

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the)
)
Joint Application of)
)
T-Mobile USA, Inc., and)
Sprint Communications Company L.P.) **Case 18-C-0396**
)
Concerning an Indirect)
Transfer of Control)
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APPLICANTS' REPLY COMMENTS

T-Mobile USA, Inc. (“T-Mobile USA”) and Sprint Communications Company L.P. (“Sprint Communications”) (collectively, “Applicants”) appreciate this opportunity to submit these reply comments pursuant to the schedule adopted in the New York State Public Service Commission’s (the “Commission”) December 20, 2018 Notice Inviting Responsive Comments and Reply Comments, as modified by the Commission’s December 26, 2018 Notice Regarding Extension of Comment Periods.¹ On January 4, 2019, the Communications Workers of America (“CWA”) and Public Utility Law Project (“PULP”) submitted responsive comments² in opposition to the Joint Application.³ As

¹ Case 18-C-0396: *Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. Concerning an Indirect Transfer of Control*, Notice Inviting Responsive Comments and Reply Comments (Issued Dec. 20, 2018), and Notice Regarding Extension of Comment Periods (Issued Dec. 26, 2018).

² Case 18-C-0396, *supra*, Responsive Comments of Communications Workers of America, District 1 (Filed Jan. 4, 2018)(“CWA Responsive Comments”), and Responsive Comments of Public Utility Law Project (Filed Jan. 4, 2018)(“PULP Responsive Comments”). The Commission should reject the CWA and PULP repetitious and disingenuous requests for yet additional delay-inducing process in this docket, which Applicants have previously thoroughly debunked. *See* Case 18-C-0396, *supra*, Applicants’ Reply to Letter Motion Filed by CWA and PULP (Filed Nov. 30, 2018)(“Reply to Letter Motion”). Likewise, CWA’s spurious claims that it was “deprived of a meaningful opportunity to comment” and not afforded an “opportunity to be heard in a meaningful manner at a meaningful time” should be dismissed as completely without merit and belied by the established record in this proceeding. CWA has had at least three noticed opportunities and more than five months to comment on the proposed transaction, and has availed itself of those opportunities on several occasions. *See* Reply to Letter Motion; Case 18-C-0396, *supra*, CWA Comments (Filed Nov. 16, 2018); Case 18-C-0396, *supra*, Responsive Comments CWA (Filed Jan. 1,

with their prior filings, CWA and PULP dedicate little to no attention to the jurisdictional subject of the Commission’s inquiry in this docket—the Indirect Competitive Local Exchange Carrier (“CLEC”) Acquisition⁴ of Sprint Communications’ wireline business, which is the only regulated element of the transaction.⁵ Instead, they focus on reiterating spurious and poorly-supported claims about other facets of the broader Merger of T-Mobile and Sprint, which remain beyond the jurisdiction of the Commission.⁶ Despite having appealed to the Commission for further rounds of comment and professing their

2019). Further, New York Courts have consistently held that due process rights do not confer a right to any one form of procedure and it is entirely within the Commission’s discretion to establish the process for review in this proceeding, particularly in circumstances where, as is the case here, there is no statutory right to a hearing. *See Kaur v New York State Urban Dev. Corp.*, 15 NY3d 235 (2010); *Kessel v Pub. Serv. Commn.*, 193 AD2d 339, 346 (3d Dept. 1993); *RNC Industries v Pub. Serv. Commn.*, 58 Misc.3d 1211 (A) (Sup Ct, Albany County 2017).

³ Case 18-C-0396, *supra*, Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. Concerning an Indirect Transfer of Control (Filed July 6, 2018) (the “Joint Application”).

⁴ The Indirect CLEC Acquisition will result from the merger (the “Merger”) of Sprint Corporation (“Sprint”), an indirect parent of Sprint Communications, and T-Mobile US, Inc. (“T-Mobile”), the parent of T-Mobile USA.

⁵ The CWA Responsive Comments raise no concerns relating to the potential impacts of Indirect CLEC Acquisition whatsoever. The only issue raised in the PULP Responsive Comments that relates in any way to the Indirect CLEC Acquisition is CWA’s claimed desire for greater detail regarding “the impact of the merger upon Sprint’s provision of contractual services to the Targeted Accessibility Fund (“TAF”).” PULP Responsive Comments at 4-5. However, the Applicants have fully addressed this purported “concern,” stating “Applicants are committed to meeting Sprint Communications’ contractual obligations to its customers, including obligations as the provider of telephone relay service for the hearing impaired (“TRS”) in New York State.” *Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. Concerning an Indirect Transfer of Control*, Applicants’ Comments (Filed Nov. 16, 2018)(“Applicants’ Comments”).

⁶ As Applicants have noted previously, under both State and federal law, the Commission lacks jurisdiction over the larger Merger. In 1997, the Legislature suspended application of the Public Service Law to cellular telephone services. PSL §5(6). In its Staff Assessment of Telecommunications Services dated June 23, 2015, the Commission noted that, with respect to Commission approval of transfers of control under §100 of the PSL, “wireless carriers . . . are not currently subject to these PSL regulations.” *See, In the Matter of a Study on the State of Telecommunications in New York State*, Staff Assessment of Telecommunications Services, Case 14-C-0370, June 23, 2015 at 31. *See also*, 47 U.S.C. §332(c)(3)(preempting state regulation of commercial mobile radio service (“CMRS”) market entry and rate regulation). Contrary to the implication in the PULP Responsive Comments, PSL § 92-h(2)(relating to mobile commercial radio service provider participation in the TAF) does not expand the Commission’s jurisdiction in this case. In fact, PSL § 92-h(3) expressly provides that: “Except to the extent necessary to supervise or administer the fund, nothing in this section shall confer upon the commission any regulatory jurisdiction over providers or resellers of commercial mobile radio service that elect to participate in the fund.”

need to present additional information and analysis,⁷ CWA and PULP have not presented anything new in their filings. The majority of CWA's massive 71 page filing consists of large blocks of consecutive pages copied, word-for-word, from their August 27, 2018 filing to the FCC.⁸ It is regrettable that the Commission was compelled to take the unprecedented step of extending this proceeding with additional rounds of comments so that CWA could simply regurgitate the discredited arguments that it peddled to the FCC last year. In this proceeding, as before the FCC, CWA has failed to address or rebut the overwhelming evidence demonstrating that both the Indirect CLEC Acquisition and the larger Merger are in the public interest and will create substantial benefits for the consumers of the State of New York.

Below, Applicants address the Indirect CLEC Acquisition and show that it serves the public interest; demonstrate that there is no need for further mitigating conditions on the Indirect CLEC Acquisition; refute claims levied by CWA and PULP; further demonstrate the substantial benefits of the Merger; and provide verifiable representations to relieve any remaining concerns about the veracity of the Applicants' claims. In conclusion, the Applicants show beyond any further dispute, and beyond the scope required by the jurisdiction of the Commission, that the Commission should expeditiously approve the Joint Application to rapidly bring the benefits of the Merger to the consumers of New York.

⁷ See Case 18-C-0396, *supra*, Letter-Motion filed by Communications Workers of America, District 1 and Public Utility Law Project, (Filed Nov. 19, 2018).

⁸ See Comments of Communications Workers of America, *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of the Licenses and Authorizations*, WT Docket No. 18-197, (Filed Aug. 27, 2018).

I. DISCUSSION

A. Under the Applicable Standard of Review, the Indirect CLEC Acquisition Should Be Approved Without Conditions

Pursuant to PSL §§99(2) and 100, the Commission may approve the Indirect CLEC Acquisition if it determines that the acquisition will serve the public interest. In evaluating the public interest relevant to the acquisition of competitive local exchange companies, the Commission will approve an application if it finds that, on balance and after evaluating the comments received, the transaction will advance the public interest.⁹

The major consideration in the Commission's analysis relating to a proposed merger or transfer involving telephone corporations that operate in a competitive market is the likely effect on advancing the public interest in the development and promotion of competitive markets.¹⁰ The Commission's long-established objective is to further competition as the most effective way of promoting markets, lowering prices, and developing innovative services and products.¹¹ An entity providing telecommunications services on a competitive basis does not require the degree of regulatory scrutiny that applies to a monopoly public utility.¹² Therefore, the Commission imposes minimal regulation upon CLECs operating in a competitive marketplace. The ease of entry and ability to buy and sell telecommunications companies is essential to the operation of a

⁹ See *Joint Petition of PAETEC Holding Corp., Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, LLC, US LEC Communications, LLC, PaeTec Communications, Inc., Talk America Inc., LDMI Telecommunications, Inc. and Windstream Corporation for Approval of an Indirect Transfer of Control of Authorized Telecommunications Providers*, Order Authorizing Transfer, Case 11-C-0425, at 2 (Nov. 17, 2011) ("PAETEC Order"). In their discussions of the standard of review, CWA and PULP cite inapposite cases in which the Commission has reviewed mergers of incumbent local exchange companies (*i.e.*, Fairpoint and Consolidated) and cable operators (*i.e.*, Charter and Time Warner). These cases involved review under a different set of statutes and raised concerns that do not exist in the context of the instant proceeding. The appropriate standard of review for this case is that described in the PAETEC Order.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

competitive market. Indeed, the Commission *relies* on companies to pursue business opportunities that permit them to operate in an efficient manner.¹³

After identifying the competitive effects of a CLEC merger or transfer, the Commission weighs the competitive public interest benefits against any claimed public interest harm.¹⁴ As discussed more fully below, based on the record in this proceeding, the Commission can only conclude that the proposed transaction is expected to produce benefits beyond any identifiable detriments and should be approved without conditions. The Indirect CLEC Acquisition and the larger Merger will create numerous benefits for consumers of both wireline and wireless services in the State. In addition, Applicants provide a number of significant verifiable representations, as set forth in Appendix A hereto, that provide additional benefits for consumers.

B. The Indirect CLEC Acquisition Enhances Competition in the Wireline Enterprise Market And Serves The Public Interest

CWA and PULP have now filed a total of four sets of comments in this proceeding without raising a single relevant concern relating to the only jurisdictional issue before the Commission in this docket — *i.e.*, the Indirect CLEC Acquisition. Nor has any other party to this proceeding claimed that the Indirect CLEC Acquisition will in any way (a) harm competition in the landline enterprise market in which Sprint Communications competes as one among many competitive providers, (b) harm the existing customers of Sprint Communications, or (c) have any other negative consequences. Nor have CWA, PULP, or any other party refuted in any way the

¹³ *Id.*

¹⁴ In looking at potential harm ensuing from a proposed transfer or merger, the Commission evaluates the potential impact of any anticipated increase in concentration in a competitive marketplace. *Id.* As discussed more fully below, the Indirect CLEC Acquisition will not only result in no concentration of market power in the wireline enterprise service market, but will benefit, rather than harm, competition in that market by making Sprint Communications a more effective competitor.

