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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

ADMINISTRATIVE LAW JUDGE KARL J. BEMESDERFER, presiding

)	EVIDENTIARY
)	HEARING
In the Matter of the Joint)	
Application of Sprint Communications)	
Company L.P. (U-5112) and T-Mobile)	
USA, Inc., a Delaware Corporation,)	Application
for Approval of Transfer of Control)	18-07-011
of Sprint Communications Company)	
L.P. Pursuant to California Public)	
Utilities Code Section 854(a).)	CONSOLIDATED
)	
In the Matter of the Joint)	
Application of Sprint Spectrum L.P.)	
(U3062C), and Virgin Mobile USA L.P.)	Application
(U4327C) and T-Mobile USA, Inc., a)	18-07-012
Delaware Corporation, for Review of)	
Wireless Transfer Notification per)	
Commission Decision 95-10-032.)	
)	

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1
2
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10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I N D E X

WITNESSES:		PAGE
DR. LEE SELWYN		
Direct Examination By Ms. Schaefer		1256
Cross-Examination By Mr. Lui		1261
Redirect Examination By Ms. Schaefer		1318
EILEEN ODELL		
Direct Examination By Mr. Foss		1326
Cross-Examination By Ms. Toller		1327
Cross-Examination By Ms. Chong:		1352
Redirect Examination By Mr. Foss		1353
Recross-Examination By Ms. Toller		1357
Examination By ALJ Bemserfer		1358
Examination By ALJ Bemserfer		1360
NEVILLE RAY		
Direct Examination By Ms. Toller		1366
Cross-Examination By Ms. Schaefer		1368
Cross-Examination By Ms. Koss:		1388
Cross-Examination By Ms. Mailloux		1424
Cross-Examination By Mr. Goodman		1446
Examination By ALJ Bemserfer		1450
KRISTINA DONNELLY		
Direct Examination By Ms. Schaefer		1454
Cross-Examination By Ms. Taff-Rice		1455
Exhibits:	Iden.	Evid.
PAO-11	1258	1323
PAO-11-C	1258	1323
PAO-12	1259	1323
JA-19	1278	1324
JA-20	1288	1324
JA-21	1291	1324
JA-22	1317	1324
PAO-13	1325	1365
PAO-13-C	1325	1365
JA-23	1329	1366
JA-24	1329	1366
JA-25	1332	1366
JA-26	1346	1366
JA-27	1348	1366
JA-28	1367	1453
JA-28-C	1367	1453
CWA-15	1397	1453

1	CWA-16	1397	1453
	CWA-17	1415	1453
2	PAO-14	1454	1485
	PAO-14-C	1454	1485
3	DISH-01	1459	1485
	DISH-02	1468	1485
4	JA-29	1487	1488
	JA-29-C	1487	1488
5	JA-30	1488	1488
	JA-31	1488	1488
6	JA-32	1488	1488
	JA-33	1488	1488
7	PAO-15	1488	1489
	CETF-04	1489	1489
8	CWA-18	1490	1490
	GLI-04	1490	1490

9

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SAN FRANCISCO, CALIFORNIA

DECEMBER 5, 2019 - 9:00 A.M.

* * * * *

ADMINISTRATIVE LAW JUDGE BEMESDERFER:

All right. Let's go on the record.

This is the time and place for an evidentiary hearing in Application 18-07-011 and -012, the matter of the Joint Application of Sprint Communications Company and T-Mobile USA for approval of transfer of control of Sprint Communications Company, LP.

I'm Administrative Law Judge Karl Bemederfer, and the assigned commissioner in this proceeding is Commissioner Clifford Rechtschaffen.

This additional evidentiary hearing was scheduled as a result of changes in the transaction brought about by negotiations between the applicants and the United States Department of Justice that resulted in the addition of a new fourth wireless national facilities-based wireless company, DISH Network. Because of the addition of DISH, the original transaction has been modified, and the focus of this hearing is on the implications of that modification for the State of California's assessment of this transaction.

1 I've received an order of witnesses
2 from the parties. The first witness this
3 morning will be Mr. Selwyn.

4 And would you please call your first
5 witness?

6 MS. SCHAEFER: The Public Advocates
7 Office calls our first witness, Lee Selwyn,
8 Dr. Lee Selwyn.

9 ALJ BEMESDERFER: Good morning,
10 Mr. Selwyn.

11 DR. LEE SELWYN, called as a witness
12 by Public Advocates Office, having been
13 sworn, testified as follows:

14 THE WITNESS: I do.

15 ALJ BEMESDERFER: Your witness,
16 Counsel.

17 MS. SCHAEFER: Thank you so much.

18 DIRECT EXAMINATION

19 BY MS. SCHAEFER:

20 Q Good morning, Dr. Selwyn.

21 A Good morning.

22 Q Do you have your testimony in front
23 of you?

24 A I do. I have the confidential
25 version in front of me.

26 Q The confidential version.

27 And we would like to be entering
28 that into the evidentiary record this morning

1 as, I think -- as number -- Number 1 and 1-C,
2 for both the public and the confidential
3 versions.

4 ALJ BEMESDERFER: I -- I think we're
5 going to --

6 MS. SCHAEFER: Do evidence at the end?

7 ALJ BEMESDERFER: -- carry on from
8 where we left off at the last evidentiary
9 hearing.

10 MS. SCHAEFER: Oh, okay.

11 MS. TOLLER: So, it looks to me, your
12 Honor, as if Cal PA's last exhibit number was
13 10, Public Advocates-10, and then our
14 convention has been to call the -- to call
15 the regular version, the public version of
16 the testimony --

17 ALJ BEMESDERFER: The same number.

18 MS. TOLLER: -- Public Advocates-11,
19 right, and the confidential version will be
20 Public Advocates-11-C. I would also
21 mention that, of course, I -- we won't be
22 admitting his testimony into evidence until
23 after he's been cross-examined.

24 ALJ BEMESDERFER: All right. So --

25 MS. SCHAEFER: So 11 -- Exhibits 11 and
26 11-C.

27 ALJ BEMESDERFER: Okay. We'll mark
28 them for identification, if you give me

1 copies of them.

2 MS. SCHAEFER: We --

3 MS. TOLLER: They're going to take the
4 official. Do you have the public version,
5 too?

6 ALJ BEMESDERFER: Off the record.

7 (Off the record.)

8 (Exhibit No. PAO-11 was marked for
9 identification.)

10 (Exhibit No. PAO-11-C was marked for
11 identification.)

12 ALJ BEMESDERFER: Back on the record.

13 Counselor, please continue.

14 MS. SCHAEFER: And we would also like
15 to admit into evidence at this time the
16 admissions from Dr. Mark Israel that was a
17 response to Dr. Selwyn's questions via
18 e-mail, and would like to ask -- waiving our
19 cross-examination of Mr. Israel, we will call
20 that Exhibit Cal Advocates-12.

21 ALJ BEMESDERFER: Thank you.

22 MS. SCHAEFER: And there's no
23 confidential version.

24 MS. TOLLER: So, your Honor, I guess,
25 in my mind, I had thought that we would be --
26 the admissions would come in with
27 Dr. Israel's testimony, but we can do
28 Dr. Israel later, and make that a Cal PA

1 exhibit, and we would -- the admissions, and
2 we would make Dr. Israel's testimony a
3 Joint Applicant exhibit, if that's what the
4 Court prefers.

5 ALJ BEMESDERFER: Well, we can have it
6 marked now.

7 MS. TOLLER: Okay.

8 ALJ BEMESDERFER: And you can use it
9 later.

10 So this will be Public Advocate-12.
11 I just received a document entitled
12 "Admissions from Dr. Mark Israel," which will
13 be marked for identification as Public
14 Advocates Exhibit-12.

15 (Exhibit No. PAO-12 was marked for
16 identification.)

17 MR. BLOOMFIELD: Your Honor?

18 ALJ BEMESDERFER: Uh-huh?

19 MR. BLOOMFIELD: Could we have one
20 minute just to review that? Although we
21 conveyed it to the Cal PA electronically the
22 other day, and they accepted it, we haven't
23 seen what this particular exhibit looks like;
24 so if we could just have one minute.

25 ALJ BEMESDERFER: Okay. Off the record
26 for a minute.

27 (Off the record.)

28 ALJ BEMESDERFER: Back on the record.

1 Please continue.

2 BY MS. SCHAEFER:

3 Q Okay. So Dr. Selwyn, did you
4 author the testimony in front of you?

5 A I did.

6 Q Is the information contained
7 therein true and correct, to the best of your
8 knowledge?

9 A Best of my knowledge and belief,
10 yes.

11 Q Are there any corrections you would
12 like to make to your testimony?

13 A I have one very minor correction at
14 page 59, lines 10 and 11. The reference
15 there is to an initial public offering for an
16 IPO, and that should read: "A public
17 offering for NPO." The word "initial" should
18 be stricken.

19 THE REPORTER: Can you speak into the
20 microphone, please? Thank you.

21 THE WITNESS: I'm sorry.

22 BY MS. SCHAEFER:

23 Q Okay. Thank you. And there are no
24 other changes to your testimony?

25 A Not that I'm aware of.

26 MS. SCHAEFER: Okay. Your Honor, the
27 witness is able -- available for your
28 cross -- for cross-examination at this time.

1 ALJ BEMESDERFER: Thank you.

2 Mr. Lui, I believe you're going to
3 conduct this cross?

4 MR. LUI: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. LUI:

7 Q Good morning, Dr. Selwyn.

8 A Good morning.

9 Q I'm Bradley Lui. I represent
10 Sprint in this matter, and I'm going to be
11 starting the questioning today.

12 And for the ease of just reference,
13 I am going to refer to your -- what has just
14 been marked for identification as Cal
15 Advocates 11-C, which is your reply
16 testimony, just as your prepared testimony,
17 just for ease of reference. Is that okay?

18 A That's fine.

19 Q Okay. Thank you.

20 ALJ BEMESDERFER: Mr. Lui, let me
21 interrupt you for one second. Is it your
22 intention to examine this witness about any
23 of the confidential portions of his
24 testimony?

25 MR. LUI: I don't believe that we will
26 need to elicit on -- out in open court any
27 confidential information.

28 ALJ BEMESDERFER: It -- and as long as

1 we're on that subject, are the persons
2 present in this room subject to
3 non-disclosure agreements? Is there anyone
4 here who is not subject to an NDA or is not
5 otherwise a party?

6 MS. TOLLER: Not right now, your Honor.
7 You know what? I'm sorry. I don't --

8 UNIDENTIFIED SPEAKER: No.

9 (Crosstalk.)

10 MS. TOLLER: Okay. Another Cleary
11 lawyer, but we're good. Yeah. I think
12 that's it. Yeah.

13 ALJ BEMESDERFER: All right. In that
14 event, I'm greatly relieved, because we will
15 never have to clear the room.

16 Please continue, Mr. Lui. I'm sorry
17 for the interruption.

18 MR. LUI: And your Honor -- thank you,
19 your Honor. And just for reference, there is
20 one exhibit, I believe, that I might use for
21 cross which does contain confidential
22 information, but I don't think we need to put
23 it out into the public.

24 Q So, Dr. Selwyn, in forming the
25 opinions contained in your prepared
26 testimony, did you rely solely on public
27 documents?

28 A There were a few -- some

1 proprietary material in some responses to
2 Public Advocates' data requests as well as
3 some material from earlier testimony by, I
4 believe, Mr. Draper.

5 Q Okay. So aside from the testimony
6 of Mr. Draper and the discovery requests that
7 you just referenced, was there any other
8 non-public material that you relied upon?

9 A Not that I recall.

10 Q Okay. Have you conducted a review
11 of DISH's internal planning documents with
12 respect to its 5G network?

13 A I reviewed some of the DISH
14 responses, such as the RFI, if that's what
15 you're referring to.

16 Q Okay. Did you review the internal
17 planning documents for how the network would
18 be built?

19 A Not in any detail.

20 Q What documents of the -- what
21 internal documents of the network build did
22 you review?

23 A I don't recall.

24 Q Did you interview any DISH
25 personnel regarding their 5G network build?

26 A No.

27 Q Did you review any transcripts of
28 any depositions of DISH personnel in which

1 they discussed DISH's plans for its 5G
2 network?

3 A No.

4 Q Do you have any experience in
5 building a mobile wire -- wireless network?

6 A No.

7 Q Do you have any experience in
8 wireless network engineering?

9 A Well, I was involved in the first,
10 second and third rounds of the 800-megahertz
11 licensing back in the early 1980s, and at
12 that time, I certainly was involved in the
13 issues of -- of engineering and of --
14 attempted to remain knowledgeable as -- at a
15 general level. I'm not an engineer, but I
16 certainly attempted to remain knowledgeable
17 about the engineering considerations in
18 constructing wireless networks.

19 Q Okay. But, you have not actually
20 done any engineering on a wire -- in the --
21 for a wireless network itself, have you?

22 A No.

23 Q And did you conduct a study of the
24 costs that DISH will need to incur for
25 building its 5G network?

26 A I relied on statements made by DISH
27 in -- and as recorded in its Forms 10, 10K
28 regarding an estimate of about \$10 billion.

1 Q Okay. But, you did not perform an
2 independent study of the costs of such a
3 network?

4 A I did not.

5 Q And you have not expressed an
6 opinion regarding what the actual costs to
7 DISH of building a 5G network is. Is that
8 correct?

9 A That's correct.

10 Q Okay. And DISH's plan is to build
11 a 5G-only network. Is that correct?

12 A That's my understanding.

13 Q And in building that 5G network,
14 DISH will not have to integrate that network
15 with a network based on a legacy standard.
16 Is that correct? So in other words, a --

17 THE REPORTER: So a what standard? I'm
18 sorry. I didn't get --

19 MR. LUI: A legacy standard. Sorry.

20 THE REPORTER: I didn't get the last
21 half of your question.

22 MR. LUI: A legacy standard.

23 ALJ BEMESDERFER: Mr. Lui, there's a
24 microphone in front of you. You might want
25 to turn it on. Okay. Move it closer.

26 MR. LUI: I'm not projecting enough.
27 Sorry.

28 ALJ BEMESDERFER: It's just for the

1 benefit of the reporter.

2 MR. LUI: Okay. Sorry. Let me start
3 that again. We'll -- we'll start that again.

4 Q So in building its 5G network, DISH
5 will not have to integrate that network with
6 another network based on legacy standards.
7 Is that correct?

8 A Well, if it's DISH's intent that
9 any subscriber to its service be provided
10 with a handset that is 5G capable, then that
11 would be correct. If -- if, as a marketing
12 measure, DISH intends to try to migrate
13 customers to its network who have legacy
14 handsets, then DISH would need to be able to
15 support those handsets.

16 Q And under the current plan, DISH is
17 able to provision customers with legacy
18 handsets on the -- on the T-Mobile or
19 Sprint -- the combined T-Mobile and Sprint
20 network, is that correct, of this merger?

21 A That's correct. But, they would
22 not be -- if you -- if DISH builds a 5G-only
23 network, then those handsets would not --
24 could not be migrated to the DISH network.

25 Q Okay. But, based on your
26 understanding, the 5G network that -- I think
27 we established that the 5G network that DISH
28 is building is a 5G-only network. Is that

1 correct?

2 A That is my understanding.

3 Q Are you aware that wireless
4 networks that are built today can be based on
5 a technology known as virtualization?

6 A Yes.

7 Q And are you aware that
8 virtualization significantly reduces network
9 equipment costs over older technology?

10 A That's my understanding.

11 Q And in your testimony -- let me
12 turn to your testimony at page 29, and
13 that's -- I'd like to look at -- and I'm
14 referring to Table 3.

15 A Yes.

16 Q Okay. So in Table 3, my
17 understanding is that in the column that is
18 labeled "Wireless plan and equipment," and
19 there are numbers there for T-Mobile and
20 Sprint -- do you see where I'm point --
21 looking at?

22 A Yes.

23 Q So there's a -- there's two figures
24 there, and those are your estimate of capital
25 expenditures from 20 -- 2010 to 2018 for
26 T-Mobile and Sprint for wireless plan and
27 equipment. Is that correct?

28 A Yes.

1 Q And in that table, did you adjust
2 the numbers you reported to account for the
3 differences in technology that will -- DISH
4 will be using for its network?

5 A No, I did not.

6 Q Okay. And -- and isn't it the case
7 that the cost of network equipment has fallen
8 over time?

9 A Perhaps.

10 Q Okay. And isn't it the case that
11 software can now perform many functions in a
12 wireless network that used to be
13 hardware-only?

14 A Up to a point. It's not going to
15 materially change the -- the propagation
16 attributes from individual cell sites, and to
17 the extent that DISH's potentially going to
18 be constructing new cell sites with the
19 virtualization does not change the -- the
20 course of the tower, doesn't necessarily
21 change the course of an antenna. So it may
22 have some effect. But, I -- I'm not in a
23 position to -- to identify the extent to
24 which the reduced costs would -- would affect
25 these -- these estimates.

26 Q Okay. Are you aware of a --

27 A I'm relying on DISH's
28 representations in its -- its certified Forms

1 10, 10-K as to its anticipated expenditure
2 level.

3 Q Okay. And you have no reason to
4 believe that that 10 billion-dollar figure is
5 an inaccurate figure, do you?

6 A I have not challenged it, no. I've
7 questioned DISH's ability to raise
8 \$10 billion, but I'm -- I'm not -- I don't
9 have any reason to -- to question the number.

10 Q Okay. All right. Thank you. So
11 then, if we go to your testimony at pages
12 14 -- I think it's at page 14.

13 A Did you say, "14"?

14 Q 14, sorry. Oh, sorry. Yeah,
15 page 14, paragraph 14.

16 A Okay.

17 Q In there, you describe the fact
18 that DISH's historic pay television services
19 has suffered a decline in subscribers. Is
20 that correct?

21 A Yes.

22 Q And then, if you go to the next
23 page of your testimony, you've also noted
24 that DISH has had its sights on the mobile
25 wireless business for sometime. Is that
26 correct? That's at --

27 A That's correct. Again, that's --
28 that's based on disclosures contained in

1 their Forms 10-K.

2 Q And so the mobile wireless business
3 represents an opportunity for DISH to improve
4 its financial performance. Isn't that
5 correct?

6 A As I have indicated, I am not
7 offering an opinion one way or the other as
8 to the profitability of DISH's wireless
9 venture, and hence, I'm not able to -- to
10 tell you whether or not its entry into mobile
11 would improve its financial performance. If
12 it's losing -- if it ends up losing money in
13 mobile, then that would not improve its
14 financial performance. So it would perhaps
15 increase its revenues, but not necessarily
16 its financial performance.

17 Q But, does DISH believe -- but,
18 based on those documents you've reviewed,
19 DISH does believe that that is -- that it --
20 it will be able to improve its financial
21 performance by building this wireless
22 network. Right?

23 A I can't speak to what DISH does or
24 does not believe. As I pointed out,
25 investors don't seem particularly sanguine
26 about it, since DISH's stock has -- has --
27 has taken a hit in the last six or
28 eight months to where it had been, and

1 certainly relative to the S&P 500.

2 Q So when you did that study, when
3 you looked at the stock performance of DISH,
4 did you control for the fact that its pay TV
5 business subscribers have been declining?

6 A I didn't control specifically
7 for -- for anything. But, if its -- if its
8 investors feel that wireless is -- is a --
9 that DISH's wireless investment will produce
10 future gains for the company, that should be
11 captured in the stock price, and it does not
12 appear to be the case.

13 Q But, that's a big "if." There are
14 many things that -- many factors that go into
15 the performance of a stock. Right?

16 A You asked me if -- if DISH's entry
17 into wireless would improve its financial
18 performance. And investors will value --
19 value the stock based on their expectations
20 of exactly that, of whether or not DISH's
21 activities in the future will produce an
22 increase in -- in its overall profitability,
23 and if investors were satisfied that wireless
24 was DISH's key to the future, and would --
25 would enable it to replace its -- the
26 revenues it was -- it was losing as the
27 legacy linear television market continues to
28 decline, then presumably that would be

1 captured in the stock. If investors are
2 seeing a decline in the stock price, that's
3 across all of DISH's activities. So what I'm
4 saying is to whatever extent wireless might
5 be contributing to a replacement of -- of the
6 video revenues, on balance, investors don't
7 seem particularly impressed by it.

8 Q That was not the question that I
9 asked you, was it?

10 A Yeah, I think it was.

11 Q No. The question I asked you was:
12 There are a number of factors that go into
13 the performance of a stock. Is that correct?

14 A Yes.

15 Q And you did not control for those
16 other factors in making your observation with
17 respect to the performance of DISH's stock.
18 Is that correct?

19 A I did not specifically control
20 for -- for -- I'm not even sure what factors
21 you're referring to. But, I only was looking
22 at its stock price, basically since July,
23 since the announcement of its participation
24 in the Sprint/T-Mobile transaction was made
25 public.

26 Q You estimate that DISH spent
27 approximately -- or you -- I think you've
28 testified that DISH spent approximately

1 \$20 billion for spectrum prior to its
2 agreement to buy the Boost business. Is that
3 correct?

4 A More accurately, at least from what
5 I was able to determine from its -- its
6 financial disclosures in its various 10-K
7 filings, DISH spent approximately 21 billion
8 on spectrum, and in addition, had booked
9 approximately \$4 billion in capitalized
10 interest to finance those spectrum purchases.
11 So the total amount carried on its books is
12 actually about 25 billion.

13 Q 25 billion. Thank you. And it
14 also agreed to pay approximately 1.4 billion
15 for its Boost business. Is that correct?

16 A Yes.

17 Q Okay. And what penalties will DISH
18 incur if it does not build the 5G network to
19 which it has committed?

20 A My recollection is it would have to
21 pay a fine to the -- to the Justice
22 Department, the government, of \$360 million.

23 Q Wouldn't it also have -- doesn't it
24 really have to pay about 2.2 billion in
25 fines, under the FCC order?

26 A I don't recall the precise number,
27 but perhaps.

28 Q Does the 2.2 billion number sound

1 correct?

