the Wireline Application, thus making the purported benefits moot.²⁶ With such scant information, Joint Consumers can only speculate as to further benefits or other impacts from the wireline transaction. The Wireline Application describes Sprint Wireline as offering services to “a limited number of enterprise and carrier customers” but does not describe those services. For example, the entity could operate middle mile infrastructure, a common wholesale telecommunications service. T-Mobile, the third largest wireless carrier in California is likely to be a large purchaser of middle mile services in California for its backhaul of voice and data traffic. Any new ownership interest in a middle mile provider by T-Mobile will have clear and concrete impacts on Sprint itself as well as other middle mile providers in T-Mobile and Sprint service territories. The Application should further explain how that ownership affects the public interest of the proposed transactions. Applicants have not provided sufficient information for the Commission to determine how the merger of the wireless entities will benefit the combined

²⁵ Wireline Application at p. 14.

²⁶ *Id.* at p. 15, note 37.

company's wireline business and customers. Accordingly, Joint Consumers respectfully request that the Commission's review include a thorough investigation of the wireline transaction.

2. Applicants have not Provided Sufficient Evidence of the Wireless Transaction's Effects on Competition in California.

The Wireless Application makes unsupported claims about the competitive effects of the proposed transaction. Not only have the Applicants failed to identify the relevant market or markets affected by the merger in California, they have also failed to provide data regarding California-specific merger effects or sufficient evidence of the transaction's effects on "value conscious" customers or communities of color and other vulnerable population groups as specific market segments.

a. Applicants Have Failed to Define a Relevant Market or Markets.

At the outset, it is difficult to evaluate the Applicants' claims about competitive effects because the Wireless Application fails to define the relevant market or markets, a step which is "always necessary at some point in [merger] analysis."²⁷ Applicants refer to their application at the Federal Communications Commission (FCC) that proposes a market definition based on prior FCC proceedings.²⁸ However, the proposed market definition for the federal application is not directly applicable to the state level review because while the FCC considers mobile and fixed services as substitutes,²⁹ the Commission has determined that wireless voice service is only

²⁷ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines 7 (Aug. 19, 2010) *available at* <http://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf> (last accessed August 15, 2018) (hereafter, Horizontal Merger Guidelines). The Wireline Application similarly fails to define a relevant market or markets.

²⁸ Wireless Application at p. 2, note 4, referencing Description of Transaction, Public Interest Statement, and Related Demonstrations, WTB Docket No. 18-197 (filed Jun. 18, 2018), *available at* [https://ecfsapi.fcc.gov/file/10618281006240/Public%20Interest%20Statement%20and%20Appendices%20A-J%20\(Public%20Redacted\)%20.pdf](https://ecfsapi.fcc.gov/file/10618281006240/Public%20Interest%20Statement%20and%20Appendices%20A-J%20(Public%20Redacted)%20.pdf) (last accessed August 14, 2018) ("FCC Application").

²⁹ See FCC Application at pp. 11-12.

a limited substitute for fixed voice service,³⁰ and that mobile data service is **not** a substitute for home broadband service.³¹ As a result, the Commission’s definition of a relevant market or markets may be substantially different than that of the FCC. Accordingly, Joint Consumers respectfully request that the Commission’s review include the determination of the relevant California market or markets.

b. Applicants Have Failed to Provide Sufficient California-Specific Data.

The Wireless Application contains no analysis of state-level data to verify the stated claims of merger benefits or competitive impacts in California. Applicants assert that the proposed transaction will, at a national level, result in increased data speeds³² backed by the flimsy assertion that “[w]hile these figures reflect covered population distributions for the entire United States, they demonstrate a trend that should be reflected at the state level as well.”³³ Applicants further claim that the proposed transaction will generate \$43.6 billion in cost synergies nationally, but state that “[t]here is no California-specific data available.”³⁴ Similarly, Applicants’ claims that the proposed transaction will lead to the opening of 600 or more new stores, nationally, but the locations have not yet been determined,³⁵ and the creation of over 11,000 jobs, which have “not yet been broken down by location or state.”³⁶ Even if Applicants’ claims of millions of dollars in merger synergies for the national combined company are

³⁰ Cal. Pub. Util. Comm’n., Decision analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market, D.16-12-025, 41 (Dec. 1, 2015).

