BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a)	Application 18-07-011 (Filed July 13, 2018)
And Related Matter.	Application 18-07-012

REPLY COMMENTS OF THE UTILITY REFORM NETWORK AND THE GREENLINING INSTITUTE ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BEMESDERFER

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. COMMISSION JURISDICTION AND STANDARD OF REVIEW 2

A. The Commission has a Statutory Obligation to Render a Public Interest Determination of the Proposed Transaction under Section 854. 2

B. The Commission is not Limited to Reviewing the Wireline Application 3

C. Joint Applicants Misstate Commission Authority Over Wireless Entities 4

D. The Commission Cannot Allow Joint Applicants' Actions to Stand 5

III. THE PROPOSED DECISION'S CONDITIONS ARE NECESSARY, AND THE COMMISSION SHOULD REJECT JOINT APPLICANTS' ARGUMENTS OTHERWISE. 8

A. CETF Agrees That Its Joint MOU is Premised on Commission Enforcement 8

B. The Proposed Decision's Conditions Are Not Preempted 9

IV. CONCLUSION 10

TABLE OF AUTHORITIES

CALIFORNIA CONSTITUTION

Article 3, Section 3.5 .....4, 5

CALIFORNIA STATUTES

Public Utilities Code section 216..... 4
Public Utilities Code section 233..... 4
Public Utilities Code section 234..... 4
Public Utilities Code Section 854..... 1, 2, 4, 6, 7, 8

CALIFORNIA CASES

Northern California Power Agency v. Public Utilities Commission (1971) 6 Cal. 3d 370, 377.... 3
Pacific Bell Wireless v. Public Utilities Comm'n (2006) 140 Cal.App.4th 718 …… 4

FEDERAL STATUTES

47 U.S.C. § 253.....4, 5
47 U.S.C. § 332.....4, 5

FEDERAL CASES

MetroPCS, Inc. v. City and County of San Francisco (9th Cir. 2005) 400 F.3d 715 .....4, 5
Shroyer v. New Cingular Wireless Servs., Inc. (9th Cir. 2010) 622 F.3d 1035 .....2, 5
Sprint Telephony, PCS, L.P. v. County of San Diego (9th Cir. 2007) 543 F.3d 571 5
Telesaurus VPC, LLC v. Power, (9th Cir. 2010) 623 F.3d 998 5
TPS Utilicom Services, Inc. v. AT&T (C.D. Cal 2002) 223 F.Supp.2d 1089 5
Fedor v. Cingular Wireless (7th Cir 2004) 335 F3d 1069 ……. 2

COMMISSION DECISIONS

D.89-07-019, *In Re Regulation of Cellular Radiotelephone Utilities* (1994)..... 4

D.95-10-032, *Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications* (1995) 3, 4, 5

D.01-07-030, *Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities* (July 12, 2001) 4

D.08-10-016, *Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who Have Limited English Proficiency* (Oct. 2, 2008) 4

D.16-08-021, *Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules* (August 16, 2018) 4

D.19-08-025, *Order Instituting Rulemaking Regarding Emergency Disaster Relief Program* (Aug. 23, 2019) 10

D. 19-12-008*, In the Matter of the Joint Application of MLN TOPCO LTD., MITEL NETWORKS CORP. et al. for Approval to Transfer Indirect Control of Mitel Cloud Services, Inc. to MLN TopCo Ltd*. (Dec. 18, 2019) 8

I. INTRODUCTION

Pursuant to Commission Rule of Practice and Procedure 14.3, The Utility Reform Network ("TURN") and The Greenlining Institute ("Greenlining") hereby file reply comments on the *Proposed Decision of Administrative Law Judge Bemesderfer* ("Proposed Decision.")[1]

TURN and Greenlining support the Proposed Decision's application of Section 854 (a)-(c)[2] to find that the proposed transaction is not in the public interest and requires additional, enforceable conditions adopted by this Commission to ensure that all Californians will benefit from this merger.[3] Several parties, including TURN and Greenlining, filed opening comments with proposed revisions and edits to the Proposed Decision to make the factual, legal, and policy conclusions stronger and to clarify or strengthen the conditions that will ultimately be adopted and enforced by the Commission. Joint Applicants' opening comments and proposed revisions, however, amount to a compilation of misstatements of current law, overly narrow interpretations of relevant statutes and precedent, overbroad and sweeping generalizations of precedent and policy, and procedural arguments that misstate the spirit, if not the letter, of the Commission's practice and precedent. If adopted they would completely derail this proceeding from accomplishing its goal and prevent the Commission from upholding its statutory obligations to ensure proposed transfers of control are in the public interest for California consumers.