Applicants' representations regarding the benefits the transaction will create for Sprint Communications and wireline enterprise customers in the State.¹⁵

As noted in the Joint Application and in Applicants' Comments, the Indirect CLEC Acquisition will be transparent to existing customers of Sprint Communications. Upon consummation of the Indirect CLEC Acquisition, Sprint Communications will continue to provide the services that it currently provides to customers in this State, subject to Sprint Communications' existing plans to discontinue its TDM services and transition customers to Internet Protocol ("IP") services. All existing Sprint Communications contracts and contractual obligations to customers will be honored, including transitioning customers to IP services. In particular, following the Indirect CLEC Acquisition, the Applicants will continue to meet all of Sprint Communications' obligations as the TRS provider in New York, pursuant to the Commission's Order¹⁶ and Sprint Communications' State Tariff No. 7. In addition, Sprint Communications will maintain its Syracuse relay service center.¹⁷ Accordingly, no harm to Sprint Communications' customers will result from the Indirect CLEC Acquisition.

The Indirect CLEC Acquisition will also create no harm to competition. Because neither T-Mobile USA nor its parent, affiliates, or subsidiaries provide wireline services in competition with Sprint Communications, there will be no increase in the concentration of wireline telecommunications providers in the State after the Indirect CLEC Acquisition. There will be the same number of competitive providers of wireline

¹⁵ A finding similarly held by the numerous State Public Utility Commissions that have approved the Indirect CLEC Acquisition, *see* Appendix B.

¹⁶ *See* Order Approving Recommendation, Docket No. 12-C-0257, Dec. 19, 2012.

¹⁷ PSL § 92-a(2).

service in New York the day following consummation of the transaction as there were the day before.

In fact, the transaction will increase competition by enhancing Sprint Communications' ability to provide wireline enterprise services in the State. The Indirect CLEC Acquisition will significantly increase the managerial, technical, and financial resources available to Sprint Communications. Together, the two companies will realize valuable scale efficiencies and Sprint Communications will become part of an entity with substantially greater financial resources to offer competitive wireline services. This will benefit existing customers by improving the quality and breadth of services that Sprint Communications can provide. Not only will Sprint Communications be able to offer its customers an improved and expanded network, it also will be able to offer a wider array of services to more New York customers when combined with the assets of T-Mobile USA and its affiliates.¹⁸ For example, the transaction will allow Sprint Communications to offer customers increased bundled wireline and wireless capabilities by integrating Sprint's wireline services with T-Mobile's existing wireless enterprise offerings. The ability to provide this desirable enhancement to its offerings will enable Sprint Communications to compete more effectively in the marketplace to the benefit of consumers in the State. Finally, the transaction will also result in a larger team of marketing and sales personnel, enabling Sprint Communications to aggressively market its existing and enhanced service offerings to more New York consumers than previously possible.

¹⁸ Joint Application at 6-7.

Given that the Indirect CLEC Acquisition will not only create no competitive harms in the wireline enterprise services market, but will in fact enhance competition, the Commission can only conclude that there are no potential risks to mitigate.¹⁹ Thus, no conditions are warranted and the Commission should approve the Joint Application as soon as practicable in order to bring the significant benefits of the transaction to consumers in the State.

C. Verifiable Representations

The evidence of public benefit for New York consumers provided herein and in the Joint Application, Joint Comments, and referenced FCC filings are more than sufficient to satisfy any reasonable standard that the Commission may apply. However, in the interest of allaying any remaining concerns regarding the Merger and New T-Mobile's plans for the State of New York, Applicants also offer several verifiable representations, fully described in Appendix A to this filing, with respect to jobs, employee benefits, retail pricing, and 5G coverage in New York.

D. Contrary to the Claims of Merger Opponents, the Merger Will Create Substantial Benefits for New York Consumers

Applicants have already stated that the Merger will grow jobs in the U.S. and New York from day one and for the foreseeable future.²⁰ In its first three years, New T-

¹⁹ The Commission recently approved with no conditions the merger of CenturyLink and Level 3 Communications, despite the fact that CenturyLink and Level 3 Communications were direct competitors in the wireline enterprise service market in the State. *See* Case 17-C-0101: *Joint Petition of CenturyLink, Inc., Wildcat Holdco, LLC, Wildcat Merger Sub 1 LLC, WWG Merger Sub LLC, CenturyLink Communications, LLC, Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, Global Crossing Local Services, Inc., TelCove Operations, LLC, and Level 3 Telecom of New York LLC for Authority to Transfer and Acquire Shares and Ownership Interests, and Issue Long-Term Debt*, Order Granting Petition (June 15, 2017). The Joint Application in this docket creates no such overlap, and should therefore be approved with no conditions.

²⁰ *See* Joint Comments at 28.

Mobile will build a world-leading nationwide 5G network by investing significantly more in network infrastructure than the standalone firms combined. Investing in New York infrastructure and accelerating the timeline for a state-wide 5G network will generate countless business opportunities for emerging and established companies within the state. The new deployment will also create strong demand for more low-, medium-, and high-skilled workers; and lead to spillover economic benefits for other businesses that will need to support the 5G economy.

Now-debunked claims of job losses and new assertions of wage stagnation from the CWA and the Economic Policy Institute (“EPI”) are meritless. As discussed below, these doomsday predictions rest on flawed assumptions, bad math, and incomplete data. CWA and PULP again raise their outlandish claims that the Merger will result in more than 1,700 lost jobs in New York. As detailed in Appendix A, however, Applicants offer the following verifiable jobs representation:

New T-Mobile’s total number of employees (i.e. W-2s) will equal or exceed the total number of employees of Sprint and T-Mobile in New York at closing, as of two years following the merger. This assumes inclusion of contractors hired with the intention of later becoming employees and adjustments for current employees who voluntarily decline employment at New T-Mobile.

As also detailed in Appendix A, Applicants offer the following verifiable employee benefits representation:

Existing Sprint and T-Mobile employee benefits are safeguarded as (a) the merger agreement provides that Sprint employees will receive no less favorable benefits in the aggregate upon becoming New T-Mobile employees; and, (b) T-Mobile employees will continue to receive existing T Mobile benefits under the same terms and policies once they become New T-Mobile employees.

These representations should ameliorate any remaining concerns with respect to New T-Mobile’s post-merger employment. Nevertheless, for the sake of a complete record, we address CWA and PULP’s claims below.

1. The Merger Will Add More Jobs and Boost Economic Growth.

New T-Mobile will maintain the total number of direct employees in New York for at least two years following the Merger. New T-Mobile’s 5G network investment will also translate into thousands of company jobs within New York specifically.

T-Mobile conducted an internal analysis of the direct, company-specific effects on employment resulting from the Merger, relative to employment at standalone Sprint and T-Mobile. Within a year of consummation, New T-Mobile plans to employ 3,600 more direct internal employees throughout the United States than the two standalone companies would have absent the Merger.²¹ As described in the table below, these incremental job increases will continue for the foreseeable future.

	2019	2020	2021	2022	2023	2024
Direct Internal Incremental Jobs	3,625	5,755	5,045	5,010	8,115	11,060

Given New York’s role as a strategic market and New T-Mobile’s verifiable representation to maintain or increase New York employment over the next two years, a significant portion of the Merger’s employment benefits are likely to accrue to New York. T-Mobile’s plan stands in stark contrast to other carriers (like CWA-backed AT&T), which are currently eliminating jobs in New York.²²

²¹ Applications of T-Mobile US, Inc. and Sprint Corporation to Transfer Control of the Licenses and Authorizations, WT Docket No. 18-197, Description of Transaction, Public Interest Statement, and Related Demonstrations, (filed June 18, 2018) (“Public Interest Statement”) at App. C: Declaration of G. Michael Sievert (“Sievert Declaration”). “Direct internal” employees are on-payroll jobs (*e.g.*, a badge-carrying employee who would receive a W-2 from the New T-Mobile).

²² Jana Barnell, *AT&T leaving downtown Syracuse, taking 150 jobs to Florida*, CNY CENTRAL (Jan. 8, 2018) (reporting that AT&T is closing a call center in Syracuse and relocating 150 jobs to Florida).

New T-Mobile will increase employment by opening new retail stores, hiring employees to build new network infrastructure, expanding its customer care staff, and entering or expanding new lines of business, such as in-home broadband and enterprise sales. New T-Mobile plans to open at least 600 or more new stores across the country to serve small towns and rural areas. This retail expansion will directly generate 5,000 new retail jobs by 2021.²³ In New York alone, New T-Mobile expects to open an estimated

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new retail stores located to serve New York's small towns and rural areas by 2022. New T-Mobile also anticipates creating approximately 1,800 new jobs nationally by 2021 that are dedicated to transitioning the T-Mobile and Sprint networks in rural areas and expanding rural coverage.²⁴

In addition, New T-Mobile intends to substantially increase its domestic customer care workforce to ensure it maintains T-Mobile's industry-leading standard of customer care. The combined company anticipates opening up to five new technologically advanced Customer Experience Centers to serve small towns and rural communities throughout the United States to implement the company's innovative "Team of Experts"²⁵ customer care and business model. The company's expanded customer care workforce at the new Customer Experience Centers will directly employ approximately

²³ Sievert Declaration at ¶17.

²⁴ *Id.*

²⁵ T-Mobile's "Team of Experts" approach has reinvented the customer care experience. T-Mobile customers are (1) never forced to speak with an automated phone menu (unless they want to), (2) provided access to a team of highly trained customer care representatives that are able to address a broad array of topics and issues, and (3) able to choose when and how they interact with their Team of Experts—whether by 24/7 on-call support, scheduled call-backs, or asynchronous messaging through the T-Mobile app and iMessage. T-Mobile US, Inc., *T-Mobile's Latest Un-carrier Move: Real People, Not Robots Introducing T-Mobile Team of Experts* (Aug. 15, 2018), <https://www.t-mobile.com/news/introducing-tex?AID=11878398&PID=2942700>; see also Sievert Declaration at ¶18.

5,600 professionals by 2021.²⁶ Employees at these centers will have jobs that offer a meaningful path for career advancement, and will benefit from significant management preparation experience, as well as qualify for college tuition reimbursement.²⁷

Chambers of commerce and economic development organizations throughout Upstate New York have filed in support of the Merger, recognizing the benefits that it would create for their communities.²⁸ In examining potential locations for New T-Mobile's centers, Upstate New York, with its skilled workforce and business-friendly environment, has emerged as a particularly attractive area for future investment, which could further ensure that New T-Mobile will meet its job projections.