³¹ *Id.* at p. 50.

³² Wireless Application at p. 14.

³³ Wireless Application at p. 17. Applicants have provided information about spectrum aggregation and depth by County. *See* Wireless Application at p. 17, note 41.

³⁴ Wireless Application at p. 23.

³⁵ Wireless Application at p. 24.

³⁶ Wireless Application at p. 25.

accurate, the Commission should not assume that those benefits will trickle down to California consumers who are looking for a simple phone and an affordable voice and data plan or a good job. Joint Consumers urge the Commission to fully investigate whether the proposed transaction will bring real economic benefits to Californians.

c. Applicants have not Provided Sufficient Evidence of the Transaction's Effects on "Value Conscious" Customers.

The Wireless Application makes the rather bold claim that the elimination of Sprint as a competitor will nevertheless promote competition.³⁷ However, when discussing the combined company's position as a competitor, Applicants focus on the combined company's ability to compete with "premium" brands like Verizon and AT&T, as well as cable companies' voice and data plans.³⁸ The Wireless Application is silent as to the combined company's plans to target more value-conscious customers. Joint Consumers are concerned that the proposed transaction would eliminate Sprint and T-Mobile as companies with affordable service offerings and reasonably priced equipment, and, instead, create a "third AT&T/Verizon" that lacks the incentive to serve lower-income or low-margin customers. In fact, the Federal Trade Commission and Department of Justice's Horizontal Merger Guidelines expressly acknowledge that a combined company may have the incentive to eliminate lower-cost offerings in order to drive customers to more expensive (and more profitable) offerings.³⁹ This issue is of particular concern because Sprint's and T-Mobile's customers are far more likely to be low income:

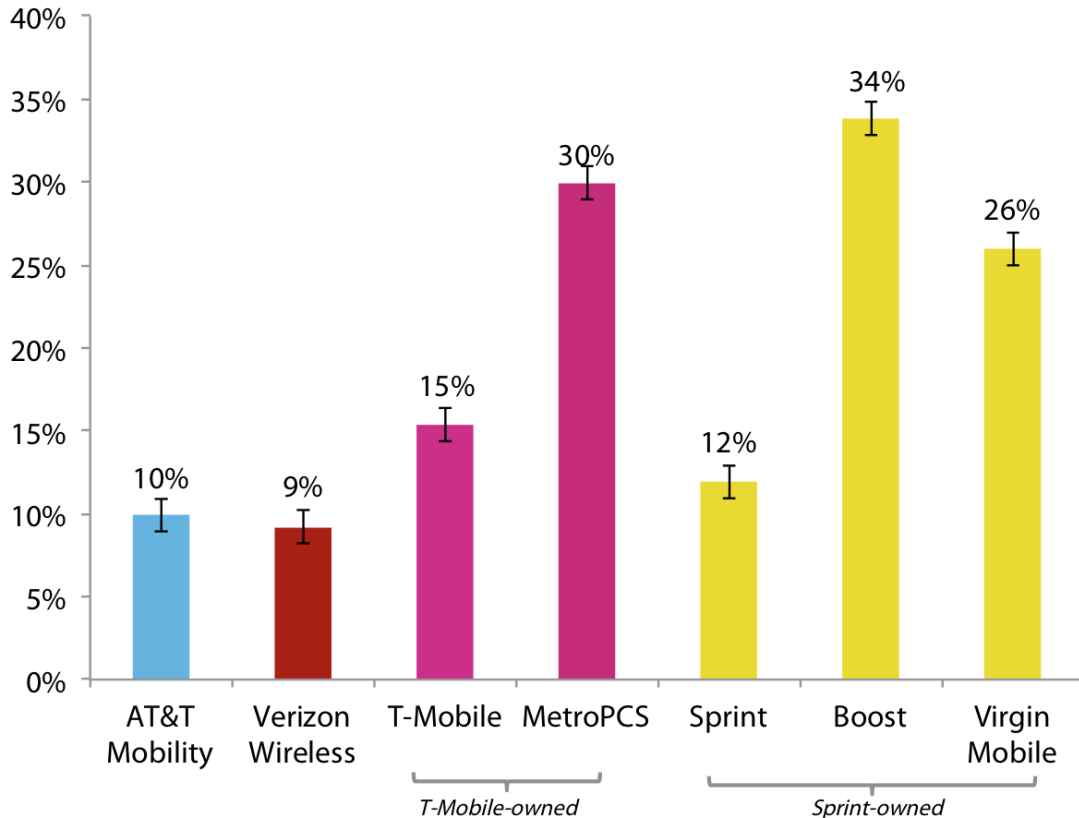
³⁷ Wireless Application at p. 30.