Moreover, the Commission should not allow the very recent actions of Joint Applicants, including an attempt to withdraw its Wireline Application, consummation of the very merger at issue in this proceeding in violation of Section 854, and strict adherence to a legal fiction previously rejected by the Administrative Law Judge and Assigned Commissioner, to stand without consequence.

Accordingly, to ensure that the Final Decision approves a merger that is within the public interest for all Californians, TURN and Greenlining urge the Commission to adopt the Proposed Decision with the necessary modifications as proposed by intervenors and Public Advocates, reject the

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[1] On April 3, 2020, ALJ Bemesderfer issued an email ruling granting parties until April 9th to file opening comments of no longer than 10 pages in length. As such, this filing is timely and proper.

[2] Unless otherwise referenced, all statute citations are to the California Public Utilities Code.

[3] Proposed Decision at p. 35 (Commission has "serious reservations about the competitive effects of the Merger here in California" and notes that the FCC and DOJ conditions may be insufficient to ensure "robust post-Merger competition in California."); p. 37 (T-Mobile's commitments regarding rural coverage and LifeLine participation along with commitments to the FCC, CETF, and NDC, "taken together" ensure that the Transaction will significantly benefit Californians); p. 38 (Notwithstanding benefits from implementing DOJ, FCC, CETF, and NDC commitments, Commission believes additional conditions are needed to guarantee that this Merger is, on balance, in the public interest.)

Joint Applicants' opening comments and proposed revisions to the Proposed Decision, reject the Joint Applicants' Motion to Withdraw the Wireline Application, and impose fines on the Joint Applicants for violation of Section 854, pursuant to its authority under Section 2107.

II. COMMISSION JURISDICTION AND STANDARD OF REVIEW

The Proposed Decision finds that the Transaction is subject to review under Public Utilities Code Section 854(a), (b), and (c).[4] The Joint Applicants not only disagree with the scope of the authority and jurisdiction set forth in the Proposed Decision, but make the far-reaching claim that the Commission errs to think that it has *any* authority to approve the merger or impose conditions on the transaction to protect California consumers.[5] TURN and Greenlining strongly disagree.

A. The Commission has a Statutory Obligation to Render a Public Interest Determination of the Proposed Transaction under Section 854.

Joint Applicants argue that the Commission cannot review the proposed transaction because such a review purportedly conflicts with federal law.[6] As a threshold matter, even if this were true, a Commission ruling that the Commission is precluded by federal law from exercising its authority under Section 854 would run afoul of Article III, section 3.5 of the California Constitution that requires an agency to follow its statutory obligations absent an appellate court ruling finding preemption by federal law.[7] None of the cases cited by Joint Applicants hold that Public Utilities Code section 854 (nor, for that matter, any similar statute) is unconstitutional or that enforcement of section 854 is prohibited by federal law or federal regulations.[8]

As a practical matter, the Commission is required to follow its duty under section 854 and comply with the California Supreme Court's mandate that any Commission review of the public

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[4] Proposed Decision at p. 6, 31-33, COL 1.
[5] Joint Applicant Opening Comments at p. 2.
[6] Joint Applicants Opening Comments at p. 2.
[7] Cal. Const. Art. III, §3.5, An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of its being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.
(b) To declare a statute unconstitutional.
(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.
[8] Joint Applicants characterize *Shroyer v. New Cingular Wireless Servs., Inc*., 622 F.3d 1035 (9th Cir. 2010) and *Bastien v. AT&T Wireless Servs, Inc.* 205 F.3d 983 as an absolute prohibition of state review of wireless mergers.[8] However, this argument is contradicted by language in *Shroyer* itself (at p. 1039) which finds that the FCC rejected arguments that states are "per se" prohibited from regulating "modes and conditions" to begin offering services. *See also*, *Fedor v. Cingular Wireless* (7th Cir 2004) 335 F3d 1069 (narrowing *Bastien*).