All told, New T-Mobile will directly or indirectly support thousands more jobs than T-Mobile and Sprint could have done on their own, and many of these new employment opportunities will be located in New York. The rationale behind the imperative of expanded employment is simple: New T-Mobile will need more workers to grow its retail presence, strengthen care, build its network and enter new lines of business.

2. The CWA Responsive Comments Essentially Restate Arguments Already Raised and Addressed in the FCC Proceeding

Despite demonstrable evidence that the Merger will result in company-specific job growth, CWA recycles the same discredited arguments it presented in its comments to the FCC. For example, CWA persists in citing to an April 2018 New Street report to

²⁶ Sievert Declaration at ¶18.

²⁷ *Id.*

²⁸ *See, generally*, Case 18-C-0396, *supra*, Comments of Greater Rochester Chamber of Commerce (Filed November 14, 2018) (“Rochester CoC Comments”); Case 18-C-0396, *supra*, Comments of Hudson Valley Economic Development Corporation (Filed November 19, 2018) (“HVEDC Comments”); Case 18-C-0396, *supra*, Comments of Greater Binghamton Chamber of Commerce (Filed November 19, 2018) (“Binghamton CoC Comments”); Case 18-C-0396, *supra*, Comments of Corning Area Chamber of Commerce (Filed November 16, 2018) (“Corning CoC Comments”); Case 18-C-0396, *supra*, Comments of Genesee County Chamber of Commerce (Filed November 15, 2018) (“Genesee CoC Comments”).

support the claim that “Wall Street analysts predict . . . massive job cuts.”²⁹ The New Street report, however, is entirely speculative, relies on no company data, and was published months before Applicants submitted the initial Public Interest Statement and supporting declarations that verified job growth at New T-Mobile.³⁰ The CWA Responsive Comments appear to incorporate CWA’s national study by reference,³¹ but it fails to explain how it calculated its estimate of 1,705 New York job losses.³² Its illogical conclusion appears to result from, among other things, focusing only on potential employment reductions, while ignoring demonstrable employment gains that have been explained in the Applicants’ filings. By selectively excluding categories of employment from its analysis, CWA fails to account for New T-Mobile’s plans for significant incremental capital investment integrating network infrastructure, expanding and updating retail stores, conducting new advertising campaigns, and enhancing customer care, all of which is job-creating. As the table below shows, CWA picks categories showing job losses, while avoiding those that demonstrate job growth:

²⁹ CWA Responsive Comments at 7 n.22. CWA states that Applicants “appear to claim that pre-existing U.S. job growth plans were somehow driven by the transaction,” which ignores the Sievert Declaration’s clear statement that employment claims are based off “the incremental job increases relative to the standalone companies’ baselines.” Sievert Declaration at ¶19.

³⁰ Applicants’ Public Interest Statement, Joint Opposition, and declarations appended to each were submitted into the record of this proceeding on November 16, 2018 as part of Applicants’ Comments. *See supra* note **Error! Bookmark not defined.**

³¹ Reply Comments of Communications Workers of America, WT Docket No. 18-197, at 2 (filed Oct. 31, 2018).

³² CWA Responsive Comments at 11; *see also* Comments of Communications Workers of America, WT Docket No. 18-197, at 61 (filed Aug. 27, 2018) (“CWA FCC Comments”); Petition to Deny of DISH Network Corporation, WT Docket No. 18-197, at 42-43 (filed Aug. 27, 2018).

Job Category	CWA’s Jobs Analysis	Real-World Job Effects
Retail employees	Included (partially)	Included
Call Center employees	Excluded ³³	Included
Headquarters	Included	Included
Employees needed for new lines of business (e.g., corporate clients, fixed broadband, and IoT)	Excluded	Included
Employees associated with additional network buildout and network integration	Excluded	Included
Induced employment in the U.S. economy due to incremental merger-specific investment	Excluded	Included
Additional employment in the U.S. economy due to speed-up of 5G deployment	Excluded	Included

Rather than engage with the details of New T-Mobile’s business plans, CWA dismisses them as unsupported assertions entitled to no weight.³⁴ But CWA cannot so easily find refuge in the evidentiary burden of proof. T-Mobile has supported each and every one of its claims of merger-specific job growth through a signed and sworn declaration from a company executive to the FCC made under the penalty of perjury.³⁵ These declarations contradict CWA’s baseless assertions that claims of projected job growth are not merger-specific. Similarly, CWA attempts to muddy the waters by incorrectly claiming that the Applicants will “return offshored call center work to the US.”³⁶ But as Applicants have explained, the five new call centers it will open in the U.S. will represent new jobs that never existed in the United States or anywhere else.

Next, just as it did at the FCC, CWA continues to misstate the extent of retail job reductions by simply assuming that New T-Mobile will eliminate half of all Boost

³³ The CWA study mentions call centers, but incorrectly assumes no job growth.

³⁴ CWA Responsive Comments at 8.

³⁵ See, e.g., *Application of Nevada Wireless for A License to Provide 800 MHz Specialized Mobile Radio Serv. in the Farmington, Nm-Co Econ. Area (EA 155) Frequency Band A*, Memorandum Opinion and Order, 13 FCC Rcd 11973 (1998) (dismissing a petition to deny for failing to rebut sworn statements by license applicants).

³⁶ CWA Responsive Comments at 21.

Mobile stores by combining them with MetroPCS stores.³⁷ CWA attributes 4,213 store closures and approximately 13,000 jobs lost as a result of this assumption.³⁸ But as John Legere explained in response to a question from Congress, “New T-Mobile does not plan to combine nearby MetroPCS and Boost stores.”³⁹ To the contrary, New T-Mobile’s business plan calls for retaining both the MetroPCS and the Boost Mobile brands because each brand has its own identity and caters to somewhat different customer segments.⁴⁰

T-Mobile’s internal projections, if anything, are overly conservative because they do not take into account the job creation that will come from merger-specific economic growth. An independent, third-party jobs analysis performed by Dr. Jeffrey Eisenach of NERA Economic Consulting confirms job growth—finding the merger will result in transaction-specific direct and indirect employment increases, particularly within the first three years following the transaction.⁴¹ By accelerating the construction of a nationwide 5G network years faster than otherwise possible, New T-Mobile will stimulate a virtuous cycle of U.S. economic growth, which Dr. Eisenach projected will result in a *net job gain* of nearly 168,600 job-years⁴² between 2019 and 2023 or, stated differently, 33,720 additional jobs over the five-year study period. CWA’s appeal to the burden of proof

³⁷ CWA Responsive Comments at 13-14.

³⁸ CWA FCC Comments, App. D. at 8.

³⁹ U.S. Senate, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Hearing, *Game of Phones: Examining the Competitive Impact of the T-Mobile n Sprint Transaction* (June 27, 2018), https://www.judiciary.senate.gov/meetings/game-of-phones-examining-thecompetitive-impact-of-the-t-mobile_sprint-transaction.

⁴⁰ Sievert Reply Decl. at ¶11.

⁴¹ See *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Joint Opposition of T-Mobile US, Inc. and Sprint Corporation at App. K: Supplemental Declaration of Jeffrey A. Eisenach (filed Sept. 17, 2018) (“Eisenach Declaration”).

⁴² Economists measure employment in terms of “job-years” to reflect the fact that the level of employment is constantly changing. One job for one year is one job-year. If that job continues for another year, the employment effect is considered to be two job-years.

overlooks the declaration submitted by Dr. Eisenach—based upon publicly available information—that Applicants have already entered into the record.⁴³

Numerous studies have demonstrated that the transition from 3G to 4G has measurably improved U.S. economic performance by spurring the development of mobile broadband services, such as music and video streaming (*e.g.*, Spotify; Snapchat), VoIP telephony (*e.g.*, Skype), and a multitude of location-based applications (*e.g.*, Lyft and Uber).⁴⁴ The same will be true of the myriad innovations that an accelerated transition from 4G to 5G would produce as a result of this Merger. The transition from 4G to 5G promises to bring even more investment, innovation and job growth than the transition from 3G to 4G wireless broadband did.

Despite CWA’s baseless and repeated suggestions to the contrary,⁴⁵ the standalone companies have never denied in this proceeding that they would eventually deploy 5G on their own.⁴⁶ But the transaction will enable New T-Mobile to build a network with distinct advantages over both the standalone 5G networks planned by T-Mobile and Sprint and will provide a platform for an unrivaled nationwide 5G mobile service.⁴⁷ Accelerating the time for deployment of a stronger, more expansive 5G wireless broadband network will not only generate new jobs, but also stimulate competitors to respond in a virtuous cycle of investment, innovation and job growth that will benefit New York and the nation.

⁴³ See Eisenach Declaration at ¶56.

⁴⁴ Recon Analytics LLC, *How America’s 4G Leadership Propelled the U.S. Economy* (Apr. 16, 2018), https://api.ctia.org/wp-content/uploads/2018/04/Recon-Analytics_How-Americas-4G-Leadership-Propelled-US-Economy_2018.pdf.

⁴⁵ See, *e.g.*, CWA FCC Comments at 37 (claiming that Applicants argue that “neither Sprint nor T-Mobile can effectively compete as standalone firms, and specifically that neither can ‘win’ the race to deploy a next-generation nationwide 5G network.”).

⁴⁶ See Public Interest Statement at 18-19.

⁴⁷ See *id.* at 17.

3. CWA Misrepresents the Facts About T-Mobile's Acquisition of iWireless

Among CWA's false representations is the claim that T-Mobile's September 2017 acquisition of Iowa Wireless ("iWireless"), a small Mid-western wireless operator, resulted in significant job losses.⁴⁸ While employment in the wireless market is beyond the relevant scope of the Commission's consideration, for the sake of a complete record, we fully refute CWA claims below. Furthermore, as detailed above and in Appendix A, Applicants offer verifiable representations regarding post-merger employment. Applicants' overwhelming evidence and verifiable representation should ameliorate any remaining concerns regarding the Merger's impact on competition and prices.

In reality, T-Mobile's acquisition of iWireless has resulted in post-transaction employment as large as pre-transaction employment and T-Mobile intends to grow employment in the future. Prior to the iWireless transaction, iWireless had approximately 289 employees distributed between corporate retail stores, independent retailer stores, one call center, back office support, engineering, and information technology. As of August 2018, there were approximately the same number of employees performing these same functions within the business unit. By the end of 2019, T-Mobile anticipates that retail T-Mobile and MetroPCS locations will drive T-Mobile's total Iowa employee count to 359—nearly 25 percent year-over-year growth. And while 20 iWireless corporate "stores" were closed, many of the closed "stores" were stores within stores. Many locations were located inside pawnshops and grocery stores; the locations were closed because they were outside brand associations or had variable and

⁴⁸ CWA Responsive Comments at 16-18.

unpredictable costs (*e.g.*, because lease rates were established based on the number of devices sold).