2 A I think so.

3 Q Okay. And it would also risk
4 forfeiture of its licenses. Correct?

5 A Yes.

6 Q And --

7 A It risks forfeiture of its licenses
8 if it does -- if it does nothing at all.

9 Q And it also would risk -- risk a
10 contempt citation from the Court --

11 THE REPORTER: I'm sorry. Allowing?
12 From the Court?

13 BY MR. LUI:

14 Q In risking the contempt citation
15 from the Court that is handling the
16 settlement with the DOJ. Is that correct?

17 A Potentially.

18 Q Thank you. So having made these
19 significant investments in spectrum and
20 commitments to build a nationwide 5G network,
21 doesn't DISH have every incentive to build a
22 competitive mobile wireless network?

23 A DISH has an incentive to comply
24 with its commitments. But, as I've noted,
25 even in the event of full compliance with its
26 commitments, it will not be in a position to
27 capture a sufficient position in the market
28 to actually operate or fulfill the role of

1 constraining the then three -- three major
2 companies. It will have a very miniscule
3 share of the market, and would not be in a
4 position to replace Sprint as a fourth
5 national carrier, even -- even assuming that
6 all of its commitments are made.

7 Q Okay.

8 A The -- the model that I developed
9 to try to estimate DISH's ramp-up over the
10 next seven years does not -- it assumes that
11 all of the commitments are made.

12 Q So you're assuming that it won't --
13 it won't meet all of its commitments?

14 A That's what -- my model makes that
15 assumption, yes. It does not -- it does not
16 adjust for any possible shortcoming on those
17 commitments.

18 Q Okay. And that -- you're
19 referring -- the model you're referring to is
20 the ETI Ramp-up Model?

21 A Yes.

22 Q Okay. I'd like to go to the issue
23 about its ability to finance its network
24 build.

25 A Yes.

26 Q DISH's ability to finance its
27 network build.

28 Have you undertaken an

1 investigation of DISH's efforts to secure
2 financing for the -- it's 5G network build?

3 A Not specifically, no.

4 Q Okay. Do you know if any of the
5 DISH spectrum is encumbered by -- as a
6 security for debt?

7 A I believe it is, yes.

8 Q And where -- where -- what is the
9 basis for that?

10 A Well, it's -- it's certainly been
11 financing it. I -- I can't cite any specific
12 basis, but that's -- that has been my belief.

13 Q That's your belief. But, you have
14 no basis -- -

15 A No.

16 Q -- for that belief?

17 A No. I may be wrong on that.

18 Q Okay. And you've reviewed DISH's
19 10-K. Is that correct?

20 A Yes, a number of them.

21 Q And the most recent 10-K?

22 A Yes.

23 Q And does that -- did that 10-K
24 reveal any encumbrances on the spectrum?

25 A I don't recall. I don't know that
26 I found that.

27 Q If the spectrum is not encumbered,
28 would one option for DISH be to borrow funds

1 against the spectrum as security for the 5G
2 network build?

3 A It is.

4 Q And you've reviewed the FCC order
5 approving the transaction. Is that correct?

6 A Yes.

7 Q And in that order, didn't the FCC
8 find that the significant public interest
9 benefits promised by DISH will only occur if
10 it actually builds the network it has
11 committed to build? That's -- that's true.
12 Right?

13 A That's correct.

14 Q And the FCC would not have approved
15 the DISH -- DISH's extension to complete the
16 construction of its network if it believed it
17 was not going to build that network. Is that
18 correct?

19 MS. SCHAEFER: Objection, your Honor,
20 that's speculation as to the FCC.

21 ALJ BEMESDERFER: Sustained. Do you
22 want to --

23 MR. LUI: Your Honor, then -- then
24 let's go look at the order at paragraph 377.

25 So we'll mark that -- I think the
26 next in sequence is 19? 19.

27 ALJ BEMESDERFER: Uh-huh.

28 MR. LUI: We'll mark this as Joint

1 Applicants-19.

2 MS. TOLLER: Thank you.

3 THE WITNESS: Where are we in --

4 BY MR. LUI:

5 Q It's paragraph 377.

6 ALJ BEMESDERFER: One moment, Mr. Lui.

7 So I've been handed a document
8 entitled "FCC order granting transfer of
9 control of the licenses, authorizations, and
10 spectrum leases held by Sprint and its
11 subsidiaries to T-Mobile" dated October 16th,
12 2019, which will be marked for identification
13 next in order as Joint Applicants-19.

14 (Exhibit No. JA-19 was marked for
15 identification.)

16 ALJ BEMESDERFER: Please continue.

17 MR. LUI: Thank you.

18 Q So Dr. Selwyn, do you have the
19 exhibit that's been marked as Joint
20 Applicants Number 19 before you?

21 A I do.]

22 Q And that, as I mentioned, is the
23 memorandum, opinion, and order of the FCC
24 approving the Sprint's -- I'd like you to
25 turn to page 166, and it's paragraph 377.
26 And if you'd like to read that.

27 A The print's really small so if
28 you'll indulge me.

1 Read this out loud?

2 Q No. Just so you read it so you're
3 familiar with it because I'll be asking you
4 some questions about it.

5 A Okay.

6 Q So in that paragraph, the
7 Commission noted that DISH itself has
8 significant business incentives to build a
9 network; is that correct?

10 A Yes.

11 Q And nonetheless it decided to
12 impose additional conditions to make sure --
13 to ensure that it makes -- that it completes
14 its build out commitment; is that correct?

15 A Yes.

16 Q And so this indicates that the
17 Commission was satisfied that -- and as a
18 condition of its approval, that DISH would
19 build that network; is that correct?

20 A Again, I did not -- I do not
21 question -- for purposes of my analysis, I
22 assume that DISH would build out its network.

23 Q Okay. Then you don't have any
24 reason to believe that it could not obtain
25 financing to build that network; is that
26 correct?

27 A I think DISH will have difficulty
28 obtaining financing. As I note,

1 notwithstanding these assets and accept your
2 representation that they are unencumbered,
3 DISH's net rating has been downgraded or has
4 some conditional downgrades.

5 It has \$25 billion of nonperforming
6 assets on its books. I'm simply raising the
7 question as to potential difficulties that
8 DISH will have to finance the build out plus
9 the purchases of another roughly \$5 billion
10 if it goes through with the 800 megahertz
11 spectrum option.

12 So we're looking at \$15 billion of
13 official cash that DISH will need in order to
14 -- to by its own estimates in order to
15 fulfill these commitments.

16 Q But you haven't done any in-depth
17 study of DISH's ability to finance this
18 network build out?

19 A Not at that level, no. And, again,
20 you know, the FCC is saying that the public
21 benefits will only occur if DISH does in fact
22 fulfill its build out commitments. That is
23 certainly -- I read that as minimally. It
24 doesn't say, "They will occur." It says they
25 will only occur.

26 If DISH fails to build out its
27 financial commitments -- its build out
28 commitments, then the FCC is saying that the

1 public benefit will not occur.

2 I don't see that the FCC in this
3 paragraph is saying that the benefits will
4 occur. They're saying essentially minimally
5 it can only occur if this happens.

6 Q So at the bottom of paragraph 377
7 that we've been talking about, the Commission
8 says:

9 These conditions will create
10 additional financial incentives
11 totalling in the billions of dollars
12 to ensure DISH undertakes its
13 committed build out.

14 Is that correct?

15 A That's what it says. You know, I
16 would remind you that similar kinds of build
17 out commitments were made in the -- recently
18 with respect to this Commission's approval of
19 the Frontier-Verizon transaction. That
20 didn't work out too well. So, you know,
21 commitments are one thing. If you impose
22 \$2 billion of fines on Frontier, you know,
23 that wouldn't be worth very much if the
24 company doesn't have \$2 billion to pay them.

25 So, I mean, these are commitments.
26 These are fines. And as I've indicated, I
27 read the FCC simply saying, "We couldn't
28 possibly -- DISH couldn't possibly achieve

1 the public benefit if it fails to build out
2 its network."

3 It doesn't say necessarily that
4 DISH will fulfill the Justice Department's
5 objectives if it does build out its network.
6 And my analysis assumes that it does build
7 out its network.

8 Q So as part to of its regulatory
9 authority, the FCC has the ability to demand
10 information from licensees such as DISH in
11 order to satisfy itself that such licensees
12 will have the ability to comply with its
13 orders; is that correct?

14 A Yes.

15 Q And the FCC did that here?

16 A I assume so.

17 Q And do you have any information
18 regarding DISH's financial condition that the
19 FCC did not have?

20 A I don't think so.

21 Q And the DOJ determined that the
22 prepaid divestiture conditions commitment to
23 build a nationwide 5G network removed its
24 concerns regarding the transaction; correct?

25 A That is what the DOJ concluded, and
26 that is what I am questioning.

27 Q And as part of its law enforcement
28 functions, the DOJ has the ability to require

1 DISH to provide it with information regarding
2 its financial ability to finance a 5G
3 network; is that correct?

4 A I would assume so.

5 Q Do you have any information that
6 the DOJ did not have regarding the financial
7 condition of DISH?

8 A I doubt it.

9 Q If the cost of the build out were
10 significantly less than \$10 billion, would
11 your opinion on DISH's ability to finance the
12 build out change?

13 A It might.

14 Q And then coming up with your
15 opinion regarding DISH's ability to finance
16 its network build, did you conduct any cash
17 flow analysis?

18 A No.

19 Q Did you consider the cash flows
20 from the prepaid business could be a means of
21 paying for its network build?

22 A Well, actually I did examine the
23 cash flows from the prepaid business. One of
24 the things that I concluded was that DISH
25 based on the prepaid Churn Rate being
26 experienced by Sprint with respect to the
27 customers that would be divested to DISH,
28 DISH risks losing almost 4 -- or

1 approximately 4 million out of the
2 9.3 million Boost -- DISH prepaid customers
3 that it would require within the first
4 12 months simply based on the Churn Rate.

5 Q Again, that's -- you were talking
6 about your ETI ramp-up model?

7 A Well, that was part of that
8 analysis. But the point is if DISH continues
9 to experience churn at the rate -- at the
10 same rate that Sprint has been experiencing
11 it, which is about 4-and-a-half percent per
12 month, then unless DISH is successful in
13 replacing that business, that 9.3 million
14 customers it would start out with will be
15 5.3 million after a year. So I actually
16 question how much cash flow DISH would
17 actually get.

18 In order for DISH to even -- DISH
19 has to ramp up the retail business. DISH has
20 had zero experience, as I understand it,
21 operating its own retail outlets. Zero
22 experience selling wireless services. And
23 yet -- I don't even know how much cash flow
24 DISH would be successful in maintaining in
25 its prepaid market. Even over the first year
26 let alone beyond that. Unless it can achieve
27 some turn around that Sprint has been unable
28 to achieve and reduce that Churn Rate.

1 And incidentally, although Sprint's
2 Churn Rate is a little higher than the
3 industry average, the Churn Rate for prepaid
4 services industrywide is still in the 4
5 percent range. So there's not that much
6 better that DISH could expect to accomplish
7 even it was able to improve it's own churn
8 rate. Improve the Churn Rate on those Sprint
9 customers that it acquires.

10 Q Boost's customers are currently
11 riding on the Sprint Network; is that
12 correct?

13 A Yes.

14 Q And the Sprint Network compared to
15 the T-Mobile Network is not -- does not have
16 as much coverage in it and does not have
17 consistency of the T-Mobile Network; is that
18 correct?

19 A That's correct.

20 Q Okay. And so when DISH takes over
21 -- if DISH were to take over the Boost
22 business, it will be able to put the new --
23 its new Boost customers on the new T-Mobile
24 Network; is that correct?

25 A To the extent that they have
26 handsets that are compatible, yes.

27 Q So T-Mobile has handsets that are
28 compatible with its network today; correct?

1 A Obviously.

2 Q And DISH can sell customers that it
3 -- handsets -- the same handsets so that they
4 can ride on the new T-Mobile Network;
5 correct?

6 A They could, yeah. Although it is
7 -- there's a lot of evidence that it is the
8 point at which customers are acquiring new
9 handsets that is a source of churn. So the
10 need -- the extent that an existing Boost
11 customer is required to obtain a new handset,
12 that provides an opportunity for that
13 customer to be addressable by other carriers.

14 Q But by the same token, Boost can
15 also seek to -- the new Boost can seek to
16 acquire customers from other carriers using
17 the advantages of the new T-Mobile Network;
18 is that correct?

19 A That's correct.

20 Q Okay. So now if I could turn to
21 the assets that DISH will receive as part of
22 divestiture.

23 Most of the prepaid subscribers
24 that are being transferred are Boost and
25 Virgin subscribers; is that correct?

26 A That's my understanding.

27 Q And as part of the divestiture,
28 Boost will be receiving -- DISH will be

1 receiving Boost's network retail locations;
2 is that correct?

3 A Well, that's actually not all that
4 clear. The decommissioned retail sites are
5 to be made available to Boost. But as
6 drafted, it isn't totally clear that -- when
7 this would occur. And certainly nothing that
8 I've read that suggests that it occurs
9 concurrently with the transferred customers.

10 I would image that DISH would have
11 no need for a Boost store upon the transfer.
12 But that's not what is actually provided in
13 the PFJ.

14 Q The PFJ talks about the
15 decommissioned stores are Sprint stores.
16 They're Sprint-branded stores, not mobile
17 Boost locations; is that correct?

18 A I didn't read it that way. I read
19 it as stores that were operated by -- I read
20 it as stores that were operated by Sprint.

21 MR. LUI: Your Honor, we'd like to hand
22 out another exhibit, which I guess is Joint
23 Applicants-20 -- will be marked as Joint
24 Applicants-20.

25 ALJ BEMESDERFER: All right. For the
26 record, I've been handed a document entitled
27 Proposed Final Judgment, Case
28 I:19-EV-02232-TJK. Dated July 26, 2019,

1 which will be marked next in order as Joint
2 Applicants-20.

3 (Exhibit No. JA-20 was marked for
4 identification.)

5 BY MR. LUI: Thank you, your Honor.

6 Q For the record, what's been marked
7 for identification as Joint Applicants-20 is
8 the proposed final judgment.

9 MS. MAILLOUX: Your Honor, may I ask a
10 question? Christine Mailloux for TURN.
11 Could I just ask a clarifying question?

12 Which is this the same document that
13 -- it was attached to your amended
14 application or to your testimony? Did you
15 guys already attach this or is this a
16 different version? Just to make sure we've
17 got the same document.

18 MS. TOLLER: Are we on the record, your
19 Honor?

20 ALJ BEMESDERFER: We're on the record.
21 Do you want to go off the record?

22 MS. TOLLER: Sure for a minute.

23 ALJ BEMESDERFER: Off the record.

24 (Off the record.)

25 ALJ BEMESDERFER: Back on the record.

26 Please continue, Mr. Lui.

27 BY MR. LUI:

28 Q Thank you, Your Honor. So what's

1 -- what you have before you is the proposed
2 final judgment that was filed by the United
3 States in the proceedings that we've been
4 talking about. And I'd like to direct your
5 attention to page 4 of the proposed final
6 judgment, which is Section 2 -- is in
7 Section 2 of definitions. And specifically
8 Item L. Item L is prepaid assets; correct?

9 A Correct. Okay.

10 Q So the definition of prepaid assets
11 -- these are the prepaid assets that will be
12 required to be divested to DISH; is that
13 correct?

14 A Yes.

15 Q And if you look at the definition
16 of prepaid assets --

17 A It says retail locations.

18 Q -- Boost and Virgin mobile retail
19 locations?

20 A Correct.

21 Q So they will begin in retail
22 locations?

23 A Yes.

24 Q And do you know how many stores
25 those are?

26 A Not offhand.

27 Q Okay. And are those stores owned
28 by third-party dealers?

1 A There are -- Boost Services and
2 Virgin Mobile Services are sold by
3 third-party retailers. Also Boost is sold by
4 stores that are Boost branded and that I
5 believe are owned by Sprint. But I don't
6 know that for certain.

7 I know that there are -- it is not
8 uncommon in the wireless industry for a store
9 to carry the brand but not be owned by the
10 provider. T-Mobile certainly has stores in
11 that category.

12 Q I can't remember. Were you here on
13 February 6th at the beginning of this year
14 for earlier hearings?

15 A I was.

16 Q Were you here for the testimony of
17 Dow Draper?

18 A I'm sorry?

19 Q Dow Draper who is a Sprint
20 employee?

21 A I think so. But I don't -- I
22 probably was, yes.

23 Q Okay. So why don't I do this. I'm
24 going to hand out what's now -- will be
25 marked as Joint Applicants-21, which is a
26 transcript of the February -- an excerpt of
27 the transcript of February 6, 2019 hearing in
28 this matter.

1 ALJ BEMESDERFER: For the record, I've
2 been handed a document entitled Hearing
3 Transcript, Brandon Dow Draper Testimony.
4 Dated February 6, 2019, which will be marked
5 for identification as Joint Applicants-21.

6 (Exhibit No. JA-21 was marked for
7 identification.)

8 BY MR. LUI:

9 Q It seems like a long time ago. So
10 I think it would just be easier to give him a
11 transcript and obviously you can look
12 wherever you want on the transcript. But I'm
13 going to be focused on pages 687 and 688 of
14 the transcript.

15 Let me know when you've had a
16 opportunity to review it.

17 A What do you want me to look at?

18 Q Why don't you read page 687 and 688
19 through line 10.

20 A Okay. I see where I'm thinking is
21 line 7 and 8 on 688.

22 Q Yes. But I wanted make sure you
23 have the context. And Mr. Draper indicates
24 that Sprint does not own the mobile -- sorry.
25 The Boost and Virgin Mobile locations; is
26 that correct?

27 A Right.

28 Q And those -- so the employees of

1 those stores would not be Sprint employees;
2 is that correct?

3 A No.

4 Q On page 68 of your testimony, and
5 I'm referring to lines 4 to 6.

6 A Okay.

7 Q Okay. In there you say on line 5,
8 "It's a maximum of 400 individuals."

9 I think that might be a typo. Is it
10 a "minimum" of 400 individuals?

11 A I think so. Actually, I don't
12 remember.

13 Q If you go to the previous page,
14 line 18, I believe it says, "Shall include no
15 fewer than 400"?

16 A That would be minimum. Okay.

17 Q I just wanted to make sure the
18 record was clear. The reason that the retail
19 employees from the Boost and Virgin Mobile
20 retail locations is not included in that
21 prepaid assets personnel bucket is because
22 they're not Sprint employees; is that
23 correct?

24 A That's correct, yes.

25 Q And Boost Prepaid Services are also
26 sold at Wal-Mart stores; is that correct?

27 A Among other places, yes.

28 Q And how many Wal-Mart stores are

1 there in the United States?

2 A I don't know.

3 Q Are there thousands?

4 A Countless.

5 Q And DISH, as part of the
6 divestiture, will also get the relationships
7 that Boost has had with Wal-Mart; is that
8 correct?

9 A Yes.

10 Q And isn't it the case that DISH
11 also has a number of third-party dealers that
12 sell its service?

13 A That is my understanding as to its
14 entire retail business model, yes.

15 Q So it has a number of independent
16 third parties?

17 A I don't believe that DISH maintains
18 any retail stores.

19 Q Okay. So it sells through
20 independent stores?

21 A Correct.

22 Q And so if the transaction is
23 concluded, DISH will be able to use those
24 retailers to sell Boost Services as well?

25 A Possibly. My understanding is that
26 those services are typically sold at
27 locations where TV sets and home theater-type
28 systems are sold. Not necessarily locations

1 that are associated with wireless services.
2 So I can't say for sure that they're
3 necessarily amenable to pick up the wireless
4 brands.

5 Q So are DISH services sold in a --
6 you're saying that things like retailer
7 locations that sell TVs I think I understood;
8 is that correct?

9 A Yes.

10 Q Okay.

11 A Some retail locations may also sell
12 wireless services but not necessarily the
13 same part of the store for example.

14 Q So like a Best Buy could sell TVs
15 and wireless?

16 A Not usually in the same place.

17 Q But within the same store?

18 A Same store, yes.

19 Q Okay. So now I'd like to switch to
20 a different topic and talk about towers. So
21 just -- I just want to clarify in your
22 testimony. In your discussion of
23 decommissioned towers, you're not assuming
24 that DISH is going to rely just on
25 decommissioned towers for T-Mobile -- the new
26 T-Mobile to build its network; is that
27 correct?

28 A I believe that -- I don't know that

1 I ever used the expression "decommissioned
2 towers." I used the phrase "decommissioned
3 cell sites." That is how it's described in
4 the PFJ.

5 Q Sorry.

6 A The tower is not necessarily even
7 owned by Sprint or T-Mobile.

8 Q And the towers are commonly owned
9 by leasing companies?

10 A Right.

11 Q And those carriers lease the space
12 for their antennas from the leasing company?

13 A And equipment.]

14 Q And equipment?

15 A Right.

16 Q Thank you.

17 And then -- so, in fact, DISH is
18 relying on those leasing companies leasing
19 space on towers from leasing companies for --
20 independently for its network build; is that
21 correct?

22 A I'm sorry. DISH is or Sprint?

23 Q DISH is for its 5G network.

24 A I would assume so. I don't know.
25 I doubt that they would -- DISH would be
26 planning to construct its own tower, so
27 that's probably the case.

28 Q So DISH is actually for its

1 previous network plan, which was an IOT
2 network, it is contracted with tower leasing
3 companies for space on those towers; is that
4 correct?

5 A I believe so.

6 Q And then as a result of the PFJ, if
7 a decommissioned cell site becomes available,
8 DISH is able to supplement its network with
9 those sites; right?

10 A Well, that's going to depend on
11 when it's available, when the decommissioned
12 cell site becomes available. Under PFJ, the
13 new T-Mobile would have up to five years to
14 decommission the minimum of 20,000 cell
15 sites. The question is, will those cell
16 sites be decommissioned sufficiently early in
17 that period that they are useful for DISH for
18 its own network.

19 I'm simply questioning if DISH is
20 going to be building out its network
21 beginning shortly after the order is issued
22 and does not have access to the
23 decommissioned cell sites. That aspect of
24 divestiture is less important.