³⁸ Wireless Application at p. 30.

³⁹ Horizontal Merger Guidelines at pp. 22-23.

T-Mobile and Sprint Customers are Disproportionately Lower-Income

Percent of Each Carrier's Customers that Report Annual Income Below \$25,000



Source: S&P Global Market Intelligence MediaCensus survey of 10,000 U.S. internet adults conducted in February 2018. Values for each carrier represent the percent of survey respondents claiming that brand as their carrier who reported their income as less than \$25,000 per year.

It is worth noting that the Joint Applicants' FCC Application contains a lengthy economic analysis claiming that the merger would not increase the risk of coordinated anticompetitive conduct.⁴⁰ However, this economic analysis fails to address the proposed transaction's potential **unilateral** competitive effects. For example, post-merger, the combined company could increase prices for, or eliminate, value conscious service plans that T-Mobile and Sprint currently offer, but that are not available through AT&T and Verizon.⁴¹ Similarly, the merger can decrease innovation in the marketplace because it will eliminate the role of the

⁴⁰ FCC Application, Appendix H, (Joint Declaration of Steven C. Salop and Dr. Yianis Sarafidis).

⁴¹ See Horizontal Merger Guidelines at p. 20. This is particularly true where customers of one of the merging companies consider the other merging company to be their next best choice. *Id.*

“maverick” that pushes the envelope to develop new products and services targeted to the value conscious consumer that could capture substantial revenue from the other companies and pushes those companies to similarly adapt and improvise.⁴²

For low-income families, wireless service is often the only means a family has to make phone calls or access the Internet at home. The Wireless Application does not contain a sufficiently comprehensive analysis of the proposed transaction’s impacts on low-cost services, and low-income communities, in California. Joint Consumers respectfully request that the Commission not approve the proposed transaction without first determining how the proposed transaction will affect the ability of low-income households in California to access affordable phone and broadband services.

d. Applicants have not Provided Sufficient Evidence of the Transaction’s Effects on Communities of Color.

While 14% of white consumers are “smartphone dependent,” i.e. rely on only their smartphone as their means of Internet access, for communities of color that number is much higher: 24% of African-Americans and 36% of Latinx consumers are smartphone dependent.⁴³ The proposed transaction promises to eliminate a competitor in communities of color across California.⁴⁴ The elimination of Sprint in these communities could reduce competitive choice and cause unique harm to those communities through higher prices, poor customer service or service quality and fewer plan choices that meet their needs. Joint Consumers respectfully request that the Commission not approve the proposed transaction without first determining how

⁴² Horizontal Merger Guidelines at p. 23.

⁴³ Pew Research Center, Internet/Broadband Fact Sheet (Feb. 5, 2018), *available at* <http://www.pewinternet.org/fact-sheet/internet-broadband/> (last accessed August 15, 2018).

⁴⁴ *See* Wireless Application, Confidential Exhibit I.

the transaction will affect California's communities of color, and asks that the Commission specifically examine the Los Angeles market.

e. Applicants have not Provided Sufficient Evidence of the Transactions' Effects on Rural Communities.