Furthermore, T-Mobile has opened 13 new MetroPCS locations in Iowa, and 23 of the 27 iWireless authorized dealer stores remain in business as independent retailers or transitioned to MetroPCS authorized dealers. Finally, while CWA has claimed that 76 of 81 authorized iWireless dealers closed after “cross-referenc[ing] authorized dealer locations [from AggData] against a list of T-Mobile, MetroPCS, and iWireless locations,” counsel for T-Mobile contacted several of the entities listed in the AggData dataset and found that many of those iWireless authorized dealer locations are electronics stores, convenience stores, hardware stores, and other retail locations that remain in business.⁴⁹

For former iWireless customers, the T-Mobile network provides a marked improvement in coverage and quality since acquisition. The Iowa T-Mobile network is currently undergoing a \$70 million transformation to build out the 600 MHz spectrum and prepare for 5G deployment. Since the merger, 35 full-time equivalent employees have been hired for network buildout. In addition to upgrading and overlaying new technology upon 388 existing sites, T-Mobile is also building an additional 46 new sites to provide complete coverage statewide. In less than a year from transaction close, T-Mobile has already begun implementation and in 2018 actually activated 24 new L600 upgrades and sites for current customers.

⁴⁹ See Complete List of I Wireless Locations, AggData, <https://www.aggdata.com/aggdata/complete-list-i-wireless-locations> (last visited Sept. 13, 2018).

4. T-Mobile's Strong Workplace Satisfaction Track Record and Industry-Leading Benefits Will Continue with New T-Mobile

Contrary to CWA's preposterous and unsubstantiated claim that "T-Mobile has won the dubious distinction as one of the worst labor law violators in the country,"⁵⁰ T-Mobile has an impressive history of employee satisfaction and consistently ranks among the best places to work in the United States, according to both third-party reviews and its employees. Prioritizing T-Mobile's employees and their workplace satisfaction has been critical to T-Mobile's success as the Un-carrier, and New T-Mobile will continue the legacy of investing in its employees following the merger.

T-Mobile has received numerous accolades and recognition for its efforts to enhance workplace satisfaction. Approximately 92 percent of responding employees in anonymous surveys say they take pride in telling others they work for T-Mobile,⁵¹ and roughly 90 percent say T-Mobile is a great place to work.⁵² In T-Mobile's most recent employee survey this fall, 93% of respondents said they "take pride in working for my company;" 85% said their company inspires them to "go above and beyond" their normal job duties to help the company succeed; and 89% said they often recommend T-Mobile to others as a great place to work. Outside experts have confirmed employee surveys and recognized T-Mobile as a supportive and stimulating workplace.⁵³

Moreover, that T-Mobile's is a great place to work has been recognized by many external and independent organizations over the years. Most notably, T-Mobile receives multiple Best Place to Work awards annually—in 2018 including being: recognized as

⁵⁰ CWA Responsive Comments at 27.

⁵¹ *T-Mobile US, Inc.*, GREAT PLACE TO WORK INSTITUTE, <https://www.greatplacetowork.com/certified-company/1000276> (last visited Jan. 2, 2019).

⁵² *Id.*

⁵³ T-Mobile, *Awards: 2018 National – Workplace and Diversity*, https://www.t-mobile.com/our-story/awards?icid=WMM_TMNG_Q218CORPOR_V95Z1930BL13231 (last visited Jan. 2, 2019).

one of the 100 Best Places to Work in the US by Fortune Magazine;⁵⁴ recognized as number 17 in the top 25 US companies for pay and benefits by independent, employee crowd-sourced, Glassdoor; the only wireless company to be named one of Glassdoor's best places to work;⁵⁵ and named the second best place to work in the New York region.⁵⁶ In addition, T-Mobile has been recognized as one of the World's Most Ethical Companies by the Ethisphere Institute for the past ten years. Both employees and outside organizations across the country have concluded that T-Mobile is a terrific place to work.

T-Mobile is also renowned for its commitment to diversity and inclusion. In 2018, Forbes named T-Mobile a "Best Employer for Diversity,"⁵⁷ it received a score of 100% on the Disability Equality Index,⁵⁸ and was named the "Best-of-the-Best Corporation for Inclusion" by the National LGBT Chamber of Commerce.⁵⁹ Outside experts have confirmed employee surveys and recognized T-Mobile as a supportive and stimulating workplace.

⁵⁴ *100 Best Companies to Work For 2018*, FORTUNE, <http://fortune.com/best-companies/list> (last visited Jan. 2, 2019).

⁵⁵ *2019 Best Places to Work Employees' Choice*, GLASSDOOR, https://www.glassdoor.com/Award/Best-Places-to-Work-LST_KQ0,19.htm (last visited Jan. 2, 2019).

⁵⁶ *The 25 Best Places to Work in New York*, FORTUNE, (July 17, 2018), <http://www.fortune.com/2018/07/17/25-best-workplaces-in-new-york/>. In addition to T-Mobile's impressive list of workplace awards, Sprint, too, is known as a great place to work and for supporting workers with disabilities and military veterans. Sprint is recognized as Great Place to Work by the Great Place to Work Institute. See, Deeanne King, *Sprint is a Great Place to Work*, Sprint (Sept. 24, 2018), <https://newsroom.sprint.com/sprint-is-great-place-to-work.htm>. Sprint was also recognized as a "Best Place to Work" by the Disability Equality Index, a joint initiative between the U.S. Business Leadership Network and the American Association of People with Disabilities. See, *2018 Best Places to Work*, American Association of People with Disabilities (2018), https://www.disabilityequalityindex.org/top_companies. Sprint has also obtained various awards for employing veterans such as the Best of the Best Top Veteran Friendly Employer and Top Supplier Diversity Program by U.S. Veteran Magazine. See *U.S. Veterans Magazine Announces Its 2018 Best of the Best Results Lists*, U.S. Veterans Magazine (Aug. 15, 2018), <https://www.usveteransmagazine.com/recognition-lists/#1496867702149-acbd49db-b74a>.

⁵⁷ T-Mobile, *Awards: 2018 National – Workplace and Diversity*, https://www.t-mobile.com/our-story/awards?icid=WMM_TMNG_Q218CORPOR_V95Z1930BL13231 (last visited Jan. 2, 2019).

⁵⁸ *2018 Best Places to Work*, Disability Equality Index, https://www.disabilityequalityindex.org/top_companies

⁵⁹ *T-Mobile Named by NGLCC and NBIC as a Best-of-the-Best Company for Diversity & Inclusion*, <https://www.t-mobile.com/news/best-of-the-best-for-diversity-inclusion>

Making T-Mobile a great place to work means taking care of the T-Mobile team, and T-Mobile provides some of the best employee benefits in the industry. Just as one example, recognizing the value of education, T-Mobile fully covers the bill for tuition at five online universities and provides tuition assistance for other schools for both full and part-time employees.⁶⁰ T-Mobile also provides financial and wellness support to help reduce the burdens associated with childcare and other family-related issues.⁶¹ T-Mobile is also committed to providing jobs and training to those who serve our country, and the company has pledged to hire 10,000 veterans by 2023.⁶² New T-Mobile employees will receive benefits that are the same as or better than what they currently receive through T-Mobile or Sprint.

While CWA's efforts to re-litigate matters before the National Labor Relations Board ("NLRB") are far beyond the scope of the Commission's jurisdiction, CWA's attempt to caricature T-Mobile as a serial labor law violator omits key facts and glosses over critical details. CWA fails to mention, for example, that CWA itself brought the cases it references, and three of those findings are currently on appeal and subject to reversal. In another case CWA cites, the Fifth Circuit actually reversed the NLRB and sided with T-Mobile on three of the four issues under appeal.⁶³ CWA's apparent suggestion that T-Mobile is a labor law scofflaw due to 40 unfair labor practice

⁶⁰ T-Mobile, *Careers: Culture and Benefits*, <https://www.t-mobile.com/content/t-mobile/corporate/careers/culture-and-benefits/benefits.html> (last visited Jan. 2, 2019).

⁶¹ *Id.*

⁶² T-Mobile, *Community: Military*, <https://www.t-mobile.com/responsibility/community/military> (last visited Aug. 7, 2018).

⁶³ *See T-Mobile USA, Inc. v. NLRB*, 865 F.3d 265, 276 (5th Cir. 2017) ("We hold that the Board's findings regarding the workplace conduct policy, the commitment-to-integrity policy, and the acceptable use policy are unreasonable. The Board's order is denied enforcement as to those policies.").

charges—nearly all of which were filed by CWA—is deceptive. As context, approximately 780 such charges have been filed *against CWA itself* during that period.⁶⁴

CWA also misleads the Commission by suggesting that T-Mobile denies employees the right to form a union. In fact, there are two unionized groups at T-Mobile. T-Mobile does not compel employees to join a union against their will. T-Mobile is entitled to protect its workers' ability to choose who represents them under U.S. labor law. And consistent with the law, the NLRB has never issued a finding that T-Mobile discriminated against an employee for engaging in union activity. Nor has the NLRB found that any employee suffered any adverse consequences from doing so. In fact, in one case, an NLRB administrative law judge dismissed a claim alleging that T-Mobile terminated an employee for union activity. CWA appealed the finding, but the NLRB upheld the dismissal and rejected CWA's appeal on the improper termination claim.⁶⁵

A majority of the employees in one of T-Mobile's two unionized groups have sought for years to end union representation, only to have their efforts blocked by CWA's filing of non-meritorious charges. Consistent with the wishes of the majority of these employees, T-Mobile suspended bargaining pending the election the employees sought.⁶⁶ Unfortunately, instead of simply allowing the T-Mobile employees to have a vote, the CWA ignored the employees' desires and continued its efforts to prevent an election

⁶⁴ A search of "communications workers" in the "Unfair Labor Practice (C)" section of the NLRB website reveals 780 complaints between January 1, 2011 and January 11, 2019.

⁶⁵ *T-Mobile USA, Inc. (Communications Workers of America Local 7011)*, 365 NLRB No. 15 (January 23, 2017). CWA cites this decision, but unsurprisingly fails to mention this portion of the holding, *See* CWA Responsive Comments at 28.

⁶⁶ Oddly, the NLRB and Court of Appeals found that T-Mobile could have withdrawn recognition entirely, but could not suspend bargaining. *T-Mobile USA, Inc. (Communications Workers of America, Local 1298)*, 365 NLRB No. 23 (February 2, 2017) (dismissing all allegations against Company except suspension of bargaining and including strong dissent by NLRB Chairman stating T-Mobile is looking after interests of employees), *enfd T-Mobile USA, Inc. v. National Labor Relations Board*, 717 F.App'x. 1 (D.C. Cir. March 27, 2018) (enforcing suspension of bargaining and including a dissent from Judge Sentelle criticizing the NLRB's ruling).

from occurring. The CWA's obstruction of the employees' desires is now in its fifth year. In any case, whatever one thinks about the public policy behind denying employees the right reject union representation, this proceeding before the Commission represents neither the time nor place to resolve it.