25 Q DISH would then have to go the
26 ordinary course, which is lease tower space
27 from a leasing company; is that correct?

28 A Well, they're going to have to do

1 that anyway, but they're not going to have
2 access to the decommissioned sites.

3 Q Okay. Understood. Okay.

4 Now, you proposed some HHI
5 calculations; is that correct?

6 A Yes.

7 Q And you based those calculations on
8 market shares that are derived from spectrum
9 shares; is that correct?

10 A That is what I did back in my
11 original testimony in this proceeding; that
12 is, I used the spectrum shares extant in each
13 of the 58 California counties as surrogates
14 for market shares.

15 Q Okay. And has the HHI calculation
16 that's in your prepared testimony that was
17 entered as Cal Advocates-11-C, are those HHI
18 calculations in here based on spectrum shares
19 or something else?

20 A Well, they are partially based upon
21 spectrum shares, but with some adjustments
22 that are associated with the ramp-up. The
23 original approach that I had used back in
24 January was to assume that the four companies
25 were all going concerns, that they were
26 fairly -- they had established their
27 respective market shares, and their
28 respective market shares and their respective

1 spectrum shares were more or less comparable.
2 They weren't identical, but they were
3 certainly similar magnitude to their market
4 shares.

5 The problem with using that same
6 approach in a situation where we're dealing
7 with a carrier that is first ramping up is
8 that the going business assumption that
9 underlies my original approach doesn't apply.

10 So what I attempted to do was to
11 adjust the DISH spectrum share by a
12 projection of its potential ability to gain
13 market share during the ramp-up period, and
14 so it is still basically a spectrum share
15 approach, but subject to ramp-up adjustment.

16 Q And you cite the Horizontal Merger
17 Guidelines of the U.S. Department of Justice
18 and the Federal Trade Commission in your
19 testimony in discussing in discussing HHI; is
20 that correct?

21 A Yes.

22 Q And in the Horizontal Merger
23 Guidelines, doesn't it specify that market
24 shares are generally to be based on revenues?

25 A Yeah.

26 Q And spectrum is not revenue?

27 A As I said, I used spectrum as a
28 surrogate for revenues.

1 Q Okay, but spectrum is not revenue?

2 A I believe the approach that I used
3 is reasonable because we didn't have
4 county-level revenues or even state-level
5 revenues, and that's what I was trying to
6 address.

7 The operative question is, are the
8 spectrum shares close enough proxy for
9 revenue shares that it is appropriate to use
10 them for this purpose, and I believe that
11 the -- I believe that they are, and that's
12 why I did that.

13 Q Okay. But the merger guidelines
14 don't provide for using an item like spectrum
15 as a proxy for shares; right?

16 A The merger guidelines refer to
17 revenue shares, and what I was doing was
18 attempting to develop revenue shares based
19 upon spectrum shares as a proxy.

20 Q Okay. But there is no guidance in
21 the merger guidelines to use something like
22 spectrum as a proxy for revenue; is it?

23 A It's not stated specifically, no.
24 But we don't have revenue shares at the level
25 that I was trying to examine the impact,
26 particularly for the state, which is the
27 jurisdiction of this Commission.

28 So absent that, I felt that

1 spectrum shares were a reasonable proxy, and
2 I still believe that they are.

3 Q The FCC didn't use spectrum shares
4 in -- for the purposes of its analysis of the
5 competitive effects in this transaction; did
6 it?

7 A The FCC has access to a lot more
8 revenue data than I have access to.

9 Q So you refer to the 200 threshold
10 in the merger guidelines; is that correct?

11 A Yes.

12 Q But that 200 threshold is not
13 intended to determine that a merger is
14 anticompetitive; is it?

15 A It is -- it is a major factor in
16 that determination. It's not totally
17 dispositive, but it is certainly a major
18 factor.

19 Q The guidelines really use it as a
20 screening mechanism; isn't that correct?

21 A In the sense that if you fall below
22 the 200, I suppose that the guidelines say
23 everything is okay. And if you go above it,
24 then additional analysis needs to be
25 undertaken, but the guidelines do also say
26 that if you're dealing with
27 highly-concentrated markets, which we are to
28 begin with, an increase of over 200 is

1 generally not to be sanctioned.

2 Q Now, doesn't the guide- -- don't
3 the guidelines say that if it trips that
4 threshold, that further analysis is
5 warranted?

6 A Yes. It says that.

7 Q And you haven't done that further
8 analysis; have you?

9 A No.

10 Q So let's go -- I guess we had
11 talked a little about the ETI Ramp-up Model,
12 and I just want to understand a little bit
13 about that model. So do you believe that
14 AT&T competes for all mobile wireless
15 customers?

16 A In the sense that AT&T provides
17 service almost universally throughout the
18 country, yes.

19 Q And Verizon competes for all
20 wireless customers?

21 A Same answer.

22 Q And T-Mobile; is that the same
23 answer for T-Mobile?

24 A To the extent they have the same
25 coverage, yes.

26 Q But with respect to DISH, you
27 conclude in your testimony at page 40 that
28 DISH will only compete for customers that are

1 churning from other carriers or part of net
2 growth in the market; is that correct?

3 A Well, let me clarify. The -- while
4 carriers compete for customers -- I took your
5 first previous three questions to be fairly
6 general. Customers, essentially, become
7 addressable by a service provider or for that
8 matter, any product provider, when the
9 customer is, essentially, in the market for
10 services.

11 If you just purchased a car or
12 leased a car that you intend to keep for some
13 number of years, you are not, basically,
14 addressable to the automobile dealers or to
15 the automobile manufacturers. So you're not
16 in the market until you become addressable.

17 You become addressable when you
18 decide to get rid of the car. At which point
19 you can go shopping for a new one or if you
20 total the car and you need a new one or
21 something like that.

22 I think that all carriers confront
23 exactly the same analysis that I described;
24 that is, the customers that are available to
25 AT&T, Verizon, T-Mobile and Sprint at any
26 given point in time are customers that are
27 addressable, which are customers that
28 respond -- that, for example, have paid off

1 their installment plan or that no longer have
2 a contract for service, and customers that
3 are dissatisfied with their service for some
4 reason.

5 And the churn rate is an indication
6 of the level to which the customers in the
7 market are addressable. We know that prepaid
8 customers are, you know, a much higher churn
9 rate than post-paid customers. We also know
10 that churn rates, particularly for post-paid,
11 are dropping principally because - and
12 there's lots of documentation on this in the
13 industry - because people are keeping their
14 handsets for longer periods of time.

15 So if you are going to get rid of a
16 handset every two years, then you are
17 addressable at the point; you're ready to
18 replace the handset.

19 If you are going to keep the
20 handset for three years, you become
21 addressable when you're ready to replace the
22 handset. So churn rates go down as handset
23 longevity increases. And that phenomenon
24 affects all carriers.

25 So when you say AT&T competes for
26 all customers, I guess I would have to
27 qualify my prior answer by saying, that all
28 carriers compete for all addressable

1 customers.

2 Q Let talk about what you just termed
3 "addressable customers." You said
4 addressable customers are when they decide to
5 replace their handset.

6 A Or net growth.

7 Q Or net growth.

8 So let's just focus on replacing
9 their handset. Say, I have my handset, and I
10 have one carrier. I could take that handset
11 and go to another carrier and have that
12 carrier provision my service; is that
13 correct?

14 A Not necessarily. It would depend
15 on whether the handset you have is locked to
16 the original carrier, and most handsets that
17 are sold by carrier outlets are locked.

18 Q But after the end of the term, you
19 can unlock -- get those unlocked; right?

20 A With some effort, yes.

21 Q But you can?

22 A Yes, with some effort.

23 Q But even with some effort, those
24 aren't included in your addressable numbers;
25 are they?

26 A Of course, they are. They're
27 included to the extent that they are
28 reflected in the churn rate.

1 Q They are included only to the
2 extent that they're reflective of the churn
3 rate.

4 Is it necessarily the case that
5 when somebody comes up at the end of their
6 contract, that they will necessarily churn?

7 A Maybe yes; maybe no. But the point
8 is that what the churn rate is doing is
9 capturing the experience in the market where
10 customers are moving from one carrier to
11 another, are churning. So, you know, exactly
12 what the cause of the churn is -- you know,
13 the customer could have died, or moved to
14 Afghanistan, or, you know, moved into an area
15 where the coverage of his existing carrier is
16 not satisfactory, or simply was responding to
17 an opportunity to move to a different carrier
18 because he or she was thinking about getting
19 a new phone, and the carrier was offering a
20 better deal on that new phone that the
21 customer wanted.

22 Q So if a carrier was offering a
23 better deal relative to other carriers, that
24 would increase the churn rate of its
25 competitors, all else equal; is that correct?

26 A And that's reflected, and that
27 industry practice is captured in the churn
28 rate. You also need to remember that, for

1 example, sometimes carriers offer to pay off
2 a contract to try to create addressable
3 customers, which is potentially another
4 source of increased sales opportunities, but
5 when you do that, you increase the CPGA, and
6 if you're going to pay off a contract that
7 still has four or \$500 left on it, then you
8 could be looking at a CPGA in the range of
9 seven or \$800 or more, and that may or may
10 not be viable.

11 So there's a lot of considerations.
12 I think the use of churn and growth provides
13 a reasonable basis for what any carrier can
14 reasonably expect with respect to sales.

15 Q But your churn number also -- let
16 me talk about that. When carriers increase
17 in quality relative to other carriers
18 increase the churn of its competitors, all
19 else equal?

20 A I'm sorry. Could you repeat that?

21 Q So if a carrier increased its
22 quality relative to its competitors would
23 that increase the churn of its competitors,
24 all else equal?

25 A Possibly. To the extent that you
26 can convince customers that it's actually
27 done that, which, of course, would involve,
28 you know, extensive marketing, promotions,

1 and things like that.

2 Q So if I'm understanding correctly,
3 then competition on price or quality can
4 affect churn rates; is that correct?

5 A Yes.

6 Q And so when we're trying to analyze
7 a merger, the most important issue is whether
8 the merger will reduce competition on price
9 or quality, and in this case for wireless
10 customers; right?

11 MR. GOODMAN: Objection, Your Honor.
12 That's not consistent with Public Utilities
13 Code.

14 MR. LUI: Your Honor, I'm asking the
15 witness's opinion. I'm not asking for a
16 legal conclusion. I'm asking for the
17 witness's expert opinion, who is testifying
18 on competitive issues.

19 ALJ BEMESDERFER: He may answer.

20 THE WITNESS: Can I have the question
21 read, please.

22 ALJ BEMESDERFER: Could you read back
23 the question.

24 (The question is not read back.)

25 BY MR. LUI:

26 Q For an analysis of this merger, the
27 most important issue is whether the merger
28 will reduce competition on price or quality

1 for wireless consumers; is that correct?

2 A Yeah.

3 Was that the question you asked me
4 before?

5 Q Yes.

6 A Okay. I didn't hear it that way.

7 Could we have that question reread
8 as he asked it before?

9 MR. LUI: Well, your Honor, that is the
10 question. He didn't answer the pending
11 question. I redid the question, and that's
12 the question that was posed.

13 ALJ BEMESDERFER: I think the witness
14 is questioning whether he was asked the same
15 question. Do you want to read back the
16 question?

17 (The record was not read back.)

18 ALJ BEMESDERFER: The record will
19 reflect that you answered the question
20 counsel had subsequently asked you, and we'll
21 see if we can clarify it, the earlier
22 question, but we'll go on at this point.

23 MR. LUI: Your Honor, I'll stipulate
24 that the answer is only to the question that
25 was posed.

26 ALJ BEMESDERFER: Continue please,
27 Mr. Lui.

28 Q So I'd like to turn to your ETI

1 Dish Ramp-Up Model. That model doesn't
2 include any factor that takes into account
3 the impact of changes in price; does it?

4 A No.

5 Q So if DISH were to reduce prices to
6 a dollar a month for unlimited service, your
7 model would predict it would get the same
8 number of customers as if it charged the same
9 price as Dish does today; is that correct?

10 A Yes.

11 Q And the ETI DISH Ramp-Up Model does
12 not include any factor that takes into
13 account a change in quality; is that correct?

14 A Well, I did op- -- I did run two
15 sensitivities; one of which had substantially
16 -- had DISH acquiring a multiple of what I
17 was identifying as addressable customers,
18 essentially to overcome -- or which would at
19 least assess the possibility that DISH would
20 be able to do better than simply capture the
21 rateable share of the addressable customers.

22 So the answer, I guess, is that,
23 yes, I did attempt to examine the possibility
24 that DISH would succeed in getting more than
25 simply its spectrum share of addressable
26 customers.

27 Q But that wasn't something that you
28 had to actually hardwire into the model? It

1 wasn't a natural outgrowth of the model; is
2 that correct?

3 A Well, you asked me whether I
4 considered factors that would allow DISH to
5 increase its sales relative to, essentially,
6 the -- what I was focusing on was a
7 spectrum-share approach, and the answer is, I
8 didn't examine specifically, for example,
9 what happens if they reduce their price to a
10 dollar. If they did that, they would keep
11 customers, but they probably would go out of
12 business. But I did attempt to consider the
13 potential for DISH to operate more
14 aggressively in capturing its market share
15 through any means, whether it -- it's
16 increased marketing, increased handset
17 subsidies, lower prices, whatever the reason,
18 and I still found that after a seven-year
19 period, it was only going to capture
20 something in the 6 percent range.

21 And, you know, I should also point
22 out that one of the things I examined was
23 financial market assessments and Comcast's
24 entry into the wireless business, and after
25 five or six years following Comcast's entry,
26 it was projected to have about 6 percent
27 market share.

28 And this is a company that's

1 starting out with three times as many of a --
2 of a linear television customer base that's
3 three times the size of DISH. So I think
4 that my overall conclusion was borne out by
5 the market's assessment of what Comcast
6 has -- is expected to accomplish by its
7 entry.

8 Q Okay. That wasn't my question. I
9 was talking about your model, but I would
10 like to take up that Comcast example.

11 Comcast only sells its wireless
12 product to its current internet customers; is
13 that correct?

14 A Yes.

15 Q And that will not be a restriction
16 that DISH will have; will it?

17 A You call that a restriction; I call
18 that an opportunity. Comcast has
19 20-odd-million internet customers, and it
20 has, basically, for the vast majority of them
21 has, essentially, purloined their wireless
22 router into a hotspot that Comcast is able to
23 use, to offer, among other things, to support
24 its wireless entry, making it almost
25 semi-facilities based because if you're
26 driving in an area where there is a Comcast
27 hotspot and you use the Comcast mobile
28 service, you access Comcast's wireless --

1 Comcast's existing broadband network, rather
2 than an MVNO-type of operation.

3 And Comcast is starting out with an
4 enormous customer base that it is able to
5 leverage through bundling and -- and -- into
6 wireless. Dish has no -- DISH has linear
7 video customers, but it has no ability to use
8 that particular infrastructure for wireless;
9 so to me Comcast starts out with a
10 significant advantage over DISH.

11 Comcast internet business is
12 growing. DISH's linear television business
13 is experiencing negative growth. So I would
14 think that if Comcast is expected to only get
15 a 6 percent share after seven years, that I
16 can't see how DISH could even get near that
17 based on where it stands in the market with
18 respect to its existing customers.

19 Q Comcast doesn't have nationwide
20 coverage for its internet service; does it?

21 MS. SCHAEFER: Your Honor, objection.
22 Comcast is not within the scope of this
23 proceeding.

24 MR. LUI: Your Honor, he is talking
25 about Comcast as an example, and I think I'm
26 entitled to explore that.

27 ALJ BEMESDERFER: I think the witness
28 brought Comcast in here. You're entitled to

1 question him at least one or two more.

2 BY MR. LUI:

3 Q So Comcast --

4 A Comcast has -- Comcast does not
5 have nationwide coverage for its internet
6 service, but it does have 20-so-odd million
7 internet customers, which is the base upon
8 which it is marketing its mobile service.

9 Comcast through MVNO arrangements
10 with wireless carriers is able to then
11 provide nationwide coverage to its mobile
12 customers that roam outside of the core
13 Comcast service area where its wifi hotspots
14 can be employed for that purpose.

15 Q Does your ETI DISH Ramp-Up Model
16 make any prediction about prices or quality
17 post-market?

18 A Other than the fact that I've
19 provided two sensitivity runs that improve
20 on -- that -- that posit a substantial
21 improvement by DISH in capturing share, I
22 haven't examined quality or price
23 specifically, but I've attempted to capture
24 the effect of those kinds of changes in the
25 model.

26 Q But the model price doesn't predict
27 any price change or any quality change as a
28 result of --

1 A It doesn't predict it, but it
2 account for it.

3 Q Isn't it the case that the FCC
4 conducted a review of the proposed merger and
5 concluded that the divestiture -- bill
6 commitments that the merger was in the public
7 interest?

8 A Yeah, and the Justice Department
9 did that as well, but I think that neither of
10 those analyses undertook a careful
11 examination of the likely presence in the
12 market that DISH is going to have, which is
13 what I've attempted to do.

14 Q So with respect to the FCC review,
15 at least 50 personnel at the FCC and DOJ that
16 were detailed to the FCC conducted that
17 review; is that correct?

18 A I don't know how many.

19 MR. LUI: One moment, your Honor.

20 Q Do you have Exhibit 19 in front of
21 you? I would direct your attention to
22 Chairman Pai's statement, 266, the last
23 paragraph. Page 266.

24 A Okay.

25 Q So this last paragraph identifies
26 all the people that worked on this
27 proceeding; is that correct?

28 You can take I look at it.

1 ALJ BEMESDERFER: Can you give me the
2 page reference again.

3 MR. LUI: I'm sorry, your Honor. Page
4 266, the last paragraph.

5 THE WITNESS: Are you talking paragraph
6 266 or page 266?

7 BY MR. LUI:

8 Q Page 266.

9 A Okay. I see them. Do you want me
10 to count them up?

11 Q Subject to check. It's around 50,
12 but a large number of people worked on it;
13 would you agree with that?

14 MS. SCHAEFER: Your Honor, objection on
15 the basis that we do not -- we're not able to
16 speculate on what the FCC has been doing.

17 ALJ BEMESDERFER: The question was,
18 does he see how many people Chairman Pai
19 thanked, and the answer is, he does.

20 MR. LUI: Thank you, your Honor.

21 THE WITNESS: And he may thanking them
22 for agreeing with his position on this
23 subject. So I don't know --

24 BY MR. LUI:

25 Q So --

26 A -- what he did. Maybe he did not
27 thank everybody. Maybe he did not include
28 people that disagreed.

1 MR. LUI: Thank you, your Honor. I
2 just have a -- one last item to take up.

3 I would like to have handed out
4 what's been marked for identification as
5 Joint Applicants-22. And your Honor, this is
6 a confidential exhibit, but I'm hoping not to
7 elicit out in the open any confidential
8 information.

9 ALJ BEMESDERFER: For the record, I've
10 been handled (sic) an exhibit entitled
11 "Sprint data request responses
12 SPR-CAPAL-00006255, confidential version,"
13 which will be marked as next in order as
14 Joint Applicants-22.

15 (Exhibit No. JA-22 was marked for
16 identification.)

17 MR. LUI: And, your Honor, this is
18 the -- Sprint's response to Cal PA data
19 request 15-1.

20 Q So Dr. Selwyn, are you aware that
21 the California Public Advocate requested a
22 Data Request 15-1 for information regarding
23 handset --

24 THE REPORTER: Handset -- did you
25 say --

26 MR. LUI: Handset compatibility.

27 THE REPORTER: Thank you.

28 THE WITNESS: Yes. Yes, I am.

1 BY MR. LUI:

2 Q Okay. And if you look at what's
3 been marked as Exhibit JA-20 -- Joint
4 Applicants-22, is that the -- Sprint's
5 response to those data requests?

6 A It appears to be, yes.

7 Q And so that identifies which of --
8 handsets are compatible with which standard.
9 Is that correct?

10 A Yes.

11 MR. LUI: One moment, your Honor. Your
12 Honor, I have no further questions.

13 ALJ BEMESDERFER: Thank you. Do we
14 have redirect for this witness, Ms. Schaefer?

15 MS. SCHAEFER: Yes, I have one
16 clarification that I would like to ask
17 Mr. Selwyn.

18 REDIRECT EXAMINATION

19 BY MS. SCHAEFER:

20 Q So Mr. Lui, you had asked about if
21 DISH had met all of its commitments that it's
22 made, those assumptions.

23 So if in -- even if DISH were to
24 meet the commitments, is the proposed -- are
25 the -- is the proposed merger in the public
26 interest?

27 A No. Even if -- the analysis that I
28 conducted, the -- the model that I developed,

1 assumes that DISH met all of its commitments,
2 and what I've determined is that even if that
3 occurs, and it -- it is able to construct the
4 network, construct this network to the extent
5 of its -- of its spectrum holdings, including
6 any spectrum that it ultimately acquires
7 from -- from Sprint or new T-Mobile, and in
8 one case, accounting for a required leaseback
9 of a 600-megahertz spectrum to new T-Mobile,
10 that, under all of these conditions, DISH,
11 after a seven-year period, would acquire such
12 a minuscule share of the -- of the national
13 wireless market as to have no meaningful
14 constraint as to -- present no meaningful
15 constraint on the then three roughly
16 equal-sized carriers, which will create
17 precisely the kind of opportunities for
18 parallel conduct and increased prices that
19 the Justice Department has identified in its
20 complaint filed with the District Court in
21 the District of Columbia, Federal District
22 Court, back in July, and that this will lead
23 to higher prices, and is not in the public
24 interest. It would be harmful to consumers.
25 And the DISH entry into this market does not
26 cure the problems that the Justice Department
27 identified in its complaint.

28 Q Thank you, Mr. Selwyn.

1 That's all on the Public Advocates
2 end.

3 ALJ BEMESDERFER: I'd like to follow up
4 on your question for a minute.

5 I just want to be sure I understand
6 your testimony, Dr. Selwyn. Is it your
7 testimony that even assuming DISH meets all
8 its commitments, its -- and assuming that as
9 a result of meeting all its commitments, it
10 is a national facilities-based carrier after
11 seven years, it -- will that present any
12 competitive threat to the other three
13 carriers? Is that your testimony?