The Commission's analysis of public interest criteria must determine if the proposed transaction will benefit all California consumers, including those in rural and isolated parts of the state. The Joint Applicants' FCC Application states that the combined company will make a "significant economic investment" in rural America through high quality mobile broadband and fixed wireless services.⁴⁵ While this statement is encouraging, it does not go far enough. The Commission must ensure that the transaction will "maintain or improve" service quality, be beneficial to state and local economies and communities in the companies' service territories, and be in the public interest.⁴⁶ Yet, the Wireless Application only discusses nationwide improvements to services in rural areas and provides statistics that reflect its plans nationwide, and provides no specific commitments to bring improved or expanded services to California's rural communities. While the transaction may allow the New T-Mobile to leverage the acquired Sprint network, cell towers, and spectrum and shift more resources into rural areas, it provides little detail except to make vague promises to "accelerate and expand" its plans to bring "improved" broadband to rural areas and to use its resources to offer services "more commensurate" with those available to urban consumers.⁴⁷

The Wireless Application also fails to discuss the impact of the transaction on roaming agreements, but the FCC Application notes that currently rural Sprint customers are "forced" to

⁴⁵ Wireless Application at p. 23; FCC Application, Appendix C, para. 17

⁴⁶ Section 854(a), (c)(2), (c)(6).

⁴⁷ Wireless Application at p. 24.

rely on roaming services because network coverage is not as uniform in rural areas.⁴⁸ Therefore, this transaction will impact existing roaming agreements and disproportionately impact rural customers. The FCC Application states that the combined company will allow current roaming partners in rural communities to choose the most favorable terms from the *existing* Sprint or T-Mobile roaming agreements seeming to propose merely the status quo and making no promises to use merger synergies to improve the quality, terms, or rates of roaming services that could ultimately benefit rural customers.⁴⁹ The Wireless Application criticizes Sprint's limited capacity in rural areas, but also fails to note that this transaction will eliminate Sprint as a competitor offering roaming services, thus possibly offsetting gains, at least in part, in improved roaming from the transaction.

The Joint Applicants also promise over 600 new stores in “small towns and rural communities,” additional customer service call centers to be located in rural areas, along with 12,000 new jobs for rural Americans. Yet, the specific locations for these stores and customer service centers are undecided, 500 of the 600 stores will be “dealer” stores where the Applicants have no control over the hiring and firing of employees, and, as discussed above, the Application makes no mention of whether a commensurate number of Sprint stores, customer service centers, and employees will be negatively impacted by this transaction. Moreover, there is no way to determine from the Applications which of these promised benefits may come to rural communities in California, whether they would have come to these areas apart from this transaction, and whether the Applicants have done any analysis to ensure the promised benefits will meet the needs of specific rural communities. Joint Consumers urge the Commission to closely review the impact of this transaction on rural communities and to require the Joint

⁴⁸ FCC Application at p. 66.

⁴⁹ *Id.* at p. 69.

Applications to provide specific commitments, details and data to demonstrate network expansion, additional stores, improved roaming and increased jobs directly as a result of this transaction.

3. The Proposed Transaction Poses a Risk of Additional Public Interest Harms.

In addition to concerns about the competitive impacts of the proposed transaction, Joint Consumers have concerns about additional potential public interest harms. Post-transaction, existing customers could face immediate price increases or declines in service quality. The proposed transaction could result in the reduced availability of LifeLine service to low-income households, and could result in less spending on diverse suppliers.

a. Applicants' Representation that Customers Will Not Be Affected is Illusory.

The Wireless Application provides some detail about plans to transition T-Mobile and Sprint customers to the combined network.⁵⁰ However, unlike the vast majority of applications in mergers of this size and scope,⁵¹ the Application contains a glaring omission. The Wireless Application contains no assurances that existing Sprint and T-Mobile customers will be able to keep their existing plans at existing prices. In contrast, the Wireline Application, states that “the

⁵⁰ Wireless Application at pp. 19-20.