CWA's allegations against Sprint are similarly meritless. CWA alleges that Sprint is unfriendly to workers by detailing an isolated matter from 1996, citing an NLRB case.⁶⁷ Sprint has and continues to respect its employees' right to choose under the law whether or not to be represented by unions. In the past 20 years, Sprint has not been cited for any federal labor law violations. Sprint therefore respectfully, but strongly, denies a history of workers' right violations.⁶⁸ In addition, the characterization of the specific Sprint labor matter is simply not accurate. It appears to be related to a single, isolated event that occurred more than 20 years ago when Sprint closed a call center called La Conexion Familiar that had been involved in a union organizing campaign. The issue ultimately ended up in court and, in 1997, the U.S. Court of Appeals for the District of Columbia unanimously ruled in Sprint's favor, agreeing with Sprint that "NLRB's conclusion that union activity motivated Sprint's closure decision lacks substantial evidence in the record" and setting the NLRB's order aside.⁶⁹

⁶⁷ CWA Responsive Comments at 28 (citing *La Conexion Familiar and Sprint Corp.*, 322 NLRB No. 137 (1996)).

⁶⁸ CWA also mentions past press accounts of various lawsuits alleging wage and hour violations by Sprint. *Id.* at 29. Sprint maintains a robust set of policies pertaining to payroll and timekeeping practices, all of which are designed to ensure Sprint's employees are properly compensated for all hours worked. Sprint's policies flatly prohibit off-the-clock work and provide numerous reporting mechanisms for employees to report any timekeeping issues. Sprint maintains that all employees were properly paid and the lawsuits filed were without merit. Nonetheless, Sprint made a business decision to settle the lawsuits due to the expenses of proceeding with litigation.

⁶⁹ *LCF, Inc. v. National Labor Relations Board*, 129 F.3d 1276 (D.C. Cir. 1997).

5. The EPI Study Is Fundamentally Flawed

CWA says that a CWA-funded study from EPI shows a decline in retail wages following the Merger.⁷⁰ In reality, however, no basis exists to credit the shoddy, outcome-driven predictions of job losses or wage decline that CWA has presented in this proceeding, especially in light of the detailed, third-party analysis demonstrating material job gains and personal income increases throughout the country and in New York.⁷¹

First and foremost, EPI's fanciful claim of labor market consolidation rests on a fundamental mischaracterization of the relevant market. To show labor market consolidation, EPI must rely on an overly restrictive and improper definition of the relevant labor market—namely, “the merging parties, their prepaid affiliates, and their wireless competitors.”⁷² But that definition is implausible on its face because retail wireless employees can and do find work beyond the retail wireless sector. It would be odd to assume that a T-Mobile retail employee could not work at a place such as Best Buy or Target. But that is precisely what EPI assumes. As EPI admits, “if we have defined labor markets incorrectly, then there may be greater elasticity of labor supply in response to increased market concentration (as we measure it) than there was in the samples of markets used by the studies we rely on.”⁷³ EPI acknowledges that its flawed definition of the labor market would represent “a further source of concern about the

⁷⁰ Adil Abdela and Marshall Steinbaum, *Labor market impact of the proposed Sprint–T-Mobile merger*, ECONOMIC POLICY INSTITUTE (Dec. 17, 2018), <https://www.epi.org/files/pdf/159194.pdf> (“EPI Study”).

⁷¹ For comparison, EPI's analysis of the employment benefits of the AT&T/T-Mobile merger, a study released and touted by CWA, found that the merger would generate 96,000 jobs. Ethan Pollack, *The jobs impact of telecom investment*, ECONOMIC POLICY INSTITUTE (May 31, 2011), https://www.epi.org/publication/the_jobs_impact_of_a_telecommunications_merger/.

⁷² *Id.* at 8.

⁷³ *Id.* at 19.

accuracy of our predictions.”⁷⁴ Simply put, EPI has rigged its definition of the relevant labor market to reach its desired conclusions.

EPI’s sloppiness in describing the relevant market is compounded by a grave mathematical error that renders their analysis wholly unreliable. EPI’s estimated wage effects are based on two components: (1) their estimates of how the Transaction would change local concentration in the purported mobile wireless retail employment market;⁷⁵ and (2) estimates of the relationship between employment concentration in local markets and wages taken from three unpublished working papers.⁷⁶ However, the way in which the EPI study combines its estimates of local changes in concentration due to the Transaction with the econometric estimates from the underlying working papers is fundamentally flawed as a matter of simple math.

Both the EPI study and the three working papers measure concentration using the Herfindahl-Hirschman Index (HHI), which is a crude mathematical tool used to study concentration within a defined market. Each of the working papers estimates the relationship between wages and concentration using the HHI calculated based on a market definition which is much broader than the “wireless stores only” market put forward by EPI. To apply those estimates properly, EPI would need to adjust for the much smaller effect on concentration the merger would have on the broadly defined markets used in the studies compared to the narrowly defined market posited by EPI.

⁷⁴ *Id.*

⁷⁵ *Id.* at 5-6.

⁷⁶ See *id.* at 8 (citing José Azar *et al.*, *Concentration in US Labor Markets: Evidence from Online Vacancy Data*, National Bureau of Economic Research Working Paper no. 24395 (Aug. 2018) (“Azar Working Paper”); Efraim Benmelech *et al.*, *Strong Employers and Weak Employees: How Does Employer Concentration Affect Wages?*, NATIONAL BUREAU OF ECONOMIC RESEARCH (Feb. 2018), <https://www.nber.org/papers/w24307>; Kevin Rinz, *Labor Market Concentration, Earnings Inequality, and Earnings Mobility*, Center for Administrative Records Research and Applications, U.S. Census Bureau (Sept. 2018), <https://www.census.gov/content/dam/Census/library/working-papers/2018/adrm/carra-wp-2018-10.pdf>).

Thus, even if one accepts both EPI's contention that (a) the Merger would increase concentration in some properly defined retail labor market and (b) the three working papers' estimates of the effects of concentration on wages are correct, EPI's estimate of the magnitude of the effect is dramatically overstated because it fails to adjust for the difference in market definitions.

EPI's error—tantamount to failing to convert from miles to inches—fatally impairs its analysis. The EPI labor market is about one twentieth the size of the labor market upon which its estimate of wage effects is based. Without additional data, it is not possible to calculate the precise effect of this error on EPI's wage estimate, but EPI's projected wage effect is likely inflated by at least the same proportion as EPI's market definition.⁷⁷ When the error is fixed, the results show that the Merger will have, at most, a *de minimis* effect on wages, even if all of EPI's other assumptions were true, which they are not. In other words, the actual effect on wages, if any, is about *one twentieth of what EPI estimates, or less than half a percent*, even assuming everything else about EPI's analysis were accurate.

Given the EPI Study's analytical errors and the *de minimis* projected impact that would result when the calculations are done correctly, any conclusions that CWA draws from this study should be given no weight or credence by the Commission.

⁷⁷ Precisely quantifying the magnitude of EPI's error would require confidential, local-level data from the Census and Bureau of Labor Statistics ("BLS") to which neither Applicants nor EPI have access. What is clear, however, is that the labor markets upon which the working papers base their results are dramatically larger than the labor market defined by EPI. EPI's assertion, for example, that the Transaction could cause a wage reduction of as much as seven percent in the most affected local markets is based on the Azar Working Paper, which uses 6-digit Standard Occupational Classification ("SOC") codes to define labor markets. According to BLS, the 6-digit SOC category which represents "Retail Salespersons" (41-2031) has 4,442,090 employees. *Occupational Employment and Wages, May 2017 41-2031 Retail Salespersons*, Bureau of Labor Statistics (last updated Mar. 30, 2018), <https://www.bls.gov/oes/2017/may/oes412031.htm>. By contrast, the "wireless retail stores only" market defined by EPI includes only 220,000 employees. EPI Study at 5.

6. CWA Has a Long History of Making Discredited Jobs Claims

CWA's dubious assertions in this proceeding are hardly surprising. The FCC has repeatedly rejected CWA's jobs predictions as baseless in many merger review proceedings.⁷⁸ During the FCC's review of the MetroPCS transaction in 2012, for example, CWA predicted up to 10,000 layoffs and advocated for onerous employment-related conditions.⁷⁹ The FCC rejected CWA's speculative predictions and instead found more credible T-Mobile's demonstrable commitment to creating American jobs.⁸⁰ The FCC got it right, and CWA's projections never occurred. After acquiring MetroPCS, T-Mobile's total workforce increased by more than 30 percent in the following three years, accounting for an increase of more than 12,000 jobs.⁸¹ Unsurprisingly, CWA urges the Commission to disregard the MetroPCS acquisition. But the undeniable success of the MetroPCS acquisition is a compelling illustration of the merger-specific job growth that will occur following this Merger.

⁷⁸ See, e.g., *Applications Filed by Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.*, Memorandum Opinion and Order, 31 FCC Rcd 4365, 4377-78 (2016) ("We conclude that CWA's claims that Applicants will finance the transaction by job cuts are speculative"); *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2349-51 (2013); *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9670 (2013) (rejecting as "speculative and unsubstantiated" CWA's claims that the transaction would not lead to significant job creation); *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4327-30 (2011) (rejecting CWA's requests to place employment- and labor-related conditions on applicants' merger application); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 514, 539 (2007) (rejecting CWA's concerns regarding job losses as "speculative" and "not supported by the record.").

⁷⁹ *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2349-51 at ¶ 76 (2013).

⁸⁰ *Id.* ¶ 80.

⁸¹ Sievert Reply Decl. at ¶ 20.

Likewise, CWA has switched its stance here from the one it took during the merger of AT&T and T-Mobile in 2011. In that proceeding, CWA supported AT&T's acquisition of T-Mobile based on the assumption that the 2011 transaction would increase capital expenditures by \$8 billion. Using a different methodology than the one it uses here, CWA claimed the acquisition of T-Mobile by a unionized AT&T would create 96,000 new jobs.⁸² The FCC, however, correctly rejected the EPI study because AT&T's business plans provided no support for an \$8 billion increase of incremental capital expenditures.⁸³ Indeed, AT&T's internal documents projected a net *loss* of jobs following the acquisition.⁸⁴ Then, as now, CWA carefully chose its methodology and studiously ignored the incremental capital expenditures from the companies' *actual* business plans to arrive at a result-driven conclusion about job effects.