14 THE WITNESS: It will not present a
15 sufficient competitive threat to the other
16 three carriers that would overcome their
17 incentive to engage in parallel conduct and
18 increased prices and its profits, because
19 there -- the potential loss of business to
20 DISH is so small that it would not overcome
21 the opportunity to increase profits by
22 essentially tacitly -- by tacit market
23 allocation agreements that would have the
24 effect of increasing prices for the other
25 three carriers.

26 ALJ BEMESDERFER: All right. Let me
27 ask you one other question not -- related to
28 another part of your testimony, which has

1 been alluded to, but I don't believe you were
2 asked specifically about it.

3 As I understand the proposed
4 transaction through the first, I think it's
5 seven years of DISH's existence as a wireless
6 carrier, it would be operating as an MVNO.
7 Am I correct in that?

8 THE WITNESS: No. DISH would be
9 operating as an MVNO essentially for the
10 initial period of the -- of the initial
11 several years of its following the entry
12 of -- of any order, because all of the
13 prepaid customers that it would be inheriting
14 and might -- might subsequently acquire
15 would -- would be -- the underlying service
16 provider would be T-Mobile. So DISH would be
17 strictly an MVNO. The -- as DISH builds out
18 its network, it has the potential to compete
19 for retail customers, postpaid retail
20 customers, for 5G-type services by offering
21 5G handsets to those customers. It has the
22 potential to migrate some of its inherited or
23 acquired prepaid customers to its own
24 network. The presumption here is that as it
25 gets more into facility-based service, it --
26 it would reduce its dependence upon T-Mobile.
27 And what my model does, it assumes
28 essentially that DISH really does not begin

1 offering prepaid -- postpaid -- sorry,
2 postpaid services until approximately 2022,
3 because that is when DISH has committed to
4 get to 20 percent coverage. So what I've
5 done is I've taken its spectrum share, and
6 I've multiplied that by .2, as -- because
7 only -- only 20 percent of its spectrum would
8 then be accessible to -- from population
9 standpoint. 2023, DISH is committed to get
10 to 70 percent. It's made no subsequent
11 commiss- -- commitments to go above
12 70 percent. So I've assumed postpaid service
13 entry at the 70 percent level starting in
14 2023. So the -- the MVNO relationship would
15 persist until DISH migrates whatever prepaid
16 customers it has to its own network, which
17 presumably is not going to occur until
18 perhaps, you know, toward the end of the --
19 of that seven-year period.

20 ALJ BEMESDERFER: All right. Thank you
21 for that clarification. I have no other
22 questions.

23 Do you have any recross, Mr. Lui?

24 MR. LUI: One moment. I have no
25 further questions, your Honor.

26 ALJ BEMESDERFER: All right.
27 Mr. Selwyn, you may step down.

28 THE WITNESS: Thank you, your Honor.

1 MR. LUI: Your Honor, can we go off the
2 record so we can rearrange?

3 ALJ BEMESDERFER: Off the record, yes.

4 (Off the record.)

5 ALJ BEMESDERFER: We'll go back on the
6 record.

7 While we were off the record, we had
8 a colloquy about moving documents into the
9 record.

10 Ms. Schaefer, would you now on the
11 record move those documents?

12 MS. SCHAEFER: Yes. The Public
13 Advocates Office would like to move both
14 Exhibits-11 and 11-C as well as Public
15 Advocates Office Exhibit-12 into the record.

16 ALJ BEMESDERFER: Is there objection?

17 (No response.)

18 ALJ BEMESDERFER: Hearing none, Public
19 Advocates-11, 11-C and 12 are admitted into
20 the record.

21 (Exhibit No. PAO-11 was received
22 into evidence.)

23 (Exhibit No. PAO-11-C was received
24 into evidence.)

25 (Exhibit No. PAO-12 was received
26 into evidence.)

26 MS. TOLLER: Your Honor?

27 ALJ BEMESDERFER: Ms. Toller?

28 MS. TOLLER: Joint Applicants would

1 like to move in cross-examination exhibits
2 that were marked as Joint Applicants-19,
3 which is the FCC decision, Joint
4 Applicants-20, which is a copy of the post
5 final judgment, Joint Applicants-21, which
6 are the transcript excerpts from Mr. Draper,
7 and Joint Applicant Exhibit 22, which were
8 the data responses to Sprint.

9 ALJ BEMESDERFER: Is there objection to
10 any of those exhibits?

11 MS. SCHAEFER: The Public Advocates
12 Office has no objections.

13 ALJ BEMESDERFER: All right. Without
14 objection, all four of those exhibits are
15 admitted into the record.

16 (Exhibit No. JA-19 was received into
17 evidence.)

18 (Exhibit No. JA-20 was received into
19 evidence.)

20 (Exhibit No. JA-21 was received into
21 evidence.)

22 (Exhibit No. JA-22 was received into
23 evidence.)

24 ALJ BEMESDERFER: All right. Next
25 witness? Ms. Schaefer?

26 MS. SCHAEFER: The next witness is
27 Eileen Odell from the Public Advocates
28 Office.

ALJ BEMESDERFER: Good afternoon --
good morning, Ms. Odell. It's still morning.

1 EILEEN ODELL, called as a witness by
2 Public Advocates Office, having been
3 sworn, testified as follows:

4 THE WITNESS: I do.

5 MS. SCHAEFER: Your Honor, I'm going to
6 turn over to Travis Foss, as I have to leave
7 for the closed session of the Commission
8 meeting at this point.

9 ALJ BEMESDERFER: Very well. Thanks
10 very much for your participation,
11 Ms. Schaefer.

12 Mr. Foss, would you like me to mark
13 these exhibits for identification before you
14 start, since I've already been given them?

15 MR. FOSS: Yes, your Honor.

16 ALJ BEMESDERFER: All right. For the
17 record, I've been handed two exhibits. Both
18 have the same title, "Reply Testimony of
19 Eileen Odell On the Proposed Transfer of
20 Control of Sprint to T-Mobile: Impacts on
21 Low Income Consumers." They will be marked
22 PA-12 (sic) for the public version and
23 PA-12-C (sic) for the confidential version.

24 (Exhibit No. PAO-13 was marked for
25 identification.)

26 (Exhibit No. PAO-13-C was marked for
27 identification.)

28 ALJ BEMESDERFER: Mr. Foss, your
witness.

1 DIRECT EXAMINATION

2 BY MR. FOSS:

3 Q Good morning, Ms. Odell. You have
4 a copy of Public Advocates-12 and 12-C in
5 front of you?

6 MR. BLOOMFIELD: Your Honor, I'm sorry.

7 MR. FOSS: 13 and 13-C?

8 MR. BLOOMFIELD: Yeah. I think that
9 the number's 13.

10 ALJ BEMESDERFER: Oh, sorry. Thank
11 you. 13 and 13-C. All right.

12 Continue, please, Mr. -- Mr. Foss.

13 THE WITNESS: I have 13-C. I do not
14 have the public version; but, I think we'll
15 be okay.

16 BY MR. FOSS:

17 Q Okay. And do you adopt those here
18 today as your testimony?

19 A I do.

20 Q Do you have any corrections to make
21 to those?

22 A I have one correction. There is a
23 correction to Footnote 15 on page 6, and I
24 have typed up that correction. I can read
25 that into the record, if necessary. But --

26 Q Yeah. Why don't you describe
27 what's being distributed?

28 A Sure. The footnote originally

1 referred to the motion of the Joint
2 Applicants to advise the Commission of the
3 new FCC commitments at Exhibit 1, and my
4 correction specifies that it is at Exhibit 1,
5 Attachment 3, that I'm specifically referring
6 to, and it corrects the date for that
7 attachment.

8 Q Okay. And with that correction,
9 you adopt this testimony as your testimony
10 here today?

11 A I do.

12 MR. FOSS: The witness is available for
13 cross-examination, your Honor.

14 ALJ BEMESDERFER: All right. Who's
15 going to conduct the cross? Ms. Toller.

16 CROSS-EXAMINATION

17 BY MS. TOLLER:

18 Q Good morning, Ms. Odell. How are
19 you?

20 A Doing well, thanks. Good morning,
21 Ms. Toller.

22 MS. TOLLER: And for the court
23 reporter's benefit, how are Ms. Odell and I
24 doing in terms of volume?

25 (Reporter nods.)

26 MS. TOLLER: Okay.

27 Q Good morning. I want to ask you
28 today some questions about your testimony,

1 and in particular your testimony about
2 T-Mobile's LifeLine and pricing commitments.

3 And then, to be efficient, I'm
4 going to actually hand two documents to you
5 at the outset, for your reference, and you've
6 referenced both of these documents in your
7 testimony. One is the CETF MOU, and I would
8 like to mark that for identification as Joint
9 Applicants-23.

10 And then I'm also going to hand you
11 the T-Mobile -- or I'm sorry. Yeah, the
12 T-Mobile May 20th, 19 -- 2019 FCC ex parte,
13 which actually is the -- the document you
14 just were correcting in your footnote,
15 Footnote 15. And we're going to mark that
16 for identification as Exhibit 24.

17 And for completeness, I've provided
18 you with the confidential version of both of
19 those documents, but most of the confidential
20 information in those, if not all of it,
21 relates to the build-out commitments --

22 A Okay.

23 Q -- because they're broader
24 commitments. And I don't anticipate asking
25 you questions about the confidential data, so
26 I don't think we'll run into any issues.

27 A Understood. Thanks.

28 ALJ BEMESDERFER: Off the record for a

1 minute.

2 (Off the record.)

3 (Exhibit No. JA-23 was marked for
4 identification.)

5 (Exhibit No. JA-24 was marked for
6 identification.)

7 ALJ BEMESDERFER: All right. Back on
8 the record.

9 MS. TOLLER: And again, your Honor, as
10 was the case with some of the earlier
11 exhibits, these are already in the record of
12 this proceeding, but I think it's just easier
13 to have them marked separately for the
14 purposes of cross-examination.

15 ALJ BEMESDERFER: I agree with you,
16 Ms. Toller.

17 MS. TOLLER: All right.

18 Q So Ms. Odell, you've reviewed and
19 are generally familiar with the pricing and
20 the LifeLine commitments contained in the
21 CETF MOU and the FCC ex parte?

22 A Yes.

23 Q And in preparing your November 22nd
24 reply testimony, did you also review prior
25 T-Mobile testimony regarding those
26 commitments in this case?

27 A I did.

28 Q And you were here for the prior

1 hearing?

2 A I was.

3 Q And so, for example, you heard
4 Mr. Sievert when he was on the stand
5 testifying about the LifeLine commitments?

6 A I did.

7 Q And the pricing commitments?

8 A Yes.

9 Q Okay. All right. First, I'd like
10 to turn to your testimony at page 8, lines 13
11 and 14.

12 A I'm there.

13 Q Okay. And in that testimony, you
14 state that the continuation of Sprint's
15 current LifeLine program is not a
16 merger-specific benefit. Do you see that
17 testimony?

18 A I do.

19 Q And is it your testimony,
20 Ms. Odell, that there will be no benefit to
21 customers from having T-Mobile as their
22 LifeLine provider as opposed to Sprint?

23 A That is not my testimony.

24 Q Can you clarify that?

25 A I have not stated that in my
26 testimony.

27 Q Do you believe that there will be
28 benefits to customers from having T-Mobile as

1 their LifeLine provider as opposed to Sprint?

2 A I don't believe that I've noted any
3 in my testimony.

4 Q As you sit here today, are you
5 aware of any benefits?

6 A I believe that T-Mobile has alleged
7 certain benefits.

8 Q Do you have any reason to believe
9 that those are not actual benefits that will
10 be achieved by customers?

11 A I believe that they could be termed
12 as benefits when examined individually; but,
13 as far as whether there is public benefits,
14 net public benefits, with the whole
15 transaction, I have not made that.

16 Q And I'm just asking you about from
17 the LifeLine participation, at this point.

18 A Uh-huh. T-Mobile has testified
19 that LifeLine participants will benefit from
20 the advancement of the -- the network that
21 T-Mobile is going to build, its 5G network.
22 I believe that all of the four large
23 nationwide facilities-based wireless carriers
24 are developing 5G networks, so I'm not sure
25 if that would be a merger-specific benefit,
26 but that's the one that comes to mind.

27 Q Okay. And I'd like to next hand
28 you a document which I'm going to mark for

1 identification as Joint Applicants-25. And
2 this is the -- these -- this is an excerpt
3 from Ms. Sylla-Dixon's testimony which has
4 already been admitted into evidence as Joint
5 Applicants-8, but, for ease of reference, I'm
6 providing you with an excerpt of that
7 testimony where she's describing certain maps
8 of T-Mobile and Sprint service territory that
9 are available to LifeLine providers. And
10 this is not a confidential document. And I
11 only attached one page, so it should be --
12 the testimony itself, so it should be easy.

13 (Exhibit No. JA-25 was marked for
14 identification.)

15 BY MS. TOLLER:

16 Q In her testimony on page 3 at lines
17 22 to 24, Ms. Sylla-Dixon is describing some
18 maps that she attached to her testimony.

19 A Uh-huh.

20 Q And she's describing two maps.
21 Right? One is the legacy Sprint network
22 currently available to Assurance customers?

23 A Uh-huh.

24 Q I'm sorry. Could you say, "Yes"?

25 A Sorry. Yes.

26 Q And the second is the current
27 T-Mobile network?

28 A Is that a question?

1 Q Yes.

2 A Yes.

3 Q Okay. And then the maps themselves
4 are also attached with the Sprint network --
5 the current, again, 4G LTE coverage being
6 attached as Attachment A, is the first map in
7 Attachment A, and then the Sprint current
8 map -- current service area that's available
9 to LifeLine customers is attached as the
10 second map with yellow.

11 A Sure.

12 Q Okay. And for clarity, just -- and
13 for the record, you understand that Assurance
14 customers are Sprint LifeLine customers.
15 Correct?

16 A Yes.

17 Q Okay. So it's clear from these
18 maps, just talking about today, not talking
19 about 5G at some point in the future, but
20 it's clear from today that the network that's
21 available to T-Mobile customers is quite a
22 bit larger than the network that Sprint
23 provides to its LifeLine customers. Isn't
24 that true?

25 A You know, I'm really not an expert
26 at examining the ins and outs of
27 availability. For example, I'm not aware of
28 whether the existence of roaming agreements

1 would affect what these maps are trying to
2 convey. So I'm probably not the best witness
3 to question on that forum.

4 Q So you don't know as you sit here
5 today whether Sprint allows its LifeLine
6 customers to roam. Is that right?

7 A That's correct.

8 Q And under the CETF MOU, is it your
9 understanding that T-Mobile has committed,
10 after a brief transition period, to put
11 life -- the new LifeLine customers who sign
12 up onto their broader network?

13 A Yes.

14 Q And being -- having customers being
15 able to be provisioned onto that broader
16 network, that would be a benefit to the
17 LifeLine customers. Is that right?

18 A That's what T-Mobile alleges.

19 Q And do you have any reason to
20 believe that T-Mobile would not, for example,
21 put the customers on the broader network?

22 A I really don't have experience in
23 analyzing that.

24 Q And this is something that
25 T-Mobile's doing only as a result of the
26 merger. Right? T-Mobile's not -- hasn't
27 otherwise made the commitment to put
28 customers on its broader -- LifeLine

1 customers on its broader network but for
2 the --

3 THE REPORTER: But for the what?

4 MS. TOLLER: Merger.

5 THE REPORTER: Thank you.

6 MS. TOLLER: Uh-huh.

7 THE WITNESS: That is my understanding.

8 BY MS. TOLLER:

9 Q Okay. Thank you.

10 Next, I also wanted to ask you: So
11 is it your understanding that under the CETF
12 MOU that T-Mobile has committed to provide
13 LifeLine service in California indefinitely,
14 but with a guarantee that they'll provide
15 service through the end of 2024, as the
16 minimum?

17 A Subject to certain other
18 provisions, yes.

19 Q Okay. And how long has Sprint
20 committed to provide LifeLine service in the
21 state?

22 A I'm not aware of any commitment
23 from Sprint.

24 Q Okay.

25 A I am, however, aware of their past
26 partition -- participation in LifeLine.
27 They're one of the preeminent LifeLine
28 providers in California. Former Commissioner

1 Sandoval has testified as to Sprint's
2 exuberant and exciting participation in
3 LifeLine, and contrasted that with T-Mobile's
4 participation, which she recollected had not
5 been as forthcoming as Sprint's.

6 Q Ms. Odell, are you aware that in
7 2016, Sprint tried to sell its LifeLine
8 business to another provider?

9 A I'm not aware.

10 Q If you were aware of that, would
11 that affect your impression of Sprint's
12 commitment to LifeLine in the state?

13 A I'd have to know more about that
14 proposed transaction that did not occur.

15 Q Are there any other wireless
16 care -- any other LifeLine providers in the
17 state that have committed to provide LifeLine
18 service, to the best of your knowledge?

19 A Not to my knowledge, no.

20 Q And in terms of T-Mobile's
21 commitment to provide LifeLine service, that
22 would not have happened but for the merger.
23 Is that right?

24 A I can't speculate as to that.

25 Q But, you're not aware of T-Mobile
26 making a commitment outside of the merger?

27 A No.

28 Q You -- you did mention just a

1 minute ago that -- that T-Mobile's commitment
2 was subject to certain limitations or --
3 limitations. I'd like to direct your
4 testimony -- I'd like, sorry, to direct you
5 to your testimony at page 9.

6 A I'm there.

7 Q And -- and in this testimony,
8 right, you're -- you're citing to some
9 concerns about the provision in the CETF MOU
10 where T-Mobile says that its -- that its --
11 under its LifeLine commitment, the company's
12 permitted to seek appropriate relief for
13 material changes?

14 A That's correct.

15 Q Okay. And is it okay if I just
16 call this the material change provision, for
17 short?

18 A Sure.

19 Q Okay. Now, the material change
20 provision doesn't allow new T-Mobile to
21 unilaterally stop providing LifeLine service
22 if there's a material change. Right?

23 A That's correct.

24 Q Okay. And it doesn't allow
25 T-Mobile to unilaterally increase the rate
26 for LifeLine service? For example, to change
27 it from three to \$10 a month, they can't just
28 do that unilaterally?

1 Q And minimum service standards?

2 A That is correct. I will however
3 note that minimum service standards is listed
4 as a potential material change.

5 Q Yes, exactly. And the amount of
6 the subsidy for example is also something
7 which is -- there are rules about that at
8 both the state and the federal level?

9 A That's correct.

10 Q And really it is for example for
11 agencies like the FCC and the CPUC decide how
12 much money or subsidy Lifeline providers get?

13 A That is correct.

14 Q Okay. And Lifeline providers
15 service offerings have to comply with the
16 regulations from the state and federal
17 entities?

18 A Ostensibly, yes.

19 Q And is it your position that
20 regardless of any changes to the Lifeline
21 Program that this Commission might make for
22 example that T-Mobile should be precluded
23 from seeking appropriate relief from its
24 currently offerings?

25 A I'm sorry. I missed part of that
26 in a cough.

27 Q No worries. Is it your position
28 that regardless of any changes to the program

1 that the Commission might make, that T-Mobile
2 should be precluded from seeking appropriate
3 relief from its current offerings?

4 A It is my position that there should
5 not be a condition if the merger should be
6 rejected.

7 Q I understand that. But if I could
8 direct you more specifically to your position
9 with respect to the material change
10 provision?

11 A Yes.

12 Q With respect to that provision,
13 because you do offer a number of criticisms
14 of that, are you stating that you don't
15 believe that that, for example, is a
16 reasonable condition for a limitation to have
17 on the commitment?

18 A The material change condition?

19 Q Correct.

20 A I point out only that there are
21 holes in it so that it could be improved
22 upon.

23 Q Okay. And did you in terms of your
24 -- but you're not saying then -- just to be
25 clear, you're not saying that we should not
26 be able to come back to the Commission and
27 seek appropriate relief if for example the
28 Commission tomorrow reduced the subsidy

1 amount by 50 percent?

2 A No. I'm not saying that.

3 Q Okay. So you do believe we should
4 be able to seek appropriate relief if there
5 are significant changes to the Lifeline
6 Program?

7 A Theoretically and generally, yes.

8 Q Okay. Thank you. All right. I'm
9 now going to move on from Lifeline to
10 pricing.

11 A Sure.

12 Q And so we'll backtrack a little bit
13 in your testimony to page 5. And I'd like to
14 direct your attention in particular to your
15 testimony that's starting on line 12 about
16 your assumption that underlies the pricing
17 condition. Do you see that?

18 A I do.

19 Q Okay. So your testimony if I
20 understand it is that the underlying
21 assumption for the three-year pricing
22 commitment, is that within -- I'm sorry. Is
23 that within three years another entity -- for
24 example DISH but maybe not just DISH -- would
25 enter the market; correct?

26 A I think that that is an assumption
27 that underlies the condition.

28 Q Okay. But in fact T-Mobile --

1 sorry. Let me actually clarify with you.
2 You actually on line 12 say, "It's the
3 assumption"?

4 A Sure.

5 Q Okay. Just to clarify. Thank you.

6 But T-Mobile's ex parte, which you
7 cite in your testimony right, the May 20th ex
8 parte which we've marked for identification
9 as Joint Applicants-24, that indicates that
10 the three-year period is really to allow for
11 network integration and customer migration;
12 right?

13 A Sorry. Can you point to where
14 you're looking at?

15 Q Yeah. So if you go to the FCC ex
16 parte -- it's almost the very last page.

17 A Okay.

18 Q It's Attachment 3. It's actually
19 just the attachment you corrected in your
20 Footnote 15.

21 A Sure.

22 Q So it's perfect. You actually
23 saved me several questions. We're on the
24 same page. When you look at Attachment 3
25 into that, you'll see that it's a
26 February 4th, 2019, ex parte that's attached
27 to the May 20th, 2019 ex parte. And that's
28 -- just to step back for a second let me ask

1 you, did you review this?