interest requires that the Commission consider antitrust issues.[9] Joint Applicants have had years to seek interlocutory relief in court or to file a Petition for Modification of D.95-10-032 wherein the Commission found it continued to have authority over transfers of control of wireless carriers, but chose not do so. This proceeding is not the proper forum for adjudicating broader issues of federal preemption and would not only contravene the California Constitution, but raise serious due process concerns for stakeholders who are not parties to this proceeding.

B. The Commission is not Limited to Reviewing the Wireline Application

Joint Applicants persist in claiming that the Commission's 1995 Decision[10] prohibits the Commission from approving or denying transfers of control of wireless providers, and that the Commission may only "review" Joint Applicants' notification to the Commission. However, while the Commission chose to forbear from its authority to review wireless mergers at that time and has similar exercised forbearance in future proceedings, due to what it determined was necessary protection of the "nascent" wireless industry, the Commission has never changed the specific language preserving its rights to require preapproval for transfers of ownership of a wireless provider in situations necessary to ensure compliance with its rules and regulations and to protect the public interest.[11] As Joint Consumers have already noted, Joint Applicants filed their Application in A.18-07-012 in response to a request from Commission staff to do so.[12] Additionally, on August 8, 2018, the Commission issued Resolution ALJ 176-3421, which ruled that A.18-07-012 would require hearings.[13] Either of these events would have been sufficient to put the Joint Applicants on notice that the Commission intended to not forbear from its right to review under these facts and to render a decision on the entire transaction, including the wireless entities.

As the Commission has already noted, "the underlying transaction that gives rise to [the wireless and wireline transactions] is the proposed Sprint-T-Mobile Merger and the underlying factual

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[9] Proposed Decision at p. 3, note 8, citing *Northern California Power Agency v. Public Utilities Commission* (1971) 6 Cal. 3d 370, 377.

[10] D.95-10-032, 62 CPUC 2d 3; Joint Applicants, at page 6, accuse the Commission of asserting its authority under the 1995 decision too late in this proceeding. Yet, TURN, Greenlining and Public Advocates all discussed the 1995 Decision throughout this proceeding, including in Protests and Briefs. See, for example, Protest of Joint Consumers, August 16, 2018, at p.6-7; Greenlining May 10, 2019 Reply Brief at p. 2; *see* August 16, 2018 Joint Protest of The Public Advocates Office, Communication Workers of America, District 9, The Utility Reform Network, and The Greenlining Institute.

[11] D.95-10-032, 62 CPUC 2d 3 at p. 15-16, 21- 22.

[12] Greenlining Reply Brief at p. 2.

[13] *Id*.

and legal issues are effectively identical."[14] 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.[15] 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.[16] The Commission's statutory mandate pursuant to Section 854 and its reserved authority under D.95-10-032 require that the Commission conduct a review of the transaction in its entirety.

C. Joint Applicants Misstate Commission Authority Over Wireless Entities

As wireless carriers have continued to do for two decades, the Joint Applicants present an overly broad interpretation of 47 U.S.C. §§ 253 and 332 that would prohibit the Commission from reviewing *any* wireless merger, including this one.[17]

Under sections 253 and 332 of the Communications Act, states are limited from adopting laws or regulations that "prohibit" wireless carriers from offering service or regulate the entry of wireless carriers into a market.[18] However, section 332 expressly provides that States may regulate "the other terms and conditions of commercial mobile services."[19]

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[14] Administrative Law Judge's Ruling Consolidating Applications at p. 1 (Sept. 11, 2018)

[15] See *Pacific Bell Wireless v. Public Utilities Comm'n* (2006) 140 Cal.App.4th 718, 733 (finding rate regulation only where "principal purpose and direct effect are to control rates.") Commission has rejected preemption arguments in many cases, 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 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).

[16] 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.