In short, CWA's haphazard use of whatever analysis and data happens to support its corporate allies at any given moment casts further doubt on the credibility of the organization's assertions in this proceeding.

ii. The Merger is Necessary to Create a Broad and Deep 5G Network

CWA has claimed that the Merger is unnecessary to create a powerful 5G network, because (a) Sprint and T-Mobile have already announced that they are building 5G networks⁸⁵ and (b) the New T-Mobile 5G network would not provide significantly

⁸² *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2349-51 at ¶¶ 76-80 (2013); *Application of AT&T and Deutsche Telekom AG*, WT Docket No. 11-65, Order and Staff Analysis and Findings, 26 FCC Rcd 16184, 16293 at ¶¶ 259-265 (2011) ("AT&T Staff Findings").

⁸³ See AT&T Staff Findings ¶ 264 n.690.

⁸⁴ See *id.* ¶ 263.

⁸⁵ CWA Responsive Comments at 56.

better rural coverage or service than T-Mobile's standalone network.⁸⁶ CWA, however, has declined to consider the differences between the standalone T-Mobile, standalone Sprint, and New T-Mobile 5G plans in New York and, in fact, has provided absolutely no New York-specific information. Instead, CWA and has merely cut and pasted 18 consecutive pages, nearly verbatim, from its August FCC filing.

CWA's claims were false in August and remain false today and, while the details of the New T-Mobile 5G network are beyond the relevant scope of the Commission's consideration, for the sake of a complete record, we fully refute CWA claims below. Furthermore, as detailed in Appendix A, Applicants offer the following verifiable 5G coverage representation:

New T-Mobile will strive to deliver 5G coverage to the overwhelming majority of its FCC licensed covered POPs throughout State of NY, including the Upstate Region, within three to five years from the merger's closing.⁸⁷

Applicants' overwhelming evidence and verifiable representation should ameliorate any remaining concerns with respect to New T-Mobile's post-merger coverage.

1. The New T-Mobile 5G Network Will Provide Capabilities Far Beyond Those of the Standalone Networks

In focusing on T-Mobile and Sprint's existing 5G plans, CWA seeks to obfuscate the stark differences between the standalone networks and the New T-Mobile 5G network, as though all 5G networks are equal. While both Sprint and T-Mobile have announced plans for, and commenced deploying, their more limited 5G broadband

⁸⁶ *Id.* at 64.

⁸⁷ T-Mobile and Sprint have strong track records of deploying state of the art networks in a timely and efficient manner; New T-Mobile will use industry best practices in its efforts to achieve the goal set forth in Appendix A, barring factors beyond its control.

networks, CWA ignores the overwhelming evidence in the record demonstrating that the New T-Mobile 5G network would be vastly superior to the networks of either standalone company.⁸⁸

As evidenced by the Joint Application, Joint Comments, Public Interest Statement (“PIS”), and Joint Opposition, neither the T-Mobile nor Sprint standalone network will be able to provide a level of service that could match that of the New T-Mobile 5G network.⁸⁹ By 2024, the New T-Mobile 5G network will provide twice the total capacity and three times the aggregate 5G capacity of the standalone T-Mobile and Sprint networks and approximately four times the throughputs of either.⁹⁰ Also, the New T-Mobile 5G network will have significantly more expansive mid-band coverage than either standalone 5G network, providing greater capacity and higher speed mid-band coverage over more square miles than either the standalone Sprint or T-Mobile network in New York.

As described in the Joint Comments, standalone T-Mobile would be able to provide 5G coverage by deploying its 600 MHz spectrum across the State, including in many rural areas, but would only be able to deploy its limited amount of higher-capacity mid-band (PCS and AWS) spectrum in a handful of population dense areas. As also described in the Joint Comments, standalone Sprint would be unable to provide 5G coverage for the overwhelming majority of New York’s geography because its mid-band 5G deployment would be limited to a few population dense areas. But T-Mobile and

⁸⁸ See, e.g., Joint Comments at 12-15; Public Interest Statement at 42-46; *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Joint Opposition of T-Mobile US, Inc. and Sprint Corporation (filed Sept. 17, 2018) (“Joint Opposition”) at 41-43.

⁸⁹ See *id.*

⁹⁰ Joint Comments at 12.

Sprint have complementary spectrum portfolios and their combination would allow New T-Mobile to deploy mid-band spectrum far more expansively than either company could as standalones, providing mid-band coverage over the majority of New York’s geography and thus expanding capacity and improving performance. Absent the Merger, fewer New Yorkers will have 5G coverage and will experience significantly slower speeds.

The “5G Throughput by Covered Pops” chart provided in the Joint Comments, demonstrates that, even in 2021, the performance gap between New T-Mobile and the standalone companies is very large, with New T-Mobile providing service at 100 Mbps, or faster to [REDACTED] as many New Yorkers as standalone T-Mobile and [REDACTED] as many as standalone Sprint.⁹¹ This performance gap widens further by 2024, with New T-Mobile providing speeds to millions of New Yorkers (i.e., [REDACTED] [REDACTED] that are much faster than the speed that either standalone company would be expected to provide.⁹² Contrary to CWA’s baseless claims, New T-Mobile will provide a 5G network with speed, capacity, and coverage that will greatly exceed that of the standalone Sprint and T-Mobile networks. Therefore, any claim that the Merger is unnecessary given the existing Sprint and T-Mobile 5G plans is without merit.

⁹¹ Joint Comments at 15.

⁹² *Id.*

2. The Merger Will Enable Increased 5G Rural Deployment

CWA has also regurgitated its claims that the Merger will not result in substantially more robust rural deployment, improve rural coverage, or help rural consumers. CWA has argued that most of the rural U.S. population will already be served by T-Mobile infrastructure, and therefore the Merger will not change their service.⁹³ Conveniently, CWA chooses to only compare New T-Mobile's rural service to standalone T-Mobile's rural service and ignores the rural service improvements relative to Sprint's standalone operations, which are dramatic due to Sprint's lack of robust low-band spectrum and more limited network footprint. Since CWA cannot deny that New T-Mobile would provide Sprint customers with vastly superior rural broadband experiences, CWA acts as if they do not exist.

However, even when only considering standalone T-Mobile, the Merger will result in both improved coverage and service in New York's rural areas, providing service in areas that currently have limited service options.⁹⁴ As Applicants have shown repeatedly, standalone T-Mobile would provide 5G 600 MHz coverage across the State, including in many rural areas, but would only be able to deploy its limited amount of higher-capacity mid-band spectrum in a handful of population dense areas. By merging with Sprint, however, New T-Mobile will be able to deploy mid-band spectrum across far more of the State and cover more rural customers. Therefore, the mere fact that much of

⁹³ See CWA Responsive Comments at 66-68.

⁹⁴ See Case 18-C-0396, *supra*, Comments of Rural Schools Association of New York State, Inc. (Filed Jan. 4, 2019) ("RSA Comments") (noting that New T-Mobile will "improve the quality and coverage of its service in rural areas" by combining the two companies' assets with the promise of "immense capacity gains at a cost low enough to make covering rural America an affordable – and even attractive – business proposition"); Binghamton CoC Comments; HVEDC Comments; Case 18-C-0396, *supra*, Comments of Seneca County Chamber of Commerce (Filed Nov. 19, 2018) ("Seneca CoC Comments"); Corning CoC Comments; Genesee CoC Comments; and Case 18-C-0396, *supra*, Comments of Center for Economic Growth (Filed Nov. 16, 2018) ("CEG Comments").

the State's rural population would be covered by standalone T-Mobile does not mean that the Merger would not significantly change their service. The increase in mid-band sites in rural areas will result in significantly faster speeds for many rural customers. Contrary to CWA's baseless claims, the difference between the rural mid-band coverage provided by standalone T-Mobile and New T-Mobile in 2024 is significant. New T-Mobile will provide mid-band 5G coverage over significantly more of New York's rural areas than the T-Mobile standalone network.

CWA also criticizes New T-Mobile's 5G plans for not covering enough rural customers.⁹⁵ In reality, however, other carriers such as AT&T and Verizon have announced far more limited 5G deployment plans that would essentially eschew rural areas. For many rural New Yorkers, New T-Mobile will provide the only 5G option. Finally, CWA ignores the importance of the merger to rural retail service.⁹⁶ As indicated above, New T-Mobile will open an estimated **REDACTED** **REDACTED** new retail stores located to serve New York's small towns and rural areas by 2022.⁹⁷ Absent the Merger, there would be a smaller retail presence to serve these communities.

iii. The Merger Will Result in Increased Competition and Lower Prices

CWA has also persisted in its claims that the Merger will result in decreased competition and higher prices for consumers.⁹⁸ CWA does not, however, present any evidence of competitive harms in New York and has merely cut and pasted 10

⁹⁵ See CWA Responsive Comments at 66-68.

⁹⁶ See Binghamton CoC Comments; HVEDC Comments; Seneca CoC Comments; Corning CoC Comments; Genesee CoC Comments; and CEG Comments.

⁹⁷ See Joint Comments at 23.

⁹⁸ See CWA Responsive Comments at 31.

consecutive pages, nearly verbatim, from its August comments to the FCC.⁹⁹ Applicants thoroughly debunked CWA's poorly-reasoned claims in the FCC proceeding and, in forum shopping for a receptive audience in New York, CWA simply rehashes, word-for-word, discredited, four-month-old arguments. While the Merger's impact on competition in the wireless market are beyond the relevant scope of the Commission's consideration, for the sake of a complete record, we fully refute CWA claims below. Furthermore, as detailed in Appendix A, Applicants offer the following verifiable price representation:

Consumers will benefit as (a) Sprint customers will be able to keep their current Sprint plan or a better New T-Mobile plan; and, (b) the New T-Mobile business projections, as verified on the record before the FCC, document that New T-Mobile customers will pay less for more.

Applicants' overwhelming evidence and verifiable representation should ameliorate any remaining concerns regarding the Merger's impact on competition and prices.

Without presenting any new economic analysis, models, or declarations, CWA has simply ignored extensive and thorough economic support for the Merger, including (a) declarations submitted by Dr. David Evans showing that the Merger would enhance consumer welfare from a unilateral effects perspective and confirming the dramatic reductions in the price/GB attributable to the Merger and the likely output-enhancing competitive responses by Verizon and AT&T; (b) merger simulations submitted by Israel, Katz, and Keating ("IKK") that further confirm that the Merger promotes consumer welfare by generating significant marginal cost savings, which will strengthen the combined firm's incentive and ability to compete for users by offering lower quality-adjusted prices; and (c) declarations of Prof. Salop and Dr. Sarafidis concluding that the

⁹⁹*See id.* at 40-51.