⁵¹ Joint Application 32, *In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C) ; Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C)*, A.15-07-009 (filed July 2, 2016); Joint Application 11, *In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C) Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732 C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications*, A.15-03-005 (filed March 18, 2015).

Transaction is transparent to Sprint Wireline’s [enterprise and wholesale] customers as Sprint Wireline will continue to honor its existing contractual obligations,” making the omission of a similar commitment for its residential wireless customers all the more problematic.⁵² There is a substantial risk that immediately after closing, the combined company could increase rates or impose more onerous terms and conditions of service on existing subscribers. Accordingly, the Commission should consider this risk when evaluating the effects of the proposed transaction on the public interest, further investigate the effects of the proposed transaction on existing customers, and consider conditions to mitigate this harm.

- b. Applicants have not Provided Sufficient Evidence of the Transaction’s Effects on the Availability of LifeLine to Low-Income Consumers.

Sprint-owned Virgin Mobile is by far the largest California LifeLine provider, wireline or wireless, through the Assurance brand, providing vital discounted services to hundreds of thousands low income and vulnerable Californians.⁵³ Additionally, Boost Mobile, a subsidiary of Sprint Corporation, has recently proposed a LifeLine pilot project in the Commission’s LifeLine proceeding to target specific low income communities.⁵⁴ T-Mobile, on the other hand, has never been part of the LifeLine program in California and only offers discounted federal Lifeline service in approximately nine other states.⁵⁵ The Wireless Application makes the highly qualified statement that, “Following consummation of the Transaction, New T-Mobile will

⁵² Wireline Application at p. 3.

⁵³ Wireless Application at p. 25; *See*, 2018 Third Party Administrator LifeLine Customer Counts, <http://www.cpuc.ca.gov/General.aspx?id=1100>.

⁵⁴ Boost Mobile, Boost Mobile as a Potential Lifeline Provider In California (2018), available at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-

[Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/Boost%20Mobile.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/Boost%20Mobile.pdf) (last accessed August 14, 2018).

⁵⁵ T-Mobile, LifeLine Program, available at <https://www.t-mobile.com/offers/lifeline-program> (last accessed August 16, 2018). There is some uncertainty regarding the data and how T-Mobile counts the customers from its wholesale services that it sells to current non-facilities based Lifeline providers.

continue the Lifeline services currently provided by Virgin Mobile.” First, this statement limits the Joint Applicants’ commitment in both time (“following the transaction”) and scope (promising to only continue those services currently being provided by Virgin Mobile). But more importantly, it is difficult to corroborate this statement with the move by T-Mobile to eliminate LifeLine plans in seven states in 2017 and public statements by T-Mobile executives last year that the LifeLine program is “uneconomical” and that it plans to eliminate its voluntary participation in state and federal Lifeline programs all together.⁵⁶

The proposed transaction has the potential to reduce competition for Lifeline services, because if the combined company does not offer Lifeline, the transaction could both (1) eliminate Assurance/Boost as a potential entrant⁵⁷ in some markets and (2) eliminate Assurance/Boost as a competitor where it currently operates.⁵⁸ Although the combined company would benefit from the transaction by acquiring more market power, it appears that it will not leverage this benefit to provide affordable service to Lifeline-eligible customers. If the transaction results in a loss to the LifeLine program and less value for LifeLine eligible customers in California, the transaction will not be in the public interest. The Commission should examine the public interest harms that would result from the new company’s withdrawing or failing to offer Lifeline service, especially for the combined company’s low-income, disabled,

⁵⁶ See, “CFO: ‘Non-sustainable’ T-Mobile Lifeline Business to be Phased Out”, Telecompetitor, June 8, 2017, found here <https://www.telecompetitor.com/cfo-non-sustainable-t-mobile-lifeline-business-to-be-phased-out/>; TG-Mobile’s CFO Wants to Get Rid of Lifeline Program, AndroidHeadlines (June 9, 2017) <https://www.androidheadlines.com/2017/06/t-mobiles-cfo-wants-to-get-rid-of-lifeline-program.html>

⁵⁷ *Horizontal Transaction Guidelines*, U.S. DEPARTMENT OF JUSTICE AND THE FEDERAL TRADE COMMISSION, Aug. 19, 2010, available at http://www.ftc.gov/sites/default/files/attachments/transaction-review/100819_hmg.pdf.