[17] Joint Applicants Opening Comments at pp. 2-4, citing 47 U.S.C. §253(A); 47 U.S.C. § 332 (c)(7)(B)(i).

[18] 47 U.S.C. § 332(c)(3)(A).

[19] 47 U.S.C. § 332(c)(3)(A).

The 9th Circuit has made it clear that the bans on state regulation of market entry and the provision of wireless services are grounded in the FCC's "exclusive *licensing authority* over wireless providers."[20] For example, licensing is "the FCC's core tool in the regulation of market entry;" accordingly, states cannot regulate spectrum licensing or PCS licenses as examples.[21] However, the 9th Circuit has also indicated that state regulations are not preempted by federal law where those regulations do not "implicate the FCC's ability to regulate the number of wireless providers in a given market."[22] Here, the result of the Proposed Decision is not to prevent the market consolidation from 4 providers to 3 providers, as also approved by the FCC, but merely to ensure that the resulting terms and conditions of service resulting from such consolidation is in the public interest in California.

As discussed above, the Commission has previously found that the Congressional authority left to states to regulate "other terms and conditions" includes the ability to review of transfers of control.[23] Accordingly, "regulation of…transfers of ownership…is not tantamount to market entry regulation and, thus, is not preempted by" section 332.[24]

It is worth noting that in 2011, the Commission rejected T-Mobile's identical arguments, relying many of the same cases, that sections 253 and 332 prohibited the Commission from reviewing the wireless aspects of the proposed AT&T/T-Mobile merger.[25] These arguments are as flawed now as they were then, and the Commission should reject them.

D. The Commission Cannot Allow Joint Applicants' Actions to Stand

The Commission should reject the Joint Applicants' claims that certain procedural steps taken by the Joint Applicants, some as little as a week ago, prevent the Commission from moving forward to complete this review and approval process. Joint Applicants claim that the structure of the merger

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[20] *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 735 (9th Cir. 2005) (emphasis added).
[21] *Telesaurus VPC, LLC v. Power*, (9th Cir. 2010) 623 F.3d 998, 1008; *See also*, *Sprint Telephony, PCS, L.P. v. County of San Diego* (9th Cir. 2007) 497 F.3d 1061, citing H.R. Conf. Rep. No. 104-458, 208; *TPS Utilicom Services, Inc. v. AT&T* (C.D. Cal 2002) 223 F.Supp.2d 1089; *Shroyer v. New Cingular Wireless Services, Inc*. (9th Cir. 2009) 622 F.3d 1035.
[22] *Id*. at 735. The Commission' Proposed Decision does not implicate the FCC's ability to regulate the number of wireless providers in California Markets, because, like the FCC Order, it approves market consolidation from 4 providers to 3.
[23] D.95-10-032, 62 CPUC 2d 3; *See* Proposed Decision at p. 2 (citing Legislative History, House Report No. 103-111, at 251.
[24] *Id.*
[25] *See*, July 6, 2011 Comments of New Cingular Wireless PCS, LLC (U-3060-C), Its Affiliated Entities, and T-Mobile West Corporation d/b/a T-Mobile (U-3056-C) p.52, Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy, I.11-06-009 (June 9, 2011).

applications prevents the Commission from imposing conditions.[26] However, the mere fact that the Joint Applicants filed separate applications, one characterized as a "review" of the wireless transaction, does not eliminate the Commission's authority.