2 A I did.

3 Q Okay. This February 14th, 2019, ex
4 parte. So you're aware of that? Okay. That
5 T-Mobile first made the commitment in
6 February? The pricing commitment piece?

7 A Yes.

8 Q Okay. All right. So looking at
9 this document if you turn to page 2, and it's
10 the second full paragraph that starts,
11 "Despite this." Right. If that says that --
12 and previous to this, it's been talking about
13 certain criticisms -- sorry. It had been
14 talking about certain criticisms that had
15 been levied about T-Mobile's statement that
16 it would lower prices.

17 And so this paragraph says:

18 Despite this, merge opponents tried
19 to raise questions about New
20 T-Mobile's pricing incentives during
21 the three-year period from the
22 merger closing until completion of
23 the network combination and customer
24 migration.

25 And it goes on a little later to
26 say, "To remove all doubt." And then they
27 offer the pricing commitment. Do you see
28 that?

1 A I see that.

2 Q Okay. So this in fact reflects
3 that the rationale for the pricing commitment
4 is to allow the period of time between the
5 merger closing until the completion of the
6 network combination and customer migration;
7 correct?

8 A Well, this represents T-Mobile's
9 characterization as the underlying rationale
10 for that commitment.

11 Q Are you aware of what the FCC's
12 rational was for accepting the pricing
13 commitment?

14 A Not specifically, no.

15 Q Would you be surprised to learn
16 that it is the same rationale as offered by
17 New T-Mobile?

18 A I would not be surprised.

19 Q As we talked about a minute ago,
20 right, the pricing commitment was offered in
21 February 2019; is that correct?

22 A I believe it was originally made in
23 February, 2019. I'm not sure if that's the
24 first state when I saw it integrated into a
25 full commitment. Or full agreement. Excuse
26 me.

27 Q Do you believe that the
28 February 2019 ex parte is not the -- is not

1 T-Mobile's offering of the pricing commitment
2 to the FCC?

3 A No, it is.

4 Q Okay. And the -- and this FCC ex
5 parte and the pricing commitment in February,
6 that was made significantly before there was
7 a DOJ commitment to divest certain assets to
8 DISH; correct?

9 A It was significantly before the DOJ
10 filed its proposed final judgment.

11 Q Okay. That was in July?

12 A Yes.

13 Q And going again -- going further to
14 the pricing commitment at testimony at
15 page 6, and this is around lines 8
16 through 15, you're talking about a concern
17 that you have about, I guess, the mechanics
18 of the pricing commitment for lack of a
19 better term?

20 A Yes.

21 Q Okay. Just to clarify, is it your
22 testimony that you believe that New T-Mobile
23 can eliminate a plan -- so for example, I'm
24 just going to give you an example.

25 So a \$30 plan that has two
26 gigabytes of data. If they provide customers
27 with a higher priced plan but that offers
28 them a better value in their view. So for

1 example a \$35 plan with five gigabytes of
2 data.

3 So could they eliminate -- under
4 the pricing commitment, is it your
5 understanding that they can eliminate that
6 \$30 plan at only two gigabytes of data if
7 they replaced it with a slightly more
8 expensive plan but offered the customer more
9 data a better value?

10 A It is my understanding that it
11 could be read that way, yes.

12 Q Okay. And you stated before that
13 you have looked at FCC's -- ex partes
14 regarding the pricing commitment; correct?

15 A I have.

16 Q Okay. I'd like to hand you a
17 document which we're going to mark for
18 identification as Joint Applicant-26.

19 ALJ BEMESDERFER: For the record, I've
20 been handed a document entitled Letter from
21 Nancy J. Victory, Counsel for T-Mobile US,
22 inc. to Marlene H. Dortch, Secretary of the
23 Federal Communication Commission WT docket
24 No. 18-197. Dated February 12, 2019. Which
25 will be marked next in order Joint
26 Applicants-26.

27 (Exhibit No. JA-26 was marked for
28 identification.)

1 MS. TOLLER: Thank you, your Honor.

2 Q Now, Ms. Odell, I'd like to draw
3 your attention in particular to page 3 of
4 this document and to this first claim; right?
5 And for clarity, this letter is responding to
6 certain claims that DISH made criticizing the
7 pricing commitment.

8 Under -- in this document, which
9 provides more details around the pricing
10 commitment, do you see the text under the
11 first paragraph labeled "facts"?

12 A I do.

13 Q Okay. And do you see that that
14 clarifies the -- or provides more details
15 around the pricing commitment commitment that
16 T-Mobile could replace a legacy plan only
17 after it introduces better plans that offer a
18 lower price for more data?

19 A I do.

20 Q Okay. And then there is a
21 definition of what is the better plan.

22 A Yes.

23 Q And the better plan could be the
24 same plan with a lower price, the same plan
25 with more data for the same price, or the
26 same plan with a lower price and more data;
27 is that correct?

28 A That's correct.

1 Q Okay. But it doesn't say that
2 better plan is for example the same plan with
3 a higher price and more data?

4 A That's correct.

5 Q And you also said before that you
6 reviewed Joint Applicant's testimony
7 regarding pricing commitments?

8 A I did.

9 Q I'm going to hand you an excerpt of
10 Mr. Sievert's testimony from February 4th,
11 which we're going to mark for identification
12 as Joint Applicants-27.

13 ALJ BEMESDERFER: For the record, I've
14 been handed a document entitled Hearing
15 Transcript Excerpt, Phase 3, pages 387 to 388
16 (Sievert Cross) dated February 5th, 2019.
17 Which is marked next in order Joint
18 Applicants-27.

19 (Exhibit No. JA-27 was marked for
20 identification.)

21 BY MS. TOLLER:

22 Q And you'll see I didn't attach very
23 much of it. But if I could direct you to --
24 starting with lines -- starting at lines 4,
25 and this is actually cross-examination, I
26 believe, by Ms. Chong -- redirect by
27 Ms. Chong. I am sorry.

28 You'll see at line 4 she's asking

1 him about the pricing commitment. Do you see
2 that?

3 A I do.

4 Q Okay. If we go down to line 10,
5 she's asked him to describe it very briefly
6 because -- I don't know why. It just came to
7 me that on our first day of hearings that
8 that was the same day they made the pricing
9 commitment.

10 But if you could read the testimony
11 starting at line 10?

12 A Sure. It's very simple. It's:
13 We intend to provide the same or
14 better at rapidly increasing levels
15 of quality on top. The prices
16 themselves even not adjusted for
17 quality will be the same or better.

18 Q And, Ms. Odell, are you aware of
19 any other wireless carriers that are
20 currently committed to not to raise prices
21 for the next three years?

22 A No.

23 Q I wanted to go back and ask you one
24 more line of questioning. And this involves
25 Footnote 16 on page 6 of your testimony.

26 A Yes.

27 Q Okay. And in that you're
28 describing the fact that prior to February 4,

1 2019, that Sprint had ceased offering a few
2 of the Sprint-branded prepaid plans under the
3 offer -- or branding Sprint Forward?

4 A That's correct.

5 Q Okay. And you're noting that the
6 -- that then means customers have lost one
7 more, kind of, prepaid -- one more set of
8 rate plans that they can choose from;
9 correct?

10 A Customers have already lost one
11 prepaid brand choice.

12 Q Okay. And are you aware of how
13 many customers Sprint prepaid had on that
14 plan or had total in the state when they
15 discontinued that?

16 A I am not.

17 Q If it turned out that Sprint only
18 had for example a few thousands customers on
19 that plan, would that reduce your concern?

20 A I am sorry?

21 Q If it turned out that Sprint only
22 had a couple thousand customers on that plan,
23 would you be less concerned about the
24 elimination of its offer?

25 A I'm concerned about the elimination
26 of choice. So the number of customers on
27 that plan isn't really relevant to my
28 concern.

1 Q So it's your testimony, for
2 example, even if a carrier has one customer
3 on a plan, they should continue it because
4 that provides more choice?

5 A That's not my testimony.

6 Q Okay.

7 MS. TOLLER: I think that I'm done,
8 your Honor. But if you'll give me a minute,
9 I'll double check.

10 ALJ BEMESDERFER: Okay. Off the
11 record.

12 (Off the record.)

13 ALJ BEMESDERFER: Back on the record.

14 Is there redirect for this witness,
15 Mr. Foss?

16 MR. FOSS: I do have some redirect,
17 your Honor. I'm hoping that Michelle
18 Schaefer will return shortly from the closed
19 session next door.

20 But I'm also wondering if this a
21 time that we could take a bathroom break.

22 MS. CHONG: Your Honor?

23 ALJ BEMESDERFER: Ms. Chong.

24 MS. CHONG: I'm sorry. Rachelle Chong
25 representing the California Emerging
26 Technology Fund. I probable have three
27 questions of cross. I didn't expect to have
28 cross, but I have just a smidgeon.

1 MS. TOLLER: Seems like a good filler.

2 ALJ BEMESDERFER: All right. Let's go
3 off the record.

4 (Off the record.)

5 ALJ BEMESDERFER: Back on the record.

6 Ms. Chong, you have some
7 cross-examination you'd like to direct to
8 this witness? Please go ahead.

9 MS. CHONG: Yes, your Honor. It will
10 be very brief.

11 CROSS-EXAMINATION

12 BY MS. CHONG:

13 Q Good morning, Ms. Odell. I am
14 Rachelle Chong, and I am special counsel to
15 the CETF.

16 A Good morning, Ms. Chong.

17 Q Thank you. I only have a few minor
18 questions for you. But first of all, are you
19 aware whether it is mandatory for wireless
20 carriers in California to offer Lifeline
21 wireless service?

22 A It is not.

23 Q Are you aware whether, for example,
24 AT&T Wireless actually offers wireless
25 Lifeline plans?

26 A They do not.

27 Q Are you aware whether Verizon
28 Wireless offers wireless Lifeline plans?

1 A They do not.

2 MS. CHONG: That's all I have, your
3 Honor. Thank you.

4 ALJ BEMESDERFER: All right. Now,
5 Mr. Foss, I believe it's your turn.

6 MR. FOSS: Can we take a short bathroom
7 break?

8 ALJ BEMESDERFER: All right. We'll
9 take a break here. Let's make it less than
10 10 minutes if we can.

11 Off the record.

12 (Off the record.)

13 ALJ BEMESDERFER: We're back on the
14 record.

15 Go ahead, Mr. Foss.

16 REDIRECT EXAMINATION

17 BY MR. FOSS:

18 Q Thank you, your Honor. I just have
19 a few redirect questions.

20 Ms. Odell, you were asked on
21 cross-examination about the appropriate
22 relief that New T-Mobile could seek under the
23 MOU. You were also asked by Ms. Chong
24 whether participation in Lifeline is
25 voluntary. Do you recall that?

26 A Yes.

27 Q So as we sit here today, could
28 T-Mobile provide Lifeline service to

1 customers?

2 A It is my understanding they could
3 seek authority to do so.

4 Q And do they?

5 A No.

6 Q And what concern does that raise in
7 your mind?

8 A That they're not fully invested in
9 the program and would drop it as soon as the
10 term expires.

11 Q And are you aware of any similar
12 instance with other carriers, like AT&T, that
13 have --

14 MS. CHONG: Objection, your Honor. How
15 is that relevant to this merger?

16 ALJ BEMESDERFER: I'm going to overrule
17 that. There have been a lot of questions
18 about what other people do and don't do, and
19 I'm going to let Mr. Foss ask this one.

20 BY MR. FOSS:

21 Q My question just gets to whether
22 other carriers had encountered similar
23 circumstances?

24 A Anecdotally, I'm vaguely aware that
25 AT&T was required to offer Lifeline through
26 Cricket after acquiring Cricket.

27 Q And what subsequently happened to
28 your knowledge?

1 A I believe that they ceased
2 providing Lifeline as soon as the term of
3 their commitment was over.

4 Q Okay. You were asked about an ex
5 parte letter from DLA Piper, and there was
6 some language in there about their
7 interpretation of the pricing commitment.
8 It's page 3 of Exhibit 26.

9 A Are we at the February 4th letter?

10 ALJ BEMESDERFER: This is Joint
11 Applicants-26.

12 BY MR. FOSS:

13 Q Joint Applicants Exhibit-26. I
14 believe it's the February 12th letter.

15 A Okay. Sorry. I know I have it up
16 here. Sorry. Here it is.

17 Q It's page 3 of that exhibit.

18 A I'm there.

19 Q You were asked, you know, questions
20 about didn't New T-Mobile say to the FCC that
21 better plans means lower prices or more data
22 for the same price. Do you see that?

23 A Yes.

24 Q To your knowledge does this exact
25 language appear in the proposed final
26 judgment?

27 A Not to my knowledge, no.

28 Q Could they have included this

1 language?

2 A They could have.

3 Q And your interpretation of the
4 language that is actually included is
5 different than this language?

6 A That's correct.

7 Q Okay. You were also asked on
8 cross-examination about something that
9 Mr. Sievert stated during his
10 cross-examination?

11 A Yes.

12 Q Which is Exhibit-27 as an excerpt?

13 A Yes.

14 Q And on page 3 of that exhibit, he
15 says the prices themselves even not adjusted
16 for quality will be the same or better?

17 A Yes.

18 Q Is it your understanding that he's
19 saying there that prices will be lower?

20 A I don't think it's clear from his
21 testimony.

22 Q Okay. And is this line in his
23 testimony itself a commitment not to raise
24 prices at all regardless of quality?

25 A That's not my understanding.

26 Q Okay.

27 MR. FOSS: I don't have any further
28 questions, your Honor.

1 MS. TOLLER: Thank you, your Honor. I
2 have a brief re-direct.

3 RE-CROSS-EXAMINATION

4 BY MS. TOLLER:

5 Q I just want to go back to the
6 second to the last set of questions that Mr.
7 Foss asked you about, the February 12th
8 letter, which is Exhibit-26 for
9 identification, Joint Applicants-26.

10 He referenced -- he asked you
11 whether or not the exact language from
12 Exhibit-26 was in the PFJ, do you recall
13 that?

14 A Yes.

15 Q And the PFJ is something which is
16 between the Department of Justice and
17 T-Mobile and Sprint and DISH; correct?

18 A Yes.

19 Q The FCC is not a party to that?

20 A No.

21 Q The FCC has its own decision that
22 it adopted approving the merger?

23 A Yes.

24 Q Okay. And the pricing commitment
25 that was made, that was made to the FCC;
26 correct?

27 A I am sorry?

28 Q The pricing commitment that we've

1 been talking about, that is a commitment that
2 was made to the FCC?

3 A Yes.

4 Q And that's why the February 12th
5 letter is in fact from T-Mobile to the FCC?

6 A Correct.

7 Q Clarifying or providing more
8 details around the terms of their pricing
9 commitment?

10 A Correct.

11 Q There's nothing -- the pricing
12 commitment was not made to the DOJ; correct?

13 A I believe the terms of the pricing
14 commitment are incorporated into the PFJ, but
15 I could be mistaken on that.

16 Q Okay. And T-Mobile's also made the
17 pricing commitment directly to -- has
18 included in the CETF MOU, and has asked that
19 that also be made a condition of this merger?

20 A Yes.

21 MS. TOLLER: All right. Nothing
22 further, your Honor.

23 EXAMINATION

24 BY ALJ BEMESDERFER:

25 Q All right. Ms. Odell, I actually
26 have a question I'd like to address to you.
27 Would you turn to page 6 of your testimony?

28 A Sure. I'm there.

1 record.

2 EXAMINATION

3 BY ALJ BEMESDERFER:

4 Q Dr. Selwyn, in her testimony
5 Ms. Odell referenced your earlier
6 supplemental declaration in support of her
7 contention that the merger would result in
8 higher prices for, among others, Lifeline
9 customers.

10 And she, in her testimony, states,
11 that the applicant's own model predicts that
12 absolute dollar price levels will go up
13 following this transaction, and then cites to
14 your testimony of April -- your Supplemental
15 Declaration of April 26th at paragraph 5. Do
16 you have that in front of you?

17 A I do.

18 Q Could you, first of all, indicate
19 to me whether you concur with the conclusion
20 reached by Ms. Odell regarding the impact of
21 the price changes, the impact of the merger
22 on pricing.

23 A Well, I do, but I think there's one
24 clarification that's required. The reference
25 in paragraph 5 is to the HBVZ Model, which is
26 actually the model that DISH presented to the
27 FCC. It's not the applicant's model. The
28 applicant's model was presented by -- I think

1 they referred to it as the IKK Model. So
2 this is actually DISH's submission when DISH
3 was opposing the merger before it changed its
4 mind.

5 Q So you would concur that the DISH
6 model suggests that the merger would cause
7 increased prices?

8 A I'm trying to recall. I think
9 there was some discussion of this actually in
10 my -- the same point that my January
11 testimony -- with respect to the IKK Model,
12 basically, I think the IKK model reached,
13 essentially, the same conclusion, but what
14 they were doing was creating what they
15 described as quality adjusted prices.

16 In other words, the amount of the
17 check that you wrote at the end of month,
18 that the customer would write at the end of
19 the month to pay the bill would go up, but
20 the notion was because the customer would be
21 getting increased quality service such as
22 increased data or increased speed or whatever
23 it was, that when you adjusted for quality,
24 the customer experienced a net decrease in
25 price, but from the customer's perspective,
26 the customer is paying more.

27 And my recollection is -- and I'm
28 sorry. It's almost a year, and I don't

1 recall precisely, but it is my recollection
2 that the IKK Model reached a similar
3 conclusion.

4 ALJ BEMESDERFER: All right. That's
5 really all I wanted to ask you.

6 We are going to have Dr. Israel. We
7 can talk to him about that.

8 MR. BLOOMFIELD: They've waived cross,
9 your Honor.

10 ALJ BEMESDERFER: Oh, they waived
11 cross. Okay. Fine.

12 MS. TOLLER: Your Honor?

13 ALJ BEMESDERFER: Ms. Toller.

14 MS. TOLLER: So, your Honor, I would
15 object, and especially because I think
16 Mr. Selwyn is not even 100 percent sure what
17 the model showed. I don't think it's
18 appropriate for him to be speculating about
19 that at this point.

20 ALJ BEMESDERFER: Well, the question I
21 asked him he's answered, which is, the model
22 to which Ms. Odell referred was not the
23 applicant's model, but the DISH model.

24 THE WITNESS: If my characterization of
25 the IKK Model is correct, it's in my January
26 testimony, so it will speak for itself.
27 Either it's in there or it isn't, and I just
28 don't recall.

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ALJ BEMESDERFER: All right. You may
step down.

THE WITNESS: Thank you.

MR. BLOOMFIELD: Your Honor, my
computer.

(Off the record.)

ALJ BEMESDERFER: It's now 10 of noon.
Let's be back at 1:15.

(Whereupon, at the hour of 11:50
a.m., a recess was taken until 1:15
p.m.)]

* * * * *

1 AFTERNOON SESSION - 1:15 P.M.

2
3 * * * * *

4
5 ADMINISTRATIVE LAW JUDGE BEMESDERFER:

6 Okay. We are back on the record.

7 Our next witness is delayed, I
8 believe, but you wanted to move the testimony
9 of Ms. Odell, I believe --

10 MS. TOLLER: I believe Cal PA wants to
11 do that.

12 ALJ BEMESDERFER: Cal PA wants to move
13 the testimony of Ms. Odell.

14 MS. SCHAEFER: Yes, your Honor. Cal
15 PA, Public Advocates Office, would like to
16 move in its Exhibit 13 which is Eileen
17 Odell's testimony into the record. And I
18 would like to issue a quick clarification
19 that was discussed when Mr. Selwyn was up on
20 the stand when I was in the open meeting.

21 He was discussing the IKK model and
22 how it confirmed that prices will be charged
23 by postpaid merger and New T-Mobile will be
24 higher than prices the two standalone firms
25 will charge absent their merger and I believe
26 we had referred to paragraph 5. We meant to
27 refer to paragraph 6. So there's that
28 clarification.

1 MS. TOLLER: Your Honor, I am not sure
2 that actually at the end of the day that
3 Mr. Selwyn said that. Although I am not
4 prepared to do it right now, I would actually
5 ask we take five minutes tomorrow morning to
6 clarify that issue because I think in fact
7 that what Mr. Selwyn said is not accurate and
8 we requested that in our brief and we will
9 come back around to that tomorrow.

10 Thank you.

11 ALJ BEMESDERFER: Yeah, we'll address
12 that again tomorrow.

13 With that, is there objection to
14 admitting the testimony of Ms. Odell?

15 MS. TOLLER: There is not, your Honor.

16 ALJ BEMESDERFER: All right. Without
17 objection, that testimony both the public and
18 confidential exhibits are admitted.

19 (Exhibit No. PAO-13 was received
20 into evidence.)

21 (Exhibit No. PAO-13-C was received
22 into evidence.)

23 MS. TOLLER: Your Honor, we would like
24 to move as well the cross exhibits that we
25 used with Ms. Odel which are Joint Applicants
26 23, 24, 25, 26 and 27.

27 ALJ BEMESDERFER: Is there objection to
28 any of those cross exhibits?

1 MS. SCHAEFER: No.

2 ALJ BEMESDERFER: Without objection,
3 they are all admitted.

4 (Exhibit No. JA-23 was received into
5 evidence.)

6 (Exhibit No. JA-24 was received into
7 evidence.)

8 (Exhibit No. JA-25 was received into
9 evidence.)

10 (Exhibit No. JA-26 was received into
11 evidence.)

12 (Exhibit No. JA-27 was received into
13 evidence.)

14 ALJ BEMESDERFER: Okay. Next up.

15 NEVILLE RAY, called as a witness by
16 New T-Mobile, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. TOLLER:

19 Q Good morning, Mr. Ray, or good
20 afternoon, Mr. Ray.

21 A Good afternoon.

22 Q Do you have before you your
23 prepared supplemental testimony?

24 A Yes, I do.

25 Q And is the version that you have
26 before you actually marked that it's
27 corrected on the first page?

28 Show him where it says "corrected."

A Yes. Thank you.