⁵⁸ *Id.*

and elderly consumers' ability to have quality and accessible phone service and require the company to expand its participation in the program.

c. The Proposed Transaction Promises to Harm Diversity and Inclusion Unless the Commission Requires Additional Commitments.

Supplier, workforce, management, and ownership diversity are issues of public interest, particularly in a state as diverse as California.⁵⁹ Applicants claim that both T-Mobile and Sprint are “devoted to the concept of creating value through diversity.”⁶⁰ Joint Consumers agree that Sprint has generally demonstrated a commitment to supplier diversity. Greenlining’s 2017 Supplier Diversity Report Card gave Sprint an “A” grade for its 2016 spend with Minority Business Enterprises (MBEs).⁶¹ T-Mobile, however, received a “C-” grade for its 2016 MBE spend.⁶² Joint Applicants argue that T-Mobile has made significant strides in increasing diversity as part of its procurement practices;⁶³ however, Joint Consumers do not view T-Mobile’s progress as sufficient to demonstrate a commitment to supplier diversity. Additionally, Joint Consumers have serious concerns that the transaction will eliminate Sprint, the wireless industry leader in supplier diversity spending, that the Wireless Application does not concretely refute the possibility, and that the combined company will instead perpetuate T-Mobile’s lackluster supplier diversity efforts. Apart from a vague statement that the combined company will “use the best practices from both companies,”⁶⁴ Applicants have made no greater

⁵⁹ See Commission General Order 156.

⁶⁰ Wireless Application at p. 25.

⁶¹ The Greenlining Institute, *Sprint* (2017), available at http://Greenlining.org/wp-content/uploads/2017/09/SDRC-2017-Single-Company-spreads_Sprint.pdf (last accessed August 14, 2018).

⁶² The Greenlining Institute, *T-Mobile* (2017), available at http://Greenlining.org/wp-content/uploads/2017/09/SDRC-2017-Single-Company-spreads_T-Mobile.pdf (last accessed August 14, 2018).

⁶³ Wireless Application at p. 25.

⁶⁴ *Id.* at p. 26.

commitment to substantially improve the new company's efforts to diversify its suppliers or workforce, and overall economic development of our communities beyond T-Mobile's currently lackluster efforts. The Commission has been a national leader in ensuring robust supplier diversity programs in major California's energy, telecommunications, and water companies throughout California. The Commission's transaction assessment should include an investigation of the new company's commitment to diversity.

d. Applicants Must Provide Assurances that the Transaction will not Impact Public Safety and Emergency Communications

As more and more Californians rely on wireless communications for almost every aspect of their daily lives, it is critical that consumers have access to robust and reliable wireless emergency services communications. Wireless emergency communications capabilities, including Enhanced 911 and improved location accuracy, have slowly evolved through a winding and sometimes bumpy path.⁶⁵ However, it is undisputed that the industry and federal regulators have made significant gains in the past several years to improve 911 service quality and capabilities. Given that the Commission has repeatedly emphasized the importance of public safety and robust emergency communications,⁶⁶ and the recent reminders of how devastating emergencies and natural disasters can be, it is surprising that neither the Wireless nor Wireline Application discusses the impact of this transaction on 911 and emergency communications capabilities.

⁶⁵ For a high-level description of the history, see The History of 911: A Timeline (February 12, 2018) <https://www.west.com/blog/safety-services/history-911-timeline/>.