Early in this proceeding, Joint Applicants had clear notice that the Commission's intent was to conduct a full review leading to an approval or rejection, pursuant to Section 854, of both the wireline and wireless transactions in a consolidated proceeding. Public Advocates and Greenlining and TURN protested the Joint Applicants' clear attempt to hamstring the Commission's authority at the very early stages of this proceeding.[27] The carriers' attempt to perpetuate this legal fiction during the initial prehearing conference and argue that the Commission had no jurisdiction to approve the wireless transaction was rebutted by Public Advocates and TURN.[28] The Assigned Commissioner's Scoping Memo rejects the Joint Applicants' arguments to shelter the wireless transaction and finds that the two Applications are "related" and "arise from the same underlying transaction."[29] The Scoping Memo declares that the proceeding will include "all issues that are relevant to evaluating the proposed merger's impacts on California consumers and determining whether any conditions should be placed upon the *merged entity*."[30] Far from using the wireline transaction to gain "leverage" over the wireless transaction, as the Joint Applicants now claim,[31] the Scoping Memo and subsequent rulings in the proceeding left no doubt that the Commission intended to approve or deny the entire transaction and, if necessary, to impose conditions on the wireline and wireless entities. As this proceeding progressed, the Commission did not accept the Joint Applicants' repeated requests and assertions to separate the wireline transaction from the wireless transaction.[32] Yet, after thousands of pages of discovery, reams of testimony extolling the benefits (and risks) of the wireless transaction, hours of hearing time discussing the details of 5G and wireless networks, and significant motion practice regarding external

[26] Joint Applicant's Opening Comments at p. 5, 7-9.
[27] Protest of Joint Consumers, August 16, 2018, at p. 6-7; Protest of the Office of Ratepayer Advocates, August 16, 2018, at p. 8-9.
[28] Prehearing Conference Transcript, September 13, 2018, p. 15-16.
[29] Scoping Memo, October 4, 2018, at p. 1.
[30] Scoping Memo, October 4, 2018, at p. 2 (emphasis added).
[31] Joint Applicants Opening Comments, p. 5.
[32] Joint Applicants Opening Comments at p. 5 (Claiming that the Joint Applicants' repeated attempts to separate the two transactions would somehow prevent the Commission from treating the transactions holistically here.) But *see*, Assigned Commissioner's Scoping Memo, September 28, 2018; Assigned Commissioner's Scoping Memo, October 4, 2018; ALJ Ruling Granting Joint Motion to Reflect the Memorandum of Understanding Between CETF and Joint Applicants, May 8, 2019 (MOU adds weight the argument that the merger is in the public interest); ALJ Ruling Reopening the Record, August 27, 2019, at p. 5 (DOJ and FCC commitments alter the transaction and record here upon which Commission will base a decision on the transaction).

conditions agreed to by the Joint Applicants for the wireless transaction, the Joint Applicants cannot now be allowed to stand on their faulty jurisdiction arguments to prevent the Commission from moving forward.

The Joint Applicants had procedural mechanisms at their disposal to gain a definitive determination regarding the Commission's jurisdiction over the full transaction, such as a motion for an interlocutory ruling or a motion to withdraw the Wireless Application after the initial Scoping Memo was issued. While the Commission does not take motions requesting interlocutory relief lightly,[33] such work would have been preferable to settle the jurisdiction arguments by conserving Commission resources in the unlikely event the Joint Applicants would have prevailed.

Perhaps even more troubling, especially considering the twenty months of resources spent by stakeholders, Joint Applicants' opening comments inappropriately rely, in part, on filings submitted just within the past week to argue the Commission has no authority. Throughout their opening comments, Joint Applicants argue that because Sprint Wireline filed an advice letter to surrender its CPCN, effective on same day notice as a Tier 1 filing, the Commission no longer has jurisdiction over the Wireline Application, calling the Wireline Application "moot."[34] The Joint Applicants' unilateral declaration that Sprint has transitioned to offering only VoIP services and no longer holds a CPCN,[35] even if accepted by the Commission, should hardly prevent the Commission from meeting its statutory obligations and fully exercising its authority to protect California consumers as one of the largest mergers in the wireless industry is approved.

Joint Applicants clearly demonstrate their disregard for the Commission's authority, rules and procedures through their decision to close the transaction prior to approval by this Commission pursuant to Section 854. On the eve of filing opening comments on the Proposed Decision, Joint Applicants served a letter from T-Mobile to the service list announcing that the companies would move forward to close the transaction for a variety of financial and timing reasons, but noting its continued view that the Commission lacks jurisdiction over the transaction.[36] As discussed above, this Commission has the authority and legal obligation to approve the merger under Section 854(a), and