MS. TOLLER: And, your Honor, we served

1 that earlier this week to make a minor kind
2 of clarifying correction to one footnote just
3 so people would have that. And we would like
4 to mark that, the public version of that as
5 Joint Applicants 28 and the confidential
6 version of Mr. Ray's testimony as Joint
7 Applicants-28C.

8 ALJ BEMESDERFER: All right. They will
9 be so marked for identification.

10 (Exhibit No. JA-28 was marked for
11 identification.)

12 (Exhibit No. JA-28-C was marked for
13 identification.)

14 ALJ BEMESDERFER: Your witness,
15 Ms. Toller.

16 MS. TOLLER: Thank you.

17 Q Mr. Ray, could you remind the
18 Commission what your job is with New
19 T-Mobile?

20 A Yes, I am the President of
21 Technology and I manage the wireless network
22 for T-Mobile and its IT services and
23 operation.

24 Q And was the testimony that you have
25 before you prepared by you or under your
26 direction?

27 A Yes.

28 Q Other than the minor corrections

1 which we already made and served, do you have
2 any other corrections to make to your
3 testimony today?

4 A No.

5 MS. TOLLER: Your Honor, we would offer
6 Mr. Ray for cross-examination.

7 ALJ BEMESDERFER: Thank you,
8 Ms. Toller.

9 Who is going to conduct the cross of
10 Mr. Ray?

11 MS. SCHAEFER: I will be beginning with
12 Mr. Ray's cross.

13 CROSS-EXAMINATION

14 BY MS. SCHAEFER:

15 Q My name is Michelle Schaefer from
16 the Public Advocates Office. Good afternoon
17 and thank you for coming all the way out
18 here.

19 A Good afternoon.

20 Q I hope your flight was okay.

21 A No problem.

22 Q In your supplemental testimony at
23 page 8, which I apologize if that actually
24 has changed.

25 MS. TOLLER: To clarify for the record,
26 your Honor, there was no change in the
27 pagination. We merely added a couple of
28 words to one footnote. So the pagination in

1 the corrected testimony is exactly the same
2 as was in the testimony that was served a few
3 weeks ago.

4 ALJ BEMESDERFER: Thank you for that
5 clarification.

6 BY MS. SCHAEFER:

7 Q Awesome. Okay. So at page 8 in
8 your supplemental testimony, you highlight
9 that New T-Mobile will have the option to
10 lease DISH's 600 megahertz spectrum; is that
11 still correct?

12 A This is the -- where are we?
13 Line 7? Yes.

14 Q Will T-Mobile begin negotiating
15 with DISH to acquire -- or excuse me. Please
16 clear that.

17 Why does T-Mobile need the option
18 to have this DISH's 600 megahertz of
19 spectrum?

20 A Why do we need the 600 megahertz
21 spectrum?

22 Q Yes. Why was that negotiated into
23 the PFJ?

24 A Well, it's an opportunity for us
25 and we were already rolling out 600 megahertz
26 across the nation to support not just LTE but
27 5G services and adding to the depth of the
28 600 megahertz spectrum that could be

1 deployed, especially in the near term because
2 this is real and live now for us, would help
3 obviously T-Mobile customers. As we combine
4 the businesses, it would help the Sprint
5 customers and it would also help the DISH and
6 Boost customers because in the early years
7 they will be most certainly using the New
8 T-Mobile network.

9 Q Is it still true that you have not
10 made any decisions regarding how much 600
11 megahertz spectrum T-Mobile with lease back?

12 A We have not concluded negotiations
13 with DISH on 600 megahertz; yes, that's
14 correct.

15 Q Okay. Thank you.

16 In the PFJ, the Proposed Final
17 Judgment, at page 19 it's stipulated that the
18 leases for the 600 --

19 MS. TOLLER: Your Honor, if
20 Ms. Schaefer is going to ask him a question
21 about that, could the witness have that
22 document in front of him, please? Thank you.

23 ALJ BEMESDERFER: Yes. Do you have a
24 copy of the Proposed Final Judgment?

25 For the record, Mr. Ray is being
26 handed a copy of the Proposed Final Judgment.

27 Go ahead, Ms. Schaefer.

28 ///

1 BY MS. SCHAEFER:

2 Q So on page 19, it's stipulated that
3 leases must be for a sufficient time for New
4 T-Mobile to make adequate commercial use of
5 the 600 megahertz spectrum. How many years
6 constitutes, quote unquote, "adequate
7 commercial use" of lease spectrum?

8 A Sorry. I am just trying to catch
9 up with you. Is it item 3 on page 19? No.

10 MS. TOLLER: Ms. Schaefer, I don't see
11 the reference either. Oh. You know, it's at
12 the very top. I'm sorry. Right before Roman
13 Numeral VI.

14 MS. SCHAEFER: Yeah.

15 THE WITNESS: It's from page 18 to 19.

16 BY MS. SCHAEFER:

17 Q Yes. Sorry about that.

18 A Okay. I have now caught up with
19 you and read it. Could you repeat the
20 question for me? Sorry.

21 Q Yes. The PFJ at page 18 I believe,
22 not 19, sorry about that, stipulates that the
23 leases must be for sufficient time for New
24 T-Mobile to make, quote unquote, "adequate
25 commercial use of 600 megahertz spectrum."

26 How many years constitutes, quote
27 unquote, "adequate commercial use" of leased
28 spectrum?

1 A Well. It could be -- it would not
2 make a great deal of sense to have a period
3 less than a year. The use of the spectrum,
4 DISH does own a significant volume of 600
5 megahertz spectrum. They were a major winner
6 in the auction wherein 600 megahertz was
7 licensed by the FCC. We were and DISH was.

8 So they have a lot of spectrum.
9 Ideally we could use it for as long as it
10 makes sense. Two to three years would be
11 good. But even a short period of time could
12 be beneficial.

13 Q Is there a typical industry average
14 duration of time that spectrum leases allow
15 for adequate commercial use of the spectrum?

16 A No. I mean I think it depends if
17 you're talking licensed or unlicensed
18 spectrum. Obviously we used in the network
19 unlicensed spectrum which is no commitment in
20 terms of time and capabilities to how long
21 you can use it.

22 Licensed spectrum typically is
23 longer term and it's something that we would
24 roll out in the network and we would utilize
25 for many years, but it can vary.

26 Q Okay. Thank you. I believe it's
27 still page 18 is when -- of your supplemental
28 testimony, not the PFJ. I will give you a

1 moment to turn to that. Okay.

2 So on page 18 of your supplemental
3 testimony, you discuss the divestiture of
4 Sprint, Boost and Virgin's prepaid businesses
5 and the impact on California consumers,
6 correct?

7 A That's Roman Numeral VII, right?

8 Q Sorry. I think I might sneeze.

9 MR. BLOOMFIELD: Bless you.

10 BY MS. SCHAEFER:

11 Q Sorry about that. You state that
12 these customers, their terms and conditions
13 for these customers, their terms and
14 conditions of service are a matter of DISH's
15 concern, correct?

16 A I am reading it.

17 MS. TOLLER: I'm sorry. Can I have a
18 line number, please?

19 MS. SCHAEFER: 27.

20 MS. TOLLER: Thank you.

21 THE WITNESS: Yes. I see that
22 sentence, yes.

23 BY MS. SCHAEFER:

24 Q And according to your supplemental
25 testimony at page 20, the duration of the
26 proposed customer care and other transition
27 agreements are about two to three years
28 following the divestiture; is that correct?

1 A I'm sorry. It would help me if you
2 would --

3 Q I'm sorry, the first three lines on
4 page 20.

5 A Yes.

6 Q Does this mean that the transition
7 agreements would end before or roughly the
8 same time that the new T-Mobile would divest
9 the 800 megahertz spectrum?

10 A Approximately. So let's just break
11 this apart.

12 So the transition services
13 agreement is for up to three years. That's a
14 condition of the PFJ and our agreement with
15 DISH. And then the 800 megahertz spectrum,
16 we've structured an arrangement whereby after
17 three years we would sell the 800 megahertz
18 spectrum to DISH, but we have the right to
19 retain a portion of that spectrum for a
20 period of time, four megahertz, I believe
21 it's for another two years after the first
22 three-year period.

23 Q Thank you. And the New T-Mobile
24 plan is to use the 800 spectrum to support
25 the legacy Sprint customers during the
26 transition, correct?

27 A We would use the 800 megahertz.
28 Why we want to use it for that three years is

1 during the migration process of Sprint and
2 Boost customers off of the legacy Sprint
3 network and the Sprint services and onto the
4 New T-Mobile network. So our intent is to --
5 that's why we put three years there. If we
6 determine we need longer, we have the right.
7 We negotiated that through the PFJ with the
8 DOJ and with DISH so that we could retain a
9 portion of that 800 megahertz for up to five
10 years.

11 And the spectrum is used today. I
12 mean why that last four megahertz is
13 important, that's the service or the spectrum
14 that supports primarily today that CDMA voice
15 service, and that's the piece that we want to
16 make sure is protected its needs as we move
17 through the first three-year period.

18 That said, we are very, very
19 confident that we will be at a complete
20 migration of customers onto the New T-Mobile
21 network within that three-year period. And
22 we have, you know, a strong history of that
23 type of work.

24 Very recently we conducted a
25 transaction in combination with MetroPCS
26 which was very similar in nature and we
27 migrated the base -- actually a similar base
28 of over 8 million customers very successfully

1 in actually less than three years.]

2 Q Okay. Thank you. So has New
3 T-Mobile developed a detailed plan to ensure
4 that these divested customers will have
5 handsets that are actually compatible with
6 the New T-Mobile's network?

7 A Would you repeat the question.

8 Q Has New T-Mobile developed a
9 detailed plan to ensure that these divested
10 customers will have handsets that are
11 compatible with the New T-Mobile's network?

12 A We are not New T-Mobile yet.
13 Hopefully soon but --

14 MS. TOLLER: I'm sorry. Excuse me for
15 just one second, Mr. Ray. I'd like to object
16 that the question is not clear, because I
17 want to make -- it's unclear to me which
18 customers Ms. Schaefer is referring to in the
19 question.

20 MS. SCHAEFER: The Sprint customers.

21 MS. TOLLER: That are being divested to
22 DISH?

23 MS. SCHAEFER: No. That are --

24 ALJ BEMESDERFER: Do you want to repeat
25 your question, Ms. Schaefer.

26 MS. SCHAEFER: -- would be going to New
27 T-Mobile.

28 MS. TOLLER: And then, your Honor --

1 MS. SCHAEFER: Yeah, that would be
2 going to -- sorry. Yeah. That would be
3 going to DISH.

4 ALJ BEMESDERFER: For the benefit of
5 the judge, could you repeat your question.

6 MS. SCHAEFER: Yes.

7 Q Has T-Mobile developed a detailed
8 plan to ensure that the divested customers to
9 DISH will have handsets that are compatible
10 with the New T-Mobile network?

11 A That's DISH's responsibility.

12 Q Is it correct, according to your
13 supplemental testimony at page 17 -- and I
14 will get the line for you in just a second --
15 line 6 and 7 on page 17, is it still correct
16 to say that mobile wants to make all cell
17 sites at decommissions available to DISH
18 within five years of the divestiture?

19 A Yes. That's correct. And we face
20 very material financial penalties if we don't
21 fulfill our obligations under the PFJ.

22 Q But you also state at the same page
23 that no final decisions have been made
24 regarding which cell sites are going to be
25 decommissioned at this time?

26 A That's correct. We haven't made
27 those final decisions. We are still hoping
28 to combine these businesses and finalize all

1 those decisions as soon as we can.

2 Q So the number and timing of cell
3 sites that are or will be available to DISH
4 is still subject to change?

5 A On a very minor basis. We have our
6 plan. We have our decommission target list,
7 but that would be refined once we close the
8 transaction. And the forecast, and I think
9 as you know, under the PFJ, is communicated
10 to DISH within a very short period of time
11 thereafter.

12 Q In addition to divesting
13 decommission cell sites, New T-Mobile will be
14 divesting the 800-megahertz spectrum after
15 three years for which New T-Mobile plan to
16 use to support LTE and CDMA service for
17 Sprint customers during the migration
18 process; is this correct?

19 A Yes.

20 Q Since the spectrum is currently
21 held by Sprint, Sprint cell sites have radios
22 to broadcast this 800-megahertz spectrum,
23 correct?

24 A I'm sorry. Could you repeat the
25 question.

26 Q Because the Sprint -- the spectrum
27 is currently still held by Sprint, Sprint
28 cell sites have radios to broadcast this

1 800-megahertz spectrum, correct?

2 A Yes, that's correct. Yes.

3 Q So the cell towers and
4 800-megahertz spectrum will continue to
5 support Sprint customers with handsets that
6 are incompatible with T-Mobile's current
7 network during the transition period,
8 correct?

9 A I'm confused by your question.
10 Could you explain what you mean by
11 "incompatible." Well, repeat the question
12 for me. I'll try.

13 Q This is at page 14 of your
14 supplemental testimony.

15 A On page -- page 14?

16 Q 14.

17 A Is there a line?

18 Q Around line 20 through 22.

19 Will the cell towers and
20 800-megahertz spectrum continue to support
21 Sprint customers that currently have handsets
22 that are incompatible with T-Mobile's network
23 during the transition period?

24 A Well, the 800-megahertz spectrum is
25 going to be utilized and propagated on the
26 Sprint cell sites. That will continue on for
27 a period of time, as we've outlined, until we
28 look to divest the spectrum. There will be

1 handsets that can use both the 800-megahertz
2 spectrum from Sprint and can use the New
3 T-Mobile network at the same time.

4 Q Will they be inoperable between the
5 CDMA and GSM networks, or will Sprint
6 customers need new handsets, to your
7 knowledge?

8 A No. There's very, very large
9 numbers of Sprint customers with handsets
10 today, some within the Boost customer base,
11 that have devices that can work on elements
12 of the T-Mobile network. They have band
13 support to do that, and they can be supported
14 with 800-megahertz service on the Sprint
15 legacy network.

16 Q What will happen to those Sprint
17 customers who do not have compatible handsets
18 during the transition period?

19 A Well, we will migrate them to new
20 handsets if needed, if they have an
21 incompatible handset, which can't work on the
22 T-Mobile network -- on the New T-Mobile
23 network. And that's absolutely part of our
24 plan. And as I referenced before, we're
25 starting here with tens of millions of Sprint
26 customers who have fully compatible handsets.
27 And every day that goes by, there's more of
28 them. Everything we're selling today is

1 effectively compatible across -- is
2 compatible with the New T-Mobile network.

3 So as we did with Metro, in that
4 Metro situation, MetroPCS, when we combined
5 those two companies together, we had very,
6 very few compatible handsets. And through
7 the normal upgrade cycle, handset exchange
8 cycle, we very successfully migrated that
9 entire base of customers within under three
10 years, from memory.

11 Q Did the migration of those
12 customers during the MetroPCS transition --
13 were those customers given any financial help
14 or breaks for their new cellular devices?

15 A I think what happened -- we believe
16 what happened in the majority of cases with
17 New T-Mobile is customers wanted to migrate
18 and secure new handsets so they could get a
19 better network experience. So there was a
20 very, very high demand for customers to
21 change their handsets so they could benefit
22 and leverage a broader, larger, more powerful
23 network.

24 As we approached the tail of
25 migration, I do believe we did to manage --
26 "the tail" is not the right word. But there
27 were very small numbers of customers who had
28 not taken a migration path, and then we did

1 provide incentives for some of those
2 customers market by market to ensure that
3 they ended up with a new handset that fully
4 worked on the New T-Mobile network.

5 Q So incentives did exist for those
6 customers that remained?

7 A Yes. I don't recall. I'm not the
8 commercial guy. I don't recall the
9 specifics, but there were some incentives
10 that were placed in the market, yes.

11 Q Okay. The New T-Mobile will need
12 the cell towers for at least a few years to
13 ensure the former Sprint customers continue
14 to have service while T-Mobile -- while the
15 New T-Mobile conducts the transmission,
16 correct? It will take a couple of years?

17 A Absolutely. That's why we've
18 always said it's a three-year integration
19 program. You know, sites will start to free
20 up and start -- the decommissioning process
21 will start within the three years, but the
22 lion's share of the activity would be once
23 we've successfully migrated the customers.
24 Obviously the intent there is to make sure
25 that no Sprint customer during that migration
26 process, be they a Boost customer or a Sprint
27 customer, or however they are strayed,
28 suffers anything approaching a degraded

1 experience.

2 And we've gone through our plan, in
3 terms of migration, what we are going to do
4 site by site in incredible detail with the
5 federal agencies. This was something they
6 were very focused on ensuring that we didn't
7 damage or impact the Sprint customer
8 experience during the migration phase.

9 We have been very careful and
10 deliberate about ensuring there's sufficient
11 time and that the network is fully ready for
12 the migration and that we can support the
13 best experience for those customers under
14 T-Mobile.

15 Q So once all of the Sprint -- so the
16 Sprint cell sites would be decommissioned
17 after they no longer support any of the
18 incompatible customers?

19 A Yeah. It's not as simple as that.
20 It's not a binary, you know, one -- all these
21 sites turn off at any point in time. We were
22 able to -- and we did this with MetroPCS --
23 you can feather in decommissioning based on
24 the reduction of number of customers as you
25 migrate. You don't need all of the cell
26 sites. There are obviously cell sites in the
27 plan or in the Sprint network which were
28 built for capacity more than coverage. We

1 have to make sure we maintain coverage and
2 sufficient capacity. But you can start to
3 decommission certain cell sites well ahead of
4 the three-year period. It's paced on the
5 migration of the customer base.

6 Q And the 800-megahertz radio
7 equipment would also be decommissioned and
8 offered to DISH to acquire as part of the
9 decommissioning of the cell site?

10 A That's the beautiful thing. It
11 would be decommissioned. DISH would be
12 available -- would have available to them --
13 it's an option they can exercise that they
14 are right on these sites that T-Mobile is
15 exiting to avail themselves of the
16 800-megahertz infrastructure.

17 That was a specific request that's
18 well-documented in the PFJ which gives DISH
19 kind of a pretty remarkable opportunity in
20 terms of they can walk into ready-made cell
21 sites that have been -- they've been prepared
22 and built for cellular use, which is no small
23 expense or issue.

24 I mean, I started -- my U.S. career
25 began in California in 1995 as we were
26 rolling out one of the first GSM digital
27 networks here. Believe me, we spent more
28 money on reinforcing buildings and installing

1 infrastructure to support radios and
2 equipment than we actually did the radio
3 equipment itself. And DISH is going to be in
4 a position whereby they can walk into
5 effectively ready-made cell sites that we
6 would be vacating. There are large numbers
7 of those sites where we actually would be
8 directly assigning leases to them. So we
9 just basically give them the keys.

10 But all of this is DISH's option,
11 and they are going to be on any of the Sprint
12 sites that are on that decom list -- I would
13 imagine on almost all of them -- that will be
14 800-megahertz radio, which DISH would be in a
15 position to start to use for their own
16 purposes as soon as we've finished with it.

17 Q So you just stated that DISH would
18 essentially get ready-made -- ready-to-go
19 cell sites. However, on page 17 of your
20 supplemental testimony beginning around line
21 13, you note that T-Mobile will be
22 potentially stripping antennas, base stations
23 and coax cable -- coaxial cable from the cell
24 sites. Is that --

25 A So just to be clear -- I mean, we
26 have a responsibility to remove the equipment
27 that DISH doesn't want to take on those
28 sites. So as I said at the beginning, I

1 mean, DISH has an option whether they want to
2 take a decommissioning site or not. So just
3 so we're clear on the terms in the document
4 here, if we are vacating a cell site -- and
5 again, recent experience with MetroPCS -- we
6 have to reinstate the site to its former
7 condition. That's typical in any commercial
8 lease whether that's -- or even a consumer
9 lease. That's, you know, in most cases
10 nothing new and different there.

11 So under the terms of the leases
12 that we have -- and we generally only lease
13 our cell sites. We don't -- we own a de
14 minimis number of cell sites. So these are
15 all these facilities. We would -- if we're
16 fully vacating, we would have to remove old
17 equipment, and we would have to reinstate the
18 rooftop. And whatever work we've done we
19 have to undo. And so that's kind of what's
20 referenced here.

21 Now, DISH has an opportunity to
22 come in and say, "No, I'm going to take that
23 site from T-Mobile. I don't want to undo all
24 of that construction work." It could be
25 literally hundreds of thousands of dollars of
26 investment that's gone into that facility or
27 that cell site. And DISH has the option,
28 which is a tremendous option. I've never

1 been offered this option in my 25-year U.S.
2 career. I wish I had. It was much tougher
3 when I was building this stuff in the early
4 days, but they can walk into a ready-made
5 site.]

6 Q Is the equipment that DISH could
7 get from T-Mobile included in the 3.6
8 billion dollar pricing?

9 A I think you're referring to the
10 \$3.6 billion which is the price for the
11 spectrum.

12 Q Yes.

13 A And then DISH has to -- has a right
14 to purchase the equipment that is on decommed
15 sites. That's a separate item, separate item
16 from 3.6.

17 MS. SCHAEFER: Thank you so much. That
18 concludes the Public Advocates' cross.

19 ALJ BEMESDERFER: Other cross for this
20 witness?

21 MS. KOSS: Yes, your Honor. Just one
22 moment please. Can we go off the record?

23 ALJ BEMESDERFER: Off the record.

24 (Off the record.)

25 ALJ BEMESDERFER: All right. Back on
26 the record.

27 ///

28 ///

1 CROSS-EXAMINATION

2 BY MS. KOSS:

3 Q Good afternoon, Mr. Ray. My name
4 is Rachael Koss. I'm here on behalf of
5 Communication Workers of America, District 9.

6 A Good afternoon.

7 Q Let's start with your supplemental
8 testimony, page 21. And lines 18 and 19 you
9 state:

10 T-Mobile's MVNO agreement with DISH
11 will have no adverse impact at all
12 on our existing LTE network or on
13 our planned world-leading 5G
14 network.