⁶⁶ See, D.16-12-066 (Rural Call Completion regarding 911 capabilities and outages); The Commission has elevated the issue of public safety in recent years including creation of the Office of the Safety Advocate to "advocate, on behalf of the interest of public utility customers, for the continuous and cost-effective improvement of the safety management and safety performance of public utilities." <http://www.cpuc.ca.gov/safetyadvocates/>.

The FCC imposed detailed rules and regulations on wireless providers to support E911 and location accuracy capabilities.⁶⁷ As part of these rules, there is a strict timeline for wireless providers to implement improved location accuracy for E911 calling, including indoor location accuracy.⁶⁸ However, the FCC also gave providers the option of requesting an exemption for narrowly defined geographic areas from compliance with some location accuracy requirements due to technical issues, issues with local emergency services agencies, or characteristics of the area.⁶⁹ Joint Applicants urge the Commission not to approve this transaction until it more fully understands each of the Joint Applicant's experience with implementation of E911 and location accuracy requirements.⁷⁰ If either party or their affiliates are not in full compliance, the Commission should request a timeline and compliance plan. This review and request for information should also request information about areas in California where Sprint or T-Mobile, and their affiliates, have requested an exemption pursuant to the FCC's rules discussed above. Before declaring that this transaction is in the public interest, the Commission must know if both companies are committed, cooperative and currently in compliance with federal 911 rules and, if not, whether the combined company will have the resources to improve emergency communication capabilities in California.

⁶⁷ Wireless E911 Location Accuracy Requirements, Fourth Report and Order, 30 FCC Rcd 1259 (2015); 47 CFR §20.18.

⁶⁸ 47 CFR §20.18(g)-(i)

⁶⁹ See, generally, 47 CFR §20.18 (for example, §20.18(h)(1)(vi) allowing carriers to exclude counties where triangulation is not possible due to line of sight issues.)

⁷⁰ Current reports filed with the FCC by wireless providers are, at best, high level, but seem to suggest both Applicants are on track at this time. Neither report discusses requested exemptions or issues in specific geographic locations. See, T-Mobile's 36 Month Progress Report for Implementing the FCC's Fourth Report and Order on Wireless E911 Location Accuracy Requirements (August 3, 2018).

e. The Purported Benefits of the Proposed Transaction are Not Merger-Specific.

The Commission does not consider the purported benefits of a transaction if those purported benefits are “vague, speculative, or otherwise cannot be verified by reasonable means.”⁷¹ As discussed above, while Applicants claim a number of purported benefits, the Wireless Application does not contain enough information for the Commission to verify those benefits. Accordingly, Joint Consumers respectfully request that the Commission reject those claims unless Applicants shows that these benefits are a verifiable public interest gain from this transaction and offset the potential competitive harms from further consolidation in the market.

Additionally, “When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.”⁷² The Commission should investigate whether Applicants could achieve the purported benefits listed in the Wireless Application with a reasonable option other than the proposed transaction.

D. IF THE COMMISSION DOES APPROVE THE PROPOSED TRANSACTION, IT SHOULD IMPOSE MITIGATION MEASURES TO PROTECT THE PUBLIC INTEREST.

As drafted, the Wireless and Wireline Applications do not provide sufficient information, analysis, or commitments to demonstrate substantial public interest benefits to California consumers or to diffuse concerns regarding the risk of public interest harms. As discussed above, Applicants’ failure to provide sufficient evidence of competitive effects, combined with

⁷¹ Horizontal Merger Guidelines at p. 31.

⁷² Cal. Pub. Util. § 854, subd. (d).

the possibility that the proposed transaction could cause additional public interest harms, create a very real risk that the proposed transaction could be adverse to the public interest. Joint Consumers respectfully request that the Commission conduct a full investigation of the above-listed issues to determine whether the proposed transaction is in the public interest.

If the Commission finds that the transaction does not meet the public interest statutory standard, before it approves the Applications, it should impose mitigation measures sufficient to ensure that the proposed transaction is in the public interest.⁷³ Should the Commission approve the Applications, the Commission should impose mitigation measures that will preserve competition, protect consumers and ensure that the new company passes through the economic benefits of the transaction. Finally, the Commission must take care to craft detailed mitigation measures with measurable performance metrics, and substantial penalties if the new company fails to meet those metrics.