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[33] *See*, D.03-05-083 (I.00-11-001/A.01-04-012) at p. 16.
[34] Joint Applicants Opening Testimony, p. 2, 5, 6-7, 8.
[35] TURN and Greenlining have protested Sprint's AL 918 and understand that the Communications Division has suspended the Advice Letter. *See*, April 1, 2020 Joint Protest of Sprint AL 918, served on this service list. *Also see*, Telecommunications Suspended Advice Letter Search, showing Sprint AL 918 as suspended, https://apps.cpuc.ca.gov/apex/f?p=506:1:0::NO:::
[36] Joint Applicants Opening Comments at p. 1, Attachment A.

any merger that does not receive proper approval is, "void and of no effect."[37] Previously, the Commission has imposed significant fines on companies that knowingly and intentionally violate statutory rules.[38] TURN and Greenlining urge the Commission to impose a significant fine on the companies for their blatant disregard for the Commission rules and in the face of clear intent by the Commission to rule on the public interest elements of this transaction.[39]

III. THE PROPOSED DECISION'S CONDITIONS ARE NECESSARY, AND THE COMMISSION SHOULD REJECT JOINT APPLICANTS' ARGUMENTS OTHERWISE.

A. CETF Agrees That Its Joint MOU is Premised on Commission Enforcement

In its opening comments, TURN argues that the Proposed Decision's failure to include the conditions set forth in the California Emerging Technology Fund and National Diversity Coalition[40] Memoranda of Understanding is legal error.[41] TURN proposes revised Conclusions of Law and Ordering paragraphs to properly reflect the record of the proceeding and the discussion within the Proposed Decision that the MOUs' terms are necessary to find that the transaction is in the public interest.[42]

CETF agrees with TURN and expresses disappointment that the Proposed Decision, "picks and chooses only a handful of the CETF MOU commitments" as enforceable conditions.[43] Like TURN, CETF proposes edits to ensure that the Proposed Decision properly incorporates the CETF MOU and ensures that the conditions are enforceable by the Commission. TURN and Greenlining agree with CETF that it is very burdensome for the parties to these MOUs to litigate the terms of these specialized

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[37] Cal. Pub. Util. Code § 854(a).

[38] *In the Matter of the Joint Application of MLN TOPCO LTD., MITEL NETWORKS CORP. et al. for Approval to Transfer Indirect Control of Mitel Cloud Services, Inc. to MLN TopCo Ltd*. (A.18-05-017), D.19-12-008 at p. 12 (Finding significant Commission precedent for imposing a fine for violations of Section 854(a).

[39] *Id.* at 8-12 (Finding that previous lenient fines were insufficient to deter future violations and finding Mitel's actions "deliberate" and "insubordinate" requiring a significant fine).

[40] The National Diversity Coalition is not a party to this proceeding. Nevertheless, on March 30, 2020, NDC submitted a written ex parte supporting the Proposed Decision and the merger without mentioning its MOU specifically or without concern regarding the enforceability of the commitments therein.

[41] TURN Opening Comments at p. 7.

[42] TURN Opening Comments at p. 7-8, Appendix A. In 2019, TURN and Greenlining opposed the Joint Motion by CETF and Joint Applicants to accept the MOU into the record, in part, because these external agreements create legal ambiguity within a Commission proceeding. TURN and Greenlining urged the ALJ to, instead, require the parties to re-file the document pursuant to the Commission's Rule 12 to govern party settlements. Notably, while the ALJ ultimately allowed the CETF MOU in the record, it was on the grounds that the terms of the agreement would be enforceable by the Commission. TURN Opening Comments, p. 8, citing May 8, 2019 ALJ Ruling Granting Joint Motion at p. 5.

[43] CETF Opening Comments at p. 3.

agreements outside of the Commission and especially in Superior Court, where issues regarding regulated utility matters are rarely heard.[44]

CETF also makes the prescient statement that Joint Applicants, "may be tempted to not comply with the portions of the MOU that are not included in the Ordering Paragraphs."[45] As discussed above, Joint Applicants' opening comments make it clear that it will not cooperate with any attempt to enforce conditions onto this transaction in front of the Commission, despite the "ample precedent" that the Commission can include and enforce these agreements and noting that the agreement itself requires parties to submit to Commission jurisdiction for enforcement of the provisions.[46] Therefore, the Commission must reject the Joint Applicants' preemption arguments and revise the Proposed Decision to incorporate the MOU conditions into the Commission's Final Decision.