15 And then moving to lines 25 and
16 through 27, you state:

17 Our network plan already accounted
18 for the Sprint prepaid customers so
19 there is limited, if any,
20 incremental loading associated with
21 this group of customers in
22 particular.

23 A I see that.

24 Q Do you state in your testimony your
25 assumptions about the number of DISH
26 subscribers?

27 A Sorry. I don't understand the
28 question.

1 Q So you're on 18 and 19?

2 A Yes.

3 Q You say that the DISH divestiture
4 won't have an impact on your network. What
5 are you assuming as far as the number of DISH
6 subscribers when you say that?

7 A The number that's there or close,
8 whatever that number is.

9 Q Did you have a number in mind when
10 you made that statement?

11 A Approximately 9 million, but it is
12 what it is.

13 Q And no matter what the number is,
14 you still believe that it will have no impact
15 on your network; is that right?

16 A Well, just if I can explain those
17 two sentences and maybe bring some clarity to
18 this.

19 When we put the New T-Mobile
20 network plan together, it looked towards the
21 migration of the entire Sprint business. And
22 so we built a plan that can support all of
23 the capacity necessary for Sprint and all of
24 its brands, Boost, Virgin, its postpaid, its
25 prepaid business.

26 So, the fact that those customers
27 from Boost are now being, you know, divested
28 in terms of ownership of that customer base

1 is now going to belong to DISH and not to
2 Sprint is effectively a moot point in terms
3 of the network capacity. We are still going
4 to be supporting those customers on the New
5 T-Mobile network until a certain point in
6 time as DISH has built out their own network.

7 And I think if I could just make
8 this point, I mean this is a -- there's a
9 tremendous MVNO opportunity we have put in
10 front of DISH whereby they have full access
11 to all of the T-Mobile -- the New T-Mobile
12 network. So everything we do in terms of
13 LTE, 5G, the performance, I mean the Boost
14 customers will be getting all of that from
15 the New T-Mobile network.

16 And the DISH team will start to
17 build their own network, the DISH mobile
18 network, whatever they're going to call it,
19 you know, in certain parts of the U.S. and I
20 assume, you know, major hubs and parts of
21 California. I don't know. I have not seen
22 and will not see. There's competitive
23 reasons as to why I would not see that DISH
24 business plan and build plan.

25 But as they build and as they take
26 -- and it may take them several years to
27 refine and complete that network, they have a
28 seven-year envelope under the MVNO

1 arrangement where they can use our network.
2 So if they decide to build LA and
3 San Francisco and San Diego in through the
4 first, you know, two, three years and then
5 they pick up Sacramento and then they go to
6 Redding, during that whole period, they will
7 have access to the New T-Mobile network
8 outside of the areas where they built their
9 own network.

10 Q Okay.

11 A And they'll have seamless mobility
12 between, which is actually very new in this
13 case, seamless mobility between what they
14 build themselves and the new T-Mobile
15 network.

16 So the customer experience for
17 those -- the DISH customers, be that with the
18 Boost sub-brand or their own customers, is
19 going to be -- it can leverage the new
20 T-Mobile network, you know, on an ongoing
21 basis.

22 And so when we started this plan, I
23 mean we obviously assumed that all of those
24 customers were coming onto the network. We
25 have aggressive growth assumptions, in terms
26 of, you know, the success of this business.
27 We are very excited about the opportunity and
28 what we're going to do. We plan to grow this

1 business materially over the period.

2 So there's a lot of new capacity
3 that's coming into the New T-Mobile business
4 plan, the 5G rollout, all those pieces, which
5 is tremendous news for the Boost and the DISH
6 business.

7 Q Okay. Thank you. Then so back to
8 my question. I think you said you assumed
9 about 9 million customers when you made that
10 statement.

11 Does your testimony, again on lines
12 18 and 19 and then 25 through 27, does --
13 when you state that, do you provide somewhere
14 in your testimony your assumptions about the
15 growth of the number of DISH subscribers over
16 the seven years of the MVNO agreement?

17 A No. But as I just testified, we
18 are very confident. It's a small volume of
19 customers. We were combining two large-scale
20 U.S. businesses together as part of New
21 T-Mobile. I mean we expect, you know, the
22 DISH team to be, you know, rivallessly
23 successful. They are going to have a great
24 volume of customers to stimulate revenue and
25 growth into their business.

26 The network they build is an
27 incredible opportunity as we just went
28 through in testimony. They're walking into

1 ready-made cell sites in many cases and the
2 DISH team has a fine volume of spectrum. So
3 we can't -- I don't have access to DISH's
4 business plan. So can I tell you
5 categorically that in year five I can, you
6 know, to the nearest whatever it might be,
7 guarantee that I will match Sprint's growth
8 at the Boost and DISH forecast? I don't have
9 that information, but I am very, very
10 confident one of the whole -- the key
11 undertaking that we're doing with New
12 T-Mobile is to put together these two
13 businesses and create an inordinate amount of
14 new supply into this wireless business, into
15 the wireless industry. So I am very
16 confident that with our own growth and our
17 plan to actually grow that customer base in
18 Boost as we had it ourselves, you know, that
19 we'll be able to support whatever DISH and
20 the DISH team decides to do.

21 Q Does your testimony provide any
22 assumptions about the data capacity used by
23 those new DISH subscribers?

24 A I don't know if it does in this
25 specific set of testimony. I think we have
26 obviously talked at length about the volume
27 of capacity that we believe this network can
28 support. I mean we have been critiqued for

1 being too aggressive in the demand forecast
2 of the New T-Mobile customer base.

3 I believe there's going to be
4 massive growth and customers are going to be
5 consuming large multiples of what, you know,
6 they consume in terms of data today and we
7 have put that into all of our documentation
8 and information. And so we build a very, as
9 I said, an inordinate amount of new wireless
10 data supply is going to come to the market as
11 we combine T-Mobile and Sprint together and
12 the opportunity to support, you know, a new
13 DISH customer is absolutely there.

14 And during that period, obviously
15 DISH is going to be building out their own
16 network; the DISH team over that period, and
17 they have material commitments and penalties
18 if they don't build a large volume of this
19 network by -- I think at some point in time
20 by 2023, the next three, four years, they
21 will face material penalties if they don't,
22 you know, build that network out.

23 And what they're bringing to the
24 market is one of the largest fallow volumes
25 of spectrum in the industry today. DISH has
26 an inordinate amount of spectrums outside of
27 the 600 megahertz assets; in mid-band, they
28 actually have more downlink mid-band spectrum

1 that T-Mobile or Verizon today.

2 And all of that spectrum is going
3 to come into the market in the areas where
4 DISH builds out its own network and that's
5 going to be against supplemental capacity
6 that comes online in the U.S markets.

7 So, you have the New T-Mobile
8 adding all their capacity and now you have
9 all of this new fallow capacity unused
10 spectrum that's sat there for several years
11 coming to the marketplace, too.

12 So that's the beautiful thing in
13 the DISH arrangement. It's going to bring a
14 lot more capacity to the marketplace.

15 Q Mr. Ray, does your testimony
16 provide your assumptions about the geographic
17 distributions of those DISH subscribers?

18 A Sorry. Repeat the question.

19 Q In your testimony, do you make any
20 assumptions about the geographic distribution
21 of those DISH subscribers?

22 MS. TOLLER: I would like to object,
23 your Honor. It's unclear to me at what point
24 in time Ms. Koss' question refers to. Does
25 she mean at the moment of close, when it's
26 the existing Sprint customers or is she
27 referring to some point in the future?

28 BY MS. KOSS:

1 Q Well, on lines 18 and 19 of
2 Mr. Ray's testimony, it states that the DISH
3 agreement will have no adverse impact at all
4 on the network. So, whatever time frame that
5 refers to, that's what my question is about.

6 A I think I understand your question.
7 I mean we know where those customers are
8 today, absolutely. Does my testimony state
9 that and give all of that detail? No. I
10 don't think we've done that with the Sprint
11 base, but it's intuitive in our business. We
12 are not planning to build a ton of capacity
13 where there's no customers. So we know where
14 those customers are today. They're pretty
15 much honed in on the same geographies where
16 we have large volumes of T-Mobile and Sprint
17 customers. So nothing new and different
18 there.

19 Q Okay. I am going to hand out a
20 couple of exhibits. Maybe we can go off the
21 record.

22 ALJ BEMESDERFER: Off the record.

23 (Off the record.)

24 ALJ BEMESDERFER: While we were off the
25 record, I was handed two cross-examination
26 exhibits.

27 The first one is Excerpt from the
28 T-Mobile Form 10-Q for the period ending

1 September 2019. That will be admitted as CWA
2 -- that will be identified as CWA-15.

3 (Exhibit No. CWA-15 was marked for
4 identification.)

5 ALJ BEMESDERFER: The second one is the
6 excerpt from the Sprint Form 10-Q for the
7 period ending September 2019. And that will
8 be marked for identification as CWA-16.

9 (Exhibit No. CWA-16 was marked for
10 identification.)

11 ALJ BEMESDERFER: Okay, Ms. Koss, go
12 ahead.

13 BY MS. KOSS:

14 Q Thank you, your Honor. Let's start
15 with what's been marked as Exhibit 15.
16 That's the excerpt from the T-Mobile 10-Q.
17 And close to the bottom you will see a line
18 in that little chart that has the total
19 number of customers at the end of the period
20 September 30, 2019. It's about 84.1 million.
21 Do you see that?

22 A I do. Your Honor, can I get my
23 glasses?

24 ALJ BEMESDERFER: Off the record.

25 (Off the record.)

26 ALJ BEMESDERFER: Back on the record.

27 THE WITNESS: I apologize for not
28 bringing them up here.

1 MS. TOLLER: I think the light's bad on
2 the witness stand, too. It's hard to see up
3 there.

4 BY MS. KOSS:

5 Q Just to confirm, you see that
6 approximately 84.1 million customers for
7 T-Mobile. And then if you look at
8 Exhibit 16, that is the exhibit from Sprint's
9 10-Q?

10 A Yes.

11 Q On page 51, also in the chart, you
12 will see retail subscribers approximately
13 41.8 million?

14 A Yes.

15 Q So roughly combined, T-Mobile and
16 Sprint, we're talking about 125.9 million;
17 would you agree with that?

18 A I think that's good math, yes.

19 Q Okay. And then also back to
20 Sprint's 10-Q, it shows that of Sprint's
21 approximately 41.8 million customers, there
22 are about 8-and-a-half million prepaid. Do
23 you see that?

24 A I do.

25 Q Okay. So, a little more math. Of
26 the total number of combined T-Mobile and
27 Sprint customers, the 8.5 million prepaid of
28 Sprint is about 6.7 percent of those total

1 125.9 million. Would you agree with that?

2 A I will take your word for it.

3 Q Okay. So if we head back to your
4 supplemental testimony on page 21, it's where
5 we were before and we've gone over these
6 lines where you state that your network plan
7 accounted for Sprint's prepaid customers. I
8 take it to mean that your network plan
9 accounted for this about 6.7 percent, the
10 Sprint prepaid customers who would make up
11 the DISH subscribers; is that right?

12 A Correct. I think I previously
13 testified that, yes.

14 Q Okay. My understanding is that
15 it's generally agreed that it's not possible
16 for DISH to build its own network in two
17 years. Would you agree with that?

18 A It's down to DISH. And it's down
19 to the size and scale of the network that
20 they want to build.

21 So if they were aggressive, back to
22 one of the comments I made earlier on, you
23 have got the opportunity in front of these
24 guys; the size and scale of what they build
25 in the period of time, especially with the
26 T-Mobile -- New T-Mobile network to fall back
27 to, DISH could absolutely build out areas of
28 network in two years.

1 Q Okay. Areas, but it's not going to
2 build its full network in two years. I think
3 that is generally understood amongst most
4 people following this.

5 A I don't know who that would be.
6 Could you -- if you ask me -- sorry.

7 MS. TOLLER: That's all right. Your
8 Honor, I have to object. I don't know what
9 people, generally, Ms. Koss is referring to,
10 but I think she's going to have to be more
11 specific if she wants to ask Mr. Ray
12 questions.

13 BY MS. KOSS:

14 Q Let me rephrase the question.

15 Would you agree that DISH is going
16 to have to rely on its MVNO agreement with
17 T-Mobile for a period of time?

18 A Yes. I think they will use the
19 network for up to seven years. And I think
20 the nature of the agreement, the pricing
21 structure of the agreement, the expansive
22 nature of the T-Mobile network, it's the
23 perfect opportunity for DISH to build out a
24 network where they focus their customer
25 growth and they have a full nationwide high
26 performance, high capacity 5G network that
27 they can use outside of the areas that they
28 determine and decided to build themselves.

1 And DISH may well decide that they are going
2 to build out "City X," pick one, within the
3 first two years. They could absolutely do
4 that. That could be the extent of the, you
5 know, the DISH Network within two years and
6 it grows from there. The pace and scale of
7 which they grow their network will be down to
8 DISH but they have a tremendous MVNO in the
9 interim.

10 Q Okay. Let's suppose DISH is
11 successful as you have testified you believe
12 they will be.

13 A I hope so.

14 Q That it -- DISH keeps the Sprint
15 prepaid subscribers and adds subscribers, and
16 suppose it doubles its subscribership in two
17 years, does your plan account for a doubling
18 of the -- going back to the 6.7 percent
19 number we talked about, the 8-and-a-half
20 million customers, does your plan account for
21 doubling of this 6.7 percent over the next
22 two years?

23 A I don't -- I can't take me around
24 that hypothetical, but if the DISH customer
25 base is growing, we have material growth in
26 our business plan which included those DISH
27 customers prior to the divestiture. And you
28 also have the opportunity for DISH to build

1 out their own network and bring on more
2 customers.

3 I really have very, very few
4 concerns about capacity on this enormous
5 network we're going to go build together with
6 the Sprint team to support an aggressive and
7 fast growing DISH and Boost franchising
8 business.

9 Q Okay. I think I heard you say in
10 your initial response to my question that you
11 didn't run that scenario though, correct, in
12 your plan?

13 A You gave me a hypothetical of a
14 two "x" on a base site. No. I don't recall
15 running that hypothetical but I have no basis
16 to do it.

17 Q And under the DOJ remedy, DISH is
18 supposed to replace Sprint as the fourth
19 carrier. In the event that it becomes as
20 successful as Sprint, it will have at least
21 41.8 million subscribers, as Sprint does.
22 That would be about 33.3 million more
23 subscribers than the 8-and-a-half million
24 number we talked about, right?

25 MS. TOLLER: Your Honor, I would like
26 to object on the grounds it mischaracterizes
27 the DOJ remedy. I don't think the DOJ remedy
28 says that they anticipate DISH will be the

1 size of Sprint precisely.

2 ALJ BEMESDERFER: I think Ms. Koss is
3 asking -- why don't you frame that as a
4 hypothetical question?

5 BY MS. KOSS:

6 Q That's fine. I mean I can scratch
7 that whole sentence. It doesn't matter. I
8 still have the same question.

9 If DISH were to become as
10 successful as Sprint, that would mean it
11 would have about those same number of
12 customers. It's really just going through a
13 simple math equation; 41.8 million customers,
14 which is what Sprint has now minus the 8.5
15 million we talked about earlier, which you
16 say your plans considered leaves about 33.3
17 million, right?

18 A We're going to go talk ourselves in
19 circles. This is impossible math and let me
20 explain why for you.

21 You need to ask DISH. So,
22 Ms. Koss, DISH may come in here and say
23 they're absolutely going to build out their
24 network to support 30 million customers in
25 that time frame or 40 or 50. I don't know.
26 I hope they're wildly successful and continue
27 to compete in an aggressively fair share from
28 AT&T and Verizon as we do.

1 I don't know their business plan.
2 And I didn't sit down and say I'm going to
3 create another 40 or 50 million customer
4 capacity for an MVNO. We have a lot of
5 growth and capability in the model. But what
6 DISH plans are, I think you have to ask DISH.

7 Q Yeah. I'm not talking about DISH's
8 plans. I'm talking about the possibility of
9 what could happen over the seven-year period
10 of this MVNO?

11 A You're intimating that all of those
12 customers would reside on the New T-Mobile
13 network and that's not accurate. DISH is
14 actually committed to building out their own
15 network and all of their customer growth
16 after a period of time could well be on their
17 network and not on the T-Mobile network at
18 all.

19 So how can I tell you I would be
20 trying to accommodate growth or something
21 from DISH I don't know anything about?

22 Q Well, there's a reason there's an
23 MVNO for a period of time because it's
24 understood that DISH will have to use the
25 T-Mobile network for a period of time. So
26 the question is: What's going to happen
27 during that period of time when DISH will be
28 using T-Mobile's network. So I am asking you

1 to think about this scenario I'm putting in
2 front of you. I know nobody can read the
3 stars, but this is a possibility and so I
4 would like to explore this with you.

5 A Which is a possibility? That DISH
6 doesn't build any of its own network; doesn't
7 build a single cell site and all of the
8 capacity from DISH's growth, your theoretical
9 40 million customers that DISH is going to
10 turn into is resident on the New T-Mobile
11 network? By when?

12 Q Well, that is --

13 A Did you have a period of time in
14 mind or?

15 Q Well true. Let's think about a
16 two-year period.

17 MS. TOLLER: 40 million customers in
18 two years?

19 THE WITNESS: So a company is going to
20 create 40 million wireless customers in two
21 years?

22 BY MS. KOSS:

23 Q We don't know, right?

24 A There hasn't been that much
25 wireless throughout the industry in any given
26 year for the last decade. I mean these are
27 kind of whacky hypotheticals. I'm sorry. I
28 am not trying to be difficult. I am trying

1 to move us to some level of understanding of
2 the DISH opportunity here.

3 Q Okay. Let's say there's a
4 25 percent increase.

5 A In what?

6 Q In the first two years?

7 A The 6.7 goes to 9 or?

8 Q You're talking percentages?

9 A I'm trying to understand what
10 you're asking me. Sorry.

11 Q Well, I'm putting a hypothetical
12 out there. There's a period of time where
13 DISH will be using your network. We don't
14 know how long that is going to occur. They
15 will begin to build out. We don't know how
16 long it's going to take. There is a
17 possibility that you yourself said you hope
18 that DISH is wildly successful and you think
19 they will be. So they could grow their
20 subscribership in that first two years.

21 A I would hope so.

22 Q All right. So, and that will
23 require an increase of capacity. Would you
24 agree?

25 A An increase in capacity in what?

26 Q For the subscribers. They will use
27 -- there will be more use of capacity.

28 A Well, those customers are going to

1 require network resources to support their
2 service, yes. It's not necessarily an
3 increase in capacity. It depends on what
4 network you're on and --

5 Q At what -- does your plan consider
6 varying levels of increased capacity use as
7 DISH subscribers increase over let's say the
8 first two years?

9 A Well, we took a very aggressive
10 forecast for all customer growth on the
11 network. So, I have said it multiple times,
12 we are very confident in our ability to
13 support, you know, the capacity that would
14 come at us from our own success and any
15 additional success from DISH and then their
16 need to utilize our network.

17 And obviously if DISH is growing,
18 and they want to grow the MVNO base or MVNO
19 business with us, it's a good thing for us,
20 too. I mean we receive revenue from DISH for
21 supporting their MVNO customers. So
22 obviously we would manage to, you know, the
23 growth targets. And so can I sit here and do
24 projections on where we'll be two or three
25 years from now with that DISH base, as I said
26 I think that is somewhat impossible but I'm
27 sure DISH can give you more accurate
28 forecasts of their business plan. I haven't

1 representing a party.

2 So go ahead, Ms. Koss.

3 MS. KOSS: Okay. Thank you.

4 Q So on the bottom of page 569 and
5 the top of page 570 in this transcript, we
6 had some back-and-forth, and you agreed that
7 one cell site outside the mid-band coverage
8 areas using all the 5G low-band spectrum used
9 by T-Mobile provides a certain aggregate
10 capacity, which I will not say.

11 Do you see that capacity number on
12 line 4 of page 570?

13 A Line where?

14 Q 4 of page 570.

15 A I see that, yes.

16 Q And then at the bottom of that same
17 page 570 and to the top of 571, we had
18 another little math back and forth, and you
19 agreed that that aggregate capacity number,
20 which I will not say, would support a certain
21 number of simultaneous streams of 14 video.
22 And that number I also will not say, but it
23 is at the line 1 of page 571.

24 Do you see that?

25 A I do.

26 Q And then moving to page 572, lines
27 12 through 15, you agreed that in some cases,
28 in some parts of California including in

1 rural Humboldt County, this amount of
2 capacity that you testified to, that I won't
3 say, would need to be shared over hundreds of
4 scare square miles.

5 Do you see that?

6 MS. TOLLER: Objection.

7 Mischaracterizes the testimony in the
8 transcript.

9 MS. KOSS: On lines 12 --

10 ALJ BEMESDERFER: In what way does it
11 mischaracterize the testimony?

12 MS. TOLLER: The answer says "could
13 be," not that it would.

14 BY MS. KOSS:

15 Q Would you agree that you testified
16 that in some cases this capacity could be
17 shared over hundreds of square miles?

18 A Yes.

19 Q Okay. So in the event that DISH
20 becomes an effective competitor and requires
21 an increase in capacity usage compared to
22 your network plan, let's say, 10 percent
23 increase in capacity usage, what happens
24 to -- or would you agree that the T-Mobile
25 subscribers in these rural areas that you
26 previously testified to with that certain
27 amount of capacity, that I will not state,
28 would also or could also be required to share

1 that capacity for hundreds of square miles?

2 MS. TOLLER: Objection --

3 THE REPORTER: Excuse me. Can you
4 please slow down.

5 ALJ BEMESDERFER: And speak up.

6 MS. TOLLER: Objection, your Honor.
7 Incomplete hypothetical. Ms. Koss does not
8 say increase in capacity over what, nor did
9 she specify the time frame.

10 MS. KOSS: I believe I said "an
11 increase in capacity usage compared to your
12 network plan," and we can still use the two
13 years that we were referring to earlier.