Merger will not result in increased risks of harmful coordination. Rather than directly address Applicants' economic showings, CWA references DISH Network's submissions to the FCC through their economic consultants, the Brattle Group.¹⁰⁰ As we demonstrated in the FCC proceeding, the Brattle Group's analysis suffers from numerous fundamental infirmities and assumes no marginal costs reductions or network quality improvements.¹⁰¹ Accordingly, the Brattle Group's analysis does not reflect the realities of the merging parties' plans and does nothing to rebut the conclusion that under a broad range of reasonable assumptions the proposed merger is likely to increase competition.

In their only economic submission, a report by Professor Heski Bar-Isaac, CWA misconstrues the findings of Cornerstone Research, claiming that Cornerstone overstates merger benefits through certain assumptions and omissions.¹⁰² However, CWA's expert, Professor Heski Bar-Isaac, provides no empirical evidence to support his speculation. Professor Bar-Isaac's critiques are incomplete, rejected by the data, inconsistent with the academic literature and riddled with implementation errors. Contrary to CWA's empty claims, the Cornerstone economic data further demonstrate that the Merger will be output and consumer welfare-enhancing and that network quality improvements will make the combined firm more attractive to consumers and a stronger competitor.

Rather than providing new economic support for its assertions, CWA has fixated on claims that the Merger would eliminate head-to-head competition between T-Mobile and Sprint and that the Merger would increase HHIs or trigger the FCC's spectrum screen

¹⁰⁰ See CWA Responsive Comments at 31, 50 (citing Reply Comments of DISH Network, WT Docket No. 18-197 (filed Oct. 31, 2018), also filed by DISH in this proceeding by letter dated Nov. 16, 2018, without any additional New York analysis).

¹⁰¹ See Joint Opposition at 9-13.

¹⁰² See CWA Responsive Comments at 51-52.

in many counties.¹⁰³ In page after page of text copied directly from its August FCC filing, CWA pretends as though these points alone are a substitute for rigorous economic analysis and elevates them as dispositive of the competitive effects of the Merger. As we fully explained before the FCC, contrary to CWA's assertions, neither increasing HHIs nor triggering the FCC's spectrum screen are dispositive evidence that a transaction causes competitive harms, and the FCC itself has been clear that these tools are not intended to serve as such evidence.¹⁰⁴ To the contrary as the Applicants have demonstrated in great detail, and CWA has failed to even contest with economic reasoning, this Merger increases competition by dramatically expanding capacity and creating downward pressure on prices. As we have stated in our prior filings, Dr. Evans's economic declaration finds that the Merger will result in as much as a 55 percent decrease in price per GB and a 120 percent increase in cellular data supply for all wireless customers.¹⁰⁵

New T-Mobile's business projections confirm the firm's incentive and ability to compete to add customers by lowering costs and passing savings on to consumers.¹⁰⁶ Such projections track fundamental economic tenets by recognizing that the optimal strategy to monetize the combined network's additional capacity is to reduce prices. New T-Mobile will compete aggressively with lower prices to take market share from Verizon and AT&T, allowing more customers to enjoy the benefits of increased capacity.¹⁰⁷

¹⁰³ See *id.* at 40-48.

¹⁰⁴ See Joint Opposition at 23-25.

¹⁰⁵ See Public Interest Statement, Appx. G, Declaration of Dr. David Evans at Section V.C., ¶¶220-44.

¹⁰⁶ See Sievert Declaration at ¶21.

¹⁰⁷ See Public Interest Statement, Appx. D, Declaration of Peter Ewens, Executive Vice President, Corporate Strategy, T-Mobile US, Inc., at ¶12 ("Ewens Declaration").

IKK's merger simulation confirms that "the proposed transaction is projected to generate significant marginal cost savings, which will strengthen the combined firm's incentive and ability to compete for users by offering lower quality-adjusted prices."¹⁰⁸ Cornerstone Research bolsters this finding by determining that (a) the Merger will result in marginal cost efficiencies and network quality improvements, and (b) as a result New T-Mobile will gain subscriber share consistent with an expansion of output and welfare gains for consumers.¹⁰⁹ Applicants have acknowledged that T-Mobile and Sprint compete with one another. However, T-Mobile competes more directly with Verizon and AT&T, and the loss of inter-firm competition between T-Mobile and Sprint will be eclipsed by the increase in competition between New T-Mobile, Verizon, and AT&T.

With respect to CWA's misguided reliance on the spectrum screen as an indicator of competitive harm, CWA persists in mischaracterizing the function and importance of the spectrum screen. As the Applicants explained in the Joint Opposition, the FCC has made clear that the spectrum screen is merely a tool to "identify those local markets in which no competitive harm clearly arises from the transaction."¹¹⁰ Accordingly, the fact that a transaction triggers the screen in certain local markets does not render the transaction presumptively anti-competitive. Rather, the FCC conducts case-by-case competitive analyses in these markets considering a variety of factors. Also, though

¹⁰⁸ Joint Opposition, Appx. F, Declaration of Compass Lexecon at ¶6.

¹⁰⁹ Cornerstone Research, Economic Analysis of the Proposed T-Mobile/Sprint Merger at 1 ("Cornerstone Analysis").

¹¹⁰ *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13931 ¶34 (2009). See also *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, Files No. 000165065, Memorandum Opinion and Order, WT Docket No. 04-70, 19 FCC Rcd. 21522, 21568 ¶108 (2004); *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720-21 ¶32 (2010).

CWA focuses on the large number of markets for which the screen is triggered, the number of markets subject to review is not a factor in the competitive analysis, much less dispositive to that review.¹¹¹

To the contrary, the empirical modeling provided by the Applicants demonstrates that the merger will result in a substantial increase in New T-Mobile's network capacity, along with incentives to price that capacity to provide greater value to consumers and compete against its larger rivals. The transaction will generate these benefits even in local areas in which spectrum aggregation would be above the FCC's screen threshold.

Finally, CWA has argued that the transaction is unnecessary because Sprint is "a viable standalone firm" and not a "failing company."¹¹² In doing so, CWA mischaracterizes the relevance of Applicants' statements about Sprint's viability and likely future performance. Applicants have neither claimed that Sprint is a failing company nor asserted that the company is not a viable standalone firm. Rather, Applicants have described Sprint's business challenges and demonstrated in great detail why those challenges constrain the company's ability to compete effectively against the other nationwide wireless carriers, particularly in the deployment of 5G. These challenges have, and will continue to, limit the degree to which Sprint will be a competitive player in the wireless industry—particularly compared to AT&T and Verizon. Therefore, the relevant competition question is not whether Sprint is a "failing company" but whether it creates greater competition, vis-à-vis lower prices and higher output, as a standalone firm rather than as part of New T-Mobile. As we have demonstrated through our numerous submissions and economic analyses, the

¹¹¹ Joint Opposition at 25.

¹¹² CWA erroneously asserts that Sprint is either a failing company or a viable stand-alone competitor.

overwhelming evidence suggests that greater economic utility is created through Sprint’s merger with T-Mobile, which will generate a stronger competitor to AT&T, Verizon, and cable.

iv. The Merger Will Provide Better Services at a Lower Price for Low Income and Lifeline Consumers and Communities of Color

CWA also claims that the transaction will harm low-income consumers and communities of color in New York. However, CWA presents absolutely no credible evidence to support its claim and ignores T-Mobile’s and Sprint’s outstanding records of serving low-income consumers and communities of color.¹¹³ REDACTED

REDACTED percent of T-Mobile and Metro stores are located in census tracts with high or extremely high rates of poverty¹¹⁴ and T-Mobile and Sprint customers are more equally distributed across household incomes than their competitors. In other words, T-Mobile has a track record of serving lower-income neighborhoods and communities of color—more so than its larger competitors. Furthermore, T-Mobile has a more diverse customer base than its competitors, with nearly 65 percent of its customers being racially or ethnically diverse. These groups are core customers for both companies and, contrary to CWA’s unfounded and spurious attacks, New T-Mobile will continue T-Mobile’s and Sprint’s commitment to serving them.

¹¹³ See Case 18-C-0396, *supra*, Comments of Older Adults Technology Services (Filed Nov. 16, 2018) (recognizing T-Mobile’s “demonstrated ability to recognize and cater to the specific technology needs and financial circumstances of seniors” through its “ONE plans” and free data streaming programs, which “coupled with a commitment to remaining a leader in business model experimentation and pricing innovation, position New T-Mobile well for playing a key role in bringing more seniors online”).

¹¹⁴ “High” poverty tracts are defined as tracts with a poverty rate of 20 percent or greater. “Extremely high” poverty tracts are defined as tracts with a poverty rate of 40 percent or greater.

Also, contrary to PULP’s comments, in their previous filings with the Commission, Applicants did focus on New T-Mobile’s commitment to continue the Lifeline service currently provided by Sprint.¹¹⁵ In addition, Applicants also noted that New T-Mobile would draw upon Sprint’s impressive record of serving low-income consumers, including Sprint’s service to New York consumers through its subsidiary Virgin Mobile’s Assurance Wireless brand, which participates in the Lifeline program.¹¹⁶ In fact, PULP has itself acknowledged the success of Virgin Mobile/Assurance Wireless noting that it “fill[s] a vital niche” in the State of New York—by “[f]ocusing upon the sort of services...for those New Yorkers unable to pass a credit check, or pay the cost of purchasing a smartphone.”¹¹⁷

In its comments, PULP references a 2017 FCC proceeding that is exploring some potential reforms to the Lifeline program.¹¹⁸ However, PULP’s misplaced concerns regarding the future eligibility of non-facilities-based carriers for the Lifeline program are not relevant to this proceeding and are more appropriately addressed to the FCC. As a federally authorized facilities-based ETC, Virgin Mobile/Assurance Wireless’s future Lifeline services are not at risk.¹¹⁹ Furthermore, it would be completely unfounded, premature, and potentially harmful to New York’s Lifeline consumers and providers for the Commission to take any action in this proceeding to account for speculative future changes in FCC rules. Applicants also note that PULP makes critical reference of Virgin

¹¹⁵ Applicants’ Comments at 18, (citing to Public Interest Statement at 51, n. 177).

¹¹⁶ See Applicants Comments at 20; see also *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. 214(e)(1)(A), et al.*, Order at 24 FCC Rcd 3381(2009).

¹¹⁷ Case 18-C-0335, *Petition of Virgin Mobile USA L.P. Pursuant to Public Service Law 92-h to Participate in New York State Targeted Accessibility Fund and Establishment of Distribution*, PULP Comments (Filed Dec. 6, 2018) (“PULP Lifeline Comments”).

¹¹⁸ See PULP Responsive Comments at 8.