⁷³ See Pub. Util. Code § 854(c)(8).

III. PROCEDURAL ISSUES

A. Comments Regarding the Applicants' Statement on the Proposed Category

Joint Consumers take no position on Applicants' proposed category of Ratesetting.

B. Need for Hearing

As discussed above, the Commission should investigate and make factual findings regarding the impacts of the proposed transaction. These factual findings should include, but should not be limited to, investigating the impact of the proposed transaction on low-income consumers, economic benefits, and diversity. Once an initial fact-finding phase of this proceeding has complete, the Commission should request comments from parties to determine if hearings are needed to clarify or decide disputed issues of fact. However, recognizing that the Joint Applicants have a specific self-imposed timeline for approval of its merger at the federal level, and understanding the need for regulatory certainty, the Commission should not delay in this step. If the Commission does not set hearings early on the proceeding, the unavailability of the parties or Commission resources could cause an undue delay in the proceeding.

Additionally, the Commission should schedule hearings for a time frame that will ensure that the Commission is able to provide input to the FCC during its pending investigation of the proposed transaction. Accordingly, Joint Consumers respectfully request that the Commission schedule hearings, if needed, consistent with the suggested schedule below.

C. Issues to be Considered

Joint Consumers dispute Applicants' contention that the only issues to be determined evaluating the transaction are "whether the indirect transfer of control of Sprint Wireline to T-Mobile USA in the context of the Transaction meets the standards required by the

Commisison”⁷⁴ and “whether the Commission requires any further information in order to complete its review of the notification of transfer of control of the Sprint Wireless CA entities to T-Mobile USA in the context of the Transaction.”⁷⁵ Joint Consumers respectfully request that the Commission’s transaction assessment include consideration of the following issues:

- What relevant product and geographic market or markets could face substantially less competition as a result of the proposed transaction.
- What data is necessary to determine the proposed transaction’s competitive effects in California markets.
- How the proposed transaction’s impacts on competition will affect the public interest.
- How the proposed transaction’s impacts on competition will affect value-conscious customers.
- How the proposed transaction’s impacts on competition will affect consumers of color.
- How the proposed transaction’s impacts on competition will affect value-conscious customers.
- How the proposed transaction’s impacts on competition will affect rural customers.
- How the proposed transaction will impact prices and service quality for existing Sprint and T-Mobile customers.
- How the proposed transaction will affect LifeLine customers.
- How the proposed transaction will affect diversity and inclusion.
- How the proposed transaction will affect public safety and emergency communications.
- Whether the purported benefits of the proposed transaction are merger-specific.

⁷⁴ Wireline Application at p.20.

⁷⁵ *Id.* at p. 35.

D. Proposed Schedule

Joint Consumers respectfully suggests a schedule that will allow the Commission to provide input into the Federal Communication Commission's investigation. Accordingly, Joint Consumers suggests the following schedule:

August 16, 2018	Period for Submission of Protests Expires
August 27, 2018	Reply to Protests
September 10, 2018	Prehearing Conference
October 10, 2018	Scoping Memo Issued
November 12, 2018	Opening Comments on Scoping Memo
November 26, 2018	Reply Comments on Scoping Memo
January 7, 2019	Intervenor Testimony
February 7, 2019	Rebuttal Testimony
March 11-13, 2019	Evidentiary Hearings
April 15, 2019	Opening Briefs
April 29, 2019	Reply Briefs
May 29, 2019	Proposed Decision Issued
July 1, 2019	Opening Comments on PD
July 11, 2019	Reply Comments on PD

IV. CONCLUSION

The Commission should not approve the Applications unless, and until, Applicants demonstrate that the proposed transaction is in the public interest.

For the above-stated reasons, Joint Consumers respectfully requests that the Commission deny the Applications.

Respectfully submitted,

Dated: August 16, 2018

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