B. The Proposed Decision's Conditions Are Not Preempted

While TURN and Greenlining support the conclusions of the Proposed Decision that the Commission has authority to impose conditions on the entire merger transaction, including those in the CETF and NDC MOUs, both TURN and Greenlining proposed revisions to the conditions set forth in the Proposed Decision. Joint Applicants also make objections and propose revisions to specific conditions, in the event the Commission rejects their preemption claims. TURN and Greenlining do not support the Joint Applicants' proposed revisions.

For example, Joint Applicants take issue with the Proposed Decision's condition regarding LifeLine. Joint Applicants cite a litany of arguments as to why the Commission cannot specifically hold New T-Mobile to its commitment to participate in the LifeLine program.[47] However, these conditions hardly constitute "rate regulation" or violate the current voluntary participation rules for wireless carriers. Instead, the condition, as revised by TURN, is necessary to reflect the company's own repeated commitment that it will participate in LifeLine, and create specificity to ensure the

[44] CETF Opening Comments at p. 4; TURN Opening Comments at p. 7 (urging the Commission to delete the language in the Proposed Decision that leaves enforcement to actions in Superior Court).
[45] CETF Opening Comments at p. 4.
[46] CETF Opening Comments at p. 4; Joint Applicants' preemption arguments seem to back away from this commitment in the CETF MOU. In addition, while T-Mobile's March 31, 2020 letter to the CPUC claims that the New T-Mobile "stands ready to honor" the voluntary California-specific commitments, it does not acquiesce to Commission authority to enforce these voluntary commitments.
[47] Joint Applicants Opening Comments at p. 17.

commitment is meaningful and reflects the record in the proceeding and thus ensure the merger in the public interest.[48]

Finally, Joint Applicants refusal to consider conditions for emergency back up power threaten the Commission's ability to meet its goals regarding critical issues of disaster preparedness, network resiliency and prevention of outages.[49] Under its police power, the Commission has an obligation to ensure that the carriers are prepared before finding that the transaction is in the public interest. As the record shows, this merger will directly impact the current emergency response equipment and plans of Sprint and T-Mobile and as the individual carriers' equipment and procedures are consolidated into a single carrier, there will be increased reliance on the New T-Mobile emergency preparedness.[50] Therefore, the Commission's attempt to strengthen New T-Mobile's plans are necessary and not discriminatory and are supported by the record. Moreover, New T-Mobile has done nothing to assuage the Commission that it will voluntarily cooperate with disaster preparedness efforts, consistently objecting to Commission rules to bolster emergency response, relief efforts and preparedness by arguing that the Commission lacks authority to enforce its rules in *both* dockets.[51]

IV. CONCLUSION

TURN and Greenlining urge the Commission to revise the Proposed Decision as described in opening comments and, as discussed above, reject Joint Applicants legal and policy arguments.

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Respectfully submitted,

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[48] TURN and Greenlining agree that the CETF MOU language setting minimum standards for a T-Mobile LifeLine offering is preferable, but urges the Commission to maintain the parts of the ordering paragraph that move beyond the CETF MOU, including elimination of the "changed circumstances" clause that would allow T-Mobile to stop offering discounted services short of the current commitments. CETF Opening Comments at p. 8-9; TURN Opening Comments at p. 10, 14-15.

[49] Joint Applicants Opening Comments at p. 14-15; R.18-03-011, Phase II Scoping Memo, January 21, 2020.

[50] TURN Opening Brief, April 26, 2019 at p. 36-38 (citing to Public Advocates Reed and T-Mobile Ray testimony and cross examination re: back up power capabilities of T-Mobile versus Sprint Network)

[51] *See*, D.19-08-025 (R.18-03-011) at p. 6 (COW/COLT requirements necessary) p. 9-10 (finding Commission authority to impose emergency preparedness and relief conditions broadly regardless of legal categories or technology.) *See*, CTIA/AT&T Mobility Application for Rehearing of D.19-08-025, September 23, 2019.