¹¹⁹ See PULP Lifeline Comments at 5. See also, *Bridging the Digital Divide for Low Income Consumers, et al.* Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10499 (2017).

Mobile's legitimate request to access the Targeted Access Fund for additional funding to support the needs of eligible Lifeline customers in New York.¹²⁰ Virgin Mobile is eligible for such funds to better serve New York's low-income populations and PULP's disingenuous criticism flies in the face of its long-standing advocacy at the Commission in support of funding providers such as Virgin Mobile to serve the needs of low-income communities.¹²¹ Contrary to PULP's complaints, there is sufficient information in the Commission record to discern New T-Mobile's strong commitment to Lifeline customers in New York and that the public interest will continue to be served in this regard.

As described above, New T-Mobile will provide better service at a lower price, which will help low-income and value-conscious consumers across New York, many of whom rely on their wireless service as their sole access to the Internet. Average throughputs in high or extreme poverty census tracts in New York will be as high, or higher, than projected state and national averages by 2024. Low-income communities will benefit from the first nationwide 5G network; consumers with compatible handsets will get improved service; and all consumers will receive the benefits of a world class 5G network at the same or lower prices. New T-Mobile will provide high-speed broadband, with throughputs above 100 Mbps, to the overwhelming majority of high or extreme poverty census tracts in New York that currently lack such service.

New T-Mobile's commitment to bridging the digital divide is further illustrated by its pledge to continue supporting Sprint's signature corporate philanthropy -- the

¹²⁰ Case 18-C-0335, *Petition of Virgin Mobile USA L.P. Pursuant to Public Service Law 92-h to Participate in New York State Targeted Accessibility Fund and Establishment of Distribution*, Petition (Filed Mar. 23, 2018).

¹²¹ *See, generally*, PULP Lifeline Comments. PULP is "not opposing" the Commission granting Virgin Mobile Petition to access Targeted Access Fund under Public Service Law Section 92-h.

1Million Project.¹²² That initiative is addressing the homework gap for high school students in New York and across the nation that do not have access to the Internet in their homes. It has awarded devices and Internet connectivity to 32,415 students in 127 high schools in New York in two years, garnering high praise from New York school systems that it has helped.¹²³ In short, New T-Mobile will bridge the digital divide for low-income consumers, providing mobile and in-home broadband to those who cannot otherwise afford or access it and further assistance through corporate philanthropy.¹²⁴

Cornerstone's economic analysis further reinforces Applicants' evidence of these Merger-related benefits, and shows that the Merger's benefits will be particularly pronounced for heavy data users who are located in areas with significant low income, credit challenged, African American and Hispanic populations.¹²⁵

Finally, claims that the merger would harm communities of color are equally unfounded.¹²⁶ Throughputs in New York's majority African American and majority Latino census tracts will be as high, or higher than, the projected state and national averages by 2024. Any claim that the Merger will harm communities of color without considering the exceptional speeds that these communities will experience is without merit.

¹²² See <http://www.1millionproject.org> (last visited Nov. 15, 2018).

¹²³ See, e.g., Case 18-C-0396, *supra*, Comments of Hempstead School District (Jan. 9, 2019); Case 18-C-0396, *supra*, Comments of Buffalo Public School District (Jan. 11, 2019); Case 18-C-0396, *supra*, Comments of Freeport Public School District (Jan. 11, 2019).

¹²⁴ See, generally, Case 18-C-0396, *supra*, Comments of the Office of the Mayor, City of Yonkers (Filed Jan. 4, 2019) (recognizing that New T-Mobile will "provide Yonkers residents access to a mobile network which will provide unmatched coverage and speed at an affordable price allowing [its] city's students to complete homework assignments and submit college applications while also providing [its] seniors access to tele-health services"); Rochester CoC Comments; Case 18-C-0396, *supra*, Comments of the Advanced Communications Law & Policy Institute at New York Law School (Filed Nov. 16, 2018) ("ACLP Comments"); Case 18-C-0396, *supra*, Comments of Queens Chamber of Commerce (Filed Nov. 16, 2018); Case 18-C-0396, *supra*, Comments of Bronx Chamber of Commerce (Filed Jan. 9, 2019).

¹²⁵ See Cornerstone Analysis at 26-32.

¹²⁶ See, generally, Case 18-C-0396, *supra*, Comments of Silicon Harlem (Filed Jan. 4, 2019); ACLP Comments; and Rochester CoC Comments.

II. CONCLUSION

Based on the record in this proceeding, the Commission can only conclude that the proposed transaction is expected to produce benefits beyond any identifiable detriments and for the reasons stated below should be approved. While the Commission's jurisdiction in this matter is limited to the wireline Indirect CLEC Acquisitions, as described in detail above, the Merger will create numerous benefits for consumers of both wireline and wireless services in the State. In addition, Applicants provide a number of significant verifiable representations, as set forth in Appendix A hereto. Finally, the Indirect CLEC Acquisition will not only be transparent to Sprint Communications' customers, result in no consolidation of market power in the competitive wireline enterprise services market, but will also make Sprint Communications a stronger competitor in that market. Thus, there are no risks that need mitigation; the transaction is in the public interest; and, consistent with Commission precedent, the Indirect CLEC Acquisition must be approved without conditions.

Accordingly, Applicants urge the Commission to act expeditiously to grant the Joint Application pursuant to Public Service Law §§99(2) and 100.

Respectfully submitted,

HARRIS BEACH, PLLC

/s/ William M. Flynn

By: William M. Flynn

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and Sprint Communications
Company L.P.*

Appendix A
Summary of Representations & Verifications

Item	Representation	Verification
Jobs	New T-Mobile's total number of employees (i.e. W-2s) will equal or exceed the total number of employees of Sprint and T-Mobile in New York at closing, as of two years following the merger. This assumes inclusion of contractors hired with the intention of later becoming employees and adjustments for current employees who voluntarily decline employment at New T-Mobile.	Administrative notice of Department of Taxation and Finance Form NYS-45 filed on or shortly after 2-year anniversary of close: https://www.labor.ny.gov/ui/employerinfo/quarterly-reporting.shtm
Employee Benefits	Existing Sprint and T-Mobile employee benefits are safeguarded as (a) the merger agreement provides that Sprint employees will receive no less favorable benefits in the aggregate upon becoming New T-Mobile employees; and, (b) T-Mobile employees will continue to receive existing T-Mobile benefits under the same terms and policies once they become New T-Mobile employees.	Business Combination Agreement Section 6.13 https://www.sec.gov/Archives/edgar/data/101830/000110465918028087/a18-12444_1ex2d1.htm Additional Third-Party verification: https://www.glassdoor.com/Overview/Working-at-T-Mobile-EI-IE9302.11,19.htm
Consumers Pay Less for More	Consumers will benefit as (a) Sprint customers will be able to keep their current Sprint plan or a better New T-Mobile plan; and, (b) the New T-Mobile business projections, as verified on the record before the FCC, document that New T-Mobile customers will pay less for more.	FCC Public Interest Statement at 51-55; and Public Interest Statement sworn Declarations of T-Mobile President & Chief Operating Officer G. Michael Sievert, and T-Mobile Executive Vice President, Corporate Strategy, Peter Ewens: https://ecfsapi.fcc.gov/file/10618281006240/Public%20Interest%20Statement%20and%20Appendices%20A-J%20(Public%20Redacted)%20.pdf
5G Service	New T-Mobile will strive to deliver 5G coverage to the overwhelming majority of its FCC licensed covered POPs throughout State of NY, including the Upstate Region, within three to five years from the merger's closing.	Reference to Federal Communications Commission Mobile Deployment Form 477 Data with details related to particular provider and technology: https://www.fcc.gov/mobile-deployment-form-477-data ; and, Related Process for State access to Form 477 Data https://www.fcc.gov/general/process-state-regulatory-commissions-obtain-state-specific-fcc-form-477-data

Appendix B

State Approvals to Date

Alaska – *In the Matter of the Application Filed by T-Mobile USA, Inc. to Acquire a Controlling Interest in Sprint Communications Co. L.P.'s Certificate of Public Convenience and Necessity No. 750, Order No. 2 Granting Application, Case U-18-091 (Oct. 30, 2018).*

Colorado – *In the Matter of the Joint Application of Sprint Communications Co. L.P. and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control, Comm'n Decision Approving Joint Transfer, Proceeding No. 18-A-0469T (Sept. 5, 2018).*

D.C. – *Joint Application of Sprint Communications Co. L.P. and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc., Order, No. 19708 (Oct. 11, 2018).*

Delaware – *Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control of Sprint Communications Co. L.P., Memorandum, Docket No. 18-0984 (effective Aug. 20, 2018).*

Georgia – *Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control of Sprint Communications Co. L.P., Letter Order, Docket No. 6659 (Sept. 6, 2018).*

Louisiana – *Section 301.M Notice of Change in Ownership involving Subsidiaries of T-Mobile USA, Inc. and Sprint Corp., Acknowledgment Letter, Docket No. S-34950 (Aug. 6, 2018).*

Maryland – *Notification of Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc., Acknowledgment Letter, ML No. 221371, S-1792 (Sept. 26, 2018).*

Minnesota – *In the Matter of the Joint Petition for Approval of the Indirect Transfer of Control of Sprint Communications Co., L.P. to T-Mobile USA, Inc., Order, Docket No. P466,PT6227/PA-18-484 (Sept. 5, 2018).*

Mississippi – *In the Matter of the Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control, Order Approving, Docket No. 18-UA-124 (Jan. 10, 2019).*

Nevada – *Notice Regarding Transfer of Control of Sprint Communications Co. L.P. per NRS 704.329 (under 10 percent intrastate), and Waiver Request, Closing Letter, Docket No. 18-07009 (effective Aug. 30, 2018).*

New Jersey – *In the Matter of Sprint Communications Co. L.P.’s Notification of Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc.*, Order, Docket No. TM18070730 (Dec. 18, 2018).

Texas – *Application of Sprint Communications Co. L.P. to Amend a Certificate of Operating Authority*, Notice of Approval, Docket No. 48536 (Sept. 26, 2018).

Utah – *Application of Sprint Communications Co., L.P. for Informal Adjudication of Indirect Transfer of Control*, Acknowledgment Letter, Docket No. 18-094-02 (Aug. 23, 2018).

Virginia - *Joint Petition of Sprint Communications Co. of Virginia, Inc., Sprint Communications Co. L.P., Softbank Group Corp., Deutsche Telekom AG, and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control*, Order Granting Approval, Case No. PUR-2018-00110 (Dec. 6, 2018).

West Virginia – *Joint Petition of T-Mobile USA, Inc. and Sprint Corp. for Approval of Transfer Control of Authorized Telecommunications Providers*, Recommended Decision, Case No. 18-1087-T-PC (effective Oct. 15, 2018).