14 MS. TOLLER: I'd like to continue my
15 objection, your Honor. Because when she says
16 "over the network plan," I think that that's
17 vague over -- more than the capacity which
18 Mr. Ray had assumed he would need in two
19 years? 10 percent more than that? Or 10
20 percent more capacity than the current volume
21 of prepaid customers who are being divested
22 to DISH?

23 ALJ BEMESDERFER: Ms. Koss, I think
24 there's a valid question there. Do you want
25 to reframe it to respond to Ms. Toller's
26 confusion?

27 MS. KOSS: Sure. Yes.

28 Q In your supplemental testimony, Mr.

1 Ray, you refer to your network plan, which
2 accounted for Sprint prepaid customers and
3 the DISH divestiture and some -- and
4 concluded that as a result of the divestiture
5 there would be no impact on your network. So
6 I'm referring to what you call your network
7 plan on lines 25 through 27 of your
8 supplemental testimony.

9 A Let me try and help here. I have
10 no concerns with the capacity of the network
11 in these low-band areas with DISH and with
12 Boost customers, no. As I testified, that --
13 the last time around, that's a lot of
14 capacity. That's simultaneous speed
15 bandwidth in the second -- if you want to
16 calculate the full network capacity, you have
17 to multiply that by minutes, hours in the
18 day. You have to generate the whole
19 full-blown capacity figure.

20 And then if you can support
21 simultaneous use of those types of speeds,
22 you can support inordinate amounts of
23 capacity over a period of an hour, a week, a
24 month. So, again, our plan always included
25 for the Boost customers that were being
26 divested, they were in the plan. If there's
27 any form of growth on that base, then we will
28 continue to enhance this plan as we go to

1 support those customers. And I have no
2 concerns on the available capacity in the New
3 T-Mobile network to support the Boost or DISH
4 customers that are coming onto the network.

5 Again, I can't map the hypothetical
6 for you when I don't know what DISH's plan
7 is. DISH may decide that this is a great
8 area for them, the specifics of this area
9 that we're talking about, and they may decide
10 they are going to roll out their technology
11 there too. And there may be no incremental
12 growth that I have to worry about.

13 Q So I hear you saying that you don't
14 have any concern, and I appreciate that, and
15 you also have that same conclusion in your
16 testimony. My point is you haven't provided
17 any of the analysis to support that. And so
18 while you are comfortable with growth, your
19 plan does not account for it.

20 A I think our plan absolutely
21 accounts for growth, and we've submitted
22 voluminous documents on our growth and our
23 network plan and our model and capacities and
24 demand and supply.

25 Q I apologize. I'm talking about
26 DISH growth. Let's turn --

27 A I can't give you DISH numbers. I
28 work for T-Mobile. That would be a big

1 competitive problem if I came in here and
2 gave you a bunch of DISH information, their
3 business plan for the next five years. I
4 think I would probably be in another court
5 pretty soon.

6 MS. TOLLER: Your Honor, I would like
7 to object to Ms. Koss' characterization of
8 Mr. Ray's testimony as well because certainly
9 Mr. Ray testified before. And the prior
10 hearing obviously happened way before we knew
11 there was a divestiture to DISH. But he
12 definitely testified, as did Mr. Sievert,
13 about the ability of the New T-Mobile network
14 to support increased MVNO on that network,
15 right, without knowing it was a DISH MVNO,
16 there was substantial testimony on that point
17 and also on the capacity of the network.
18 Again, that wasn't so much our focus because
19 this hearing is supposed to be about DISH
20 but --

21 ALJ BEMESDERFER: Well, you make an
22 excellent witness, Ms. Toller.

23 MS. SCHAEFER: I was going to say thank
24 you for the testimony.

25 I have one last exhibit to hand out.
26 So if we could just go off the record.

27 ALJ BEMESDERFER: Go ahead.

28 (Off the record.)

1 ALJ BEMESDERFER: For the record, I've
2 just been handed a document entitled excerpt
3 from FCC Mobility Fund Phase 2 Coverage Maps
4 Investigation Staff Report GN Docket No.
5 19-367, which will be marked in order CWA-17.

6 (Exhibit No. CWA-17 was marked for
7 identification.)

8 ALJ BEMESDERFER: Go ahead, Ms. Koss.

9 MS. KOSS: Thank you, your Honor.
10 Sorry.

11 MS. TOLLER: Your Honor, before we get
12 into this line of questioning, I'd like to
13 interpose an objection if the question is
14 going to be about the document that got
15 handed out.

16 ALJ BEMESDERFER: What is your
17 objection?

18 MS. TOLLER: My objection is that this
19 study, which was only issued by the FCC
20 yesterday, is not within the scope of Mr.
21 Ray's testimony, and I don't know whether Mr.
22 Ray's had a chance to even review this study.
23 So I feel like it is outside the scope of the
24 testimony, and it is outside the scope of the
25 issues designated for hearing.

26 MS. KOSS: You Honor.

27 ALJ BEMESDERFER: Ms. Koss.

28 MS. KOSS: Thank you, your Honor.

1 Happy to give Mr. Ray a few minutes to
2 review. It's just an excerpt, and it is
3 relevant to the commitments T-Mobile made for
4 service for coverage and capacity.

5 MS. TOLLER: Your Honor, again,
6 respectfully, first of all, this is an
7 excerpt, and I would not want him to testify
8 based on an excerpt, A. I don't think that's
9 fair or reasonable without being able to see
10 the entire document.

11 And B, again, the commitments that
12 we've made and how New T-Mobile is going to
13 build its network, we've had extensive
14 testimony on that. It was the subject of the
15 first hearing in this proceeding. And this
16 hearing is supposed to be about what, if any,
17 impact the divestiture to DISH had. And this
18 does not seem to be unique to DISH or have
19 anything to do with DISH in particular.

20 ALJ BEMESDERFER: Well, I'm going to
21 overrule your objection. Without having read
22 this document but just having glanced at it,
23 it appears to be an FCC staff study that
24 examined actual coverage of various existing
25 cell phone providers. And one of the
26 underlying claims made by T-Mobile
27 illustrated by an earlier exhibit in this
28 very hearing had to do with the superior

1 coverage of T-Mobile versus Sprint in
2 California.

3 To the extent that this FCC document
4 addresses the same kind of issues, I find it
5 is relevant. Now, I haven't read the
6 document, but for the moment, I'm going to
7 let Ms. Koss proceed and persuade me that it
8 is relevant or you persuade me that it isn't.
9 But right now it looks relevant to me.

10 Ms. Koss, you may go ahead.

11 MS. KOSS: Thank you, your Honor.

12 Q Mr. Ray, are you familiar with the
13 FCC mobility fund?

14 A Somewhat. I'm not hugely familiar.
15 It's not -- I don't know all the ins and outs
16 of the FCC process.

17 Q Would you agree that it's a fund to
18 help build out mobile networks in rural areas
19 of America?

20 A I believe that's the impetus of the
21 plan, yes, building out rural band in
22 undeserved areas.

23 Q Are you aware that to get mobility
24 fund money carriers have to commit to
25 providing download speeds at a certain level
26 after completion?

27 A I'm sorry. After completion?

28 Q Yes. So once they do the

1 build-out, they have to commit to having
2 certain download speeds? That's part of the
3 requirements to get money under this program?

4 A If you receive federal money to
5 build out in these areas, there are
6 requirements that you need to meet. I
7 believe so, yes.

8 Q Are you aware that the FCC
9 performed drive tests to verify speeds that
10 were provided to the FCC to show that they
11 have met the download speed requirement?

12 A No, that was a mischaracterization,
13 I believe, of what this report is all about.
14 None of these areas have been built under
15 MF-II. I believe Chairman Pai actually
16 cancelled the program today. So there's no
17 verification of MF-II-funded build. It can't
18 happen. There's no build.

19 Q So this was -- this covers -- this
20 report covers an investigation done by staff
21 of coverage maps that were provided by
22 carriers including T-Mobile of each
23 providers' actual coverage?

24 A Incorrect.

25 Q Okay. Why don't you turn to page 2
26 of the document. It's paragraph 4.

27 MS. TOLLER: Your Honor, again, before
28 Mr. Ray -- I understand your objection that

1 you think that it's relevant, but before Ms.
2 Koss is going to cross-examine Mr. Ray on the
3 specifics of the document, I believe that --
4 I would object that no foundation has been
5 laid that he has had a chance to read the
6 document or that he has the details of what's
7 in the study.

8 MS. KOSS: Your Honor, may I? It seems
9 that Mr. Ray is partly familiar with the
10 topic of this document, and if he would like
11 to have time to review it, I can provide it
12 to him.

13 THE WITNESS: The 73 pages of it?

14 MS. KOSS: Or you can read the couple
15 of pages that I gave you, but I do have the
16 full document on my computer.

17 ALJ BEMESDERFER: Let me -- first of
18 all, Ms. Toller, I'm going to overrule you.

19 In Mr. Ray's supplemental testimony
20 and the confidential version thereof at tab D
21 and thereafter are coverage maps which have
22 been introduced in this proceeding by your
23 client. Now, according to what I'm
24 understanding from Ms. Koss, the FCC has
25 conducted tests of the accuracy of those
26 maps, and they are certainly relevant in this
27 proceeding. And certainly, the door has been
28 opened by your own witness. So I'm going to

1 overrule you, and I'm going to allow Ms. Koss
2 to proceed.

3 THE WITNESS: Your Honor, could I try
4 and help clarify?

5 ALJ BEMESDERFER: No. I'm going to let
6 Ms. Koss proceed with her questions.

7 MS. KOSS: Thank you, your Honor.

8 Q So if you turn to paragraph 4,
9 you'll see that it says that through this FCC
10 investigation staff found that the coverage
11 maps that were submitted by various carriers
12 including T-Mobile likely overstated the
13 provider's actual coverage and didn't
14 accurately reflect the on-the-ground
15 performance in several instances. For
16 T-Mobile specifically, only 63.2 percent of
17 the tests that staff underwent achieved at
18 least the minimum download speeds predicted
19 by the coverage maps. And staff also found
20 that each provider achieved sufficient
21 download speeds meeting the minimum cell edge
22 probability in fewer than half of all of the
23 test locations. Also, staff was not able to
24 obtain any 4G LTE signal for 21.3 percent of
25 the drive tests on T-Mobile's network.

26 Are you -- are these results
27 familiar to you?

28 A They are not familiar. We'd need

1 to study this, but if I can explain. This
2 MF-II coverage, this is not the coverage that
3 is indicated in my testimony. That is what
4 we would normally call Form 477 coverage.
5 That's the coverage that we portray and
6 depict in our websites, and we've used the
7 same process for our maps and material that's
8 been submitted in evidence for this whole
9 transaction.

10 Q Okay.

11 A I haven't finished. MF-II coverage
12 is something that is different. I was just
13 trying to finish my answer for you, if that's
14 okay. MF-II coverage is an FCC stipulated
15 and mandated level of coverage which is at a
16 higher level of performance than the Form 477
17 coverage. And the reason for that is that
18 the FCC drives a much higher standard against
19 the traditional coverage maps. So they can
20 create boundaries between where they see a
21 broadband service being adequate and a
22 broadband service being inadequate broadband.

23 So I do not believe the report --
24 there's nothing I've seen, scanning this
25 thing, criticizes the Form 477 filings and
26 the maps that we've generated. This is an
27 MF-II discussion, and that's a different --
28 the coverage is calculated differently for

1 MF-II, and it is reduced compared to what we
2 would do on a Form 477 map.

3 I'm sorry if that's not clear, your
4 Honor. But these maps are apples and oranges
5 because we are discussing here with MF-II
6 versus what we filed on testimony.

7 Q Thank you for that. And back to
8 the second line of paragraph 4 where it says
9 the staff found that the providers -- the
10 carriers including T-Mobile overstated each
11 provider's actual coverage.

12 Do you know if T-Mobile has been
13 penalized for providing inaccurate
14 information to the FCC?

15 A Regarding MF-II?

16 Q Regarding these -- yes, these maps
17 and --

18 A No. I saw some of the headlines on
19 the process. There's no enforcement action.
20 I think the FCC has decided that they want to
21 go back and kind of revamp the whole MF-II
22 process here so that there's a greater
23 understanding of where this digital gap
24 exists.

25 And the whole process was set up --
26 these were like challenge processes. There's
27 a challenge process in MF-II where providers
28 and folks can go out and say, "I'm not

1 getting broadband at the level I thought I
2 would." That's kind of an expected part of
3 the process especially in some of these very
4 rural areas where there could be
5 topographical changes, et cetera.

6 And so it doesn't surprise me that
7 there are challenges. I can't give you any
8 information on the percentage variability
9 here, but I think it's pretty clear. This is
10 an MF-II process. It's very little, if
11 anything, to do -- I don't think it's
12 anything to do with our coverage filings that
13 have occurred. We've never mentioned an
14 MF-II in this transaction.

15 MS. KOSS: Thank you, Mr. Ray. I don't
16 have any further questions.

17 ALJ BEMESDERFER: Any other -- well,
18 we're going to take a break at this point.
19 We'll take about a 10-minute break, and then
20 TURN, Greenlining, I think you're up next
21 after the break.

22 We'll go off the record.

23 (Off the record.)

24 ALJ BEMESDERFER: All right. We'll go
25 back on the record.

26 Ms. Mailloux, I believe you are up.

27 MS. MAILLOUX: Thank you, your Honor.

28 ///

1 CROSS-EXAMINATION

2 BY MS. MAILLOUX:

3 Q Good afternoon, Mr. Ray.

4 A Good afternoon.

5 Q Christine Mailloux from The Utility
6 Reform Network.

7 I'm primarily just going to be
8 focusing on cell site decommissioning
9 questions. So you can keep that in your mind
10 as we move forward. I understand that you
11 have in front of you, although it's going to
12 be one of my last things to talk to you
13 about, the CETF MOU. So that's there right
14 now, and it's actually been admitted as an
15 exhibit already this morning.

16 A Okay.

17 Q So that's one thing. I also will
18 be asking you questions about the proposed
19 final judgment, which I also did not bring a
20 ton of questions -- a ton of copies of
21 because -- and it was admitted this morning.
22 So I don't know if you have that in front of
23 you?

24 A I still do from earlier. Yes.

25 Q You gave -- oh. So you have it.
26 Oh. Great. Okay. So we're good. Thank
27 you. Then your testimony obviously you have.
28 Okay.

1 So to start out, I want to make
2 sure that we have the same assumption about
3 something going forward, which is that DISH
4 network, in order to be as successful as
5 you're hoping they will be and we're all, I
6 guess, hoping, if this transaction goes
7 through, that they will be, will have to do
8 some of its own build-out of other cell sites
9 whether it's maybe existing sites that they
10 may or may not have currently that they'll
11 have to add stuff to or they will have to get
12 new cell sites somewhere else in addition to
13 the decommission cell sites that they will be
14 receiving from New T-Mobile.

15 Can we assume that together -- not
16 to the number of them or how many or where
17 but at least we can specify in California
18 DISH will have to do some supplemental cell
19 sites in addition to the ones they get from
20 that will be the decommission sites from you?

21 A Yes. I don't know the number of
22 cell sites. Again, DISH --

23 Q Right. I am asking --

24 A I have heard DISH leadership and
25 management talk to a target of 50,000 sites,
26 something like that, over a period of time.
27 I don't know what time frame. And yes, the
28 decommissioning volume that is committed

1 under the PFJ was 20,000. So I'm sure DISH
2 will be looking to co-locate their equipment
3 on tower companies and -- American Tower and
4 Crown and companies like. There's a lot of
5 those facilities that those companies are
6 hungry to secure new tenants for.

7 Q Thank you. So the network
8 planning -- DISH's network planning will have
9 to incorporate both the plans for the
10 decommission sites that they get from you
11 plus these additional supplemental sites?

12 A I would think so based on what I've
13 heard publicly. But I mean, DISH may say --
14 they may say they are just going to work on
15 the decom sites. I don't know that. I would
16 guess that they would build more than that.

17 Q Thank you. Now, specifically about
18 the decommission sites and the sites that
19 you're planning under the PFJ to decommission
20 and offer to DISH, whether they take them or
21 not, let me ask you if you were aware of
22 whether in the record here in California
23 there was any discussion about how much DISH
24 will pay for these decommission cell sites
25 and perhaps maybe more generally what the
26 process will be to come up with a price and
27 an actual commercial transaction process for
28 you to turn these sites over to DISH.]

1 A I am not sure I'm fully following
2 your question, but let me try. So, as I
3 mentioned earlier, there are sites that are
4 directly assignable. So there's decommed
5 sites the landlord -- we can put -- DISH can
6 assume our lease on our firms with
7 notification effectively. So there are
8 several thousand of those sites on a
9 nation-wide basis. So I would assume, you
10 know, DISH would assume the financial terms
11 of those leases. They could try to
12 renegotiate them. I don't know. You would
13 have to ask DISH on the other decommed sites
14 where we don't have those assignment rights.
15 Then DISH will go and negotiate with the
16 landlords to secure access to the sites at a
17 rate that works for them.

18 Q So to be clear, let me ask: Is
19 DISH paying New T-Mobile for any -- is DISH
20 -- will DISH pay New T-Mobile for any of
21 these decommissioned sites that they receive?

22 A On leases? No.

23 Q Okay. So will --

24 A In prior testimony, we talked about
25 there are circumstances where they may decide
26 to purchase equipment and DISH would pay New
27 T-Mobile for the equipment that they would
28 purchase from those sites.

1 Q Okay. So New T-Mobile will not be
2 -- "reimbursed" may not be the right word,
3 but DISH will not pay New T-Mobile for the
4 actual cell sites themselves for the leases
5 for access to these decommissioned cell
6 sites?

7 A No. Our intent is to obviously
8 exit our lease obligations. And that's --
9 again, maybe I can just double-down here. I
10 mean why we'd be decommissioning it, so we
11 can save those rents that you refer to, the
12 backhaul, the connection of the fiber to the
13 sites, maintenance on those sites. Those
14 numbers are, you know, potentially large for
15 any wireless operator, seven, \$8,000 a month.
16 It could be \$100,000 a year on average,
17 probably higher in California in certain
18 jurisdictions and areas. So we are very
19 motivated to decommission, to secure
20 synergies, balancing customer migration.

21 DISH has obviously its own entire
22 option and right to negotiate, renegotiate,
23 establish terms which are comfortable for
24 DISH and the DISH business plan.

25 Q Okay. Thank you.

26 Let me then ask you: Pursuant to
27 the PFJ and the decommissioning terms under
28 the PFJ, particularly in paragraph 2 where

1 they're talking about your forecasting and
2 the notice provisions?

3 A Sorry. Can you give me a page?

4 Q It's page 13 and 14, paragraph 2.
5 And particularly page 14 it talks about the
6 -- "all forecasted decommissionings within
7 180 days will be binding"?

8 A I see that.

9 Q So as I read the PFJ then, the only
10 binding forecast that DISH can use to do
11 network planning are six months out; is that
12 correct?

13 A No. They have a forecast from us
14 that firms up as soon as we start to create
15 this rolling monthly forecast.

16 Q But to clarify, in the PFJ that you
17 are correct there is an initial forecast, but
18 in the binding forecast where you really kind
19 of have to put your money where your mouth
20 is, is just six months out, correct?

21 A Yeah. We basically give them
22 180 days' minimum notice. I mean it's
23 actually going to serve our interests to give
24 them more notice if they want to think of
25 sites but we have to give them minimum
26 180 days which is binding.

27 Q That actually sort of answered my
28 subsequent question which is: If you want

1 them to take the sites, ideally you would
2 give them more than six months' notice. From
3 a network-planning perspective, do you
4 believe six months is sufficient to get
5 notice that a site -- that a decommissioned
6 site is available and for DISH to then be
7 able to do all of the things that you just
8 testified they would have to do; negotiate
9 new lease terms, decide how that cell site
10 was going to fit in with their broader
11 network plan. Is it your testimony that six
12 months is sufficient?

13 A Absolutely.

14 Q Okay. All right. Thank you.

15 A The whole intent of the process
16 here is that they have a site forecast from
17 us which is provided I think from memory very
18 soon after close.

19 Q Which could change as I understand
20 the PFJ, correct?

21 A There could be variability in that.
22 But the intent for us is obviously we want
23 to, you know, we want to decommission and
24 it's helpful for us to have DISH assume
25 ownership of the sites for the reasons I
26 testified early.

27 Q Right. I understand.

28 A And the costs to reinstate a site

1 could run into hundreds of thousands of
2 dollars and if DISH is taking that site, it's
3 advantageous to them and it's advantageous to
4 us. So we have every motivation to give them
5 an accurate forecast that they can work with
6 that will enable them to plan out their build
7 in activity. And that is the intent of the
8 agreement.

9 Q All right. Great. Let me point
10 you now to page 15 of the PFJ in paragraph 4.
11 And you were just a minute ago were talking
12 about the decommissioned cell sites that will
13 be directly assignable essentially and you
14 could turn those right over fairly easily to
15 DISH.

16 There's a second or third sentence
17 of paragraph 4 that says:

18 Where divesting defendants do not
19 have the right to assign or transfer
20 such rights, divesting defendants
21 will cooperate with the acquiring
22 defendant in an attempt to obtain
23 the rights.

24 I guess my question is: Do you
25 have a sense of the percentage of
26 California-specific cell sites where that
27 scenario may apply?

28 A I think it's highly likely. I

1 don't want to give you a hypothetical
2 certainty. But if you imagine the scenario
3 where a landlord with his rooftop in downtown
4 Sacramento is sitting there and he has a
5 rental stream of \$5,000-a-month coming from
6 T-Mobile and DISH now comes along to
7 negotiate a new lease, I think that the
8 landlord is -- the landlord's highly
9 motivated to maintain and continue on with
10 that relationship. The facility's built. So
11 there's an incoming revenue stream which is,
12 in many cases on these sites is very
13 material.

14 So, I am sure there will be
15 negotiations and the DISH team will have
16 their own approach and practices in terms of
17 how they negotiate with, you know, what --
18 there's many different formats of landlords.

19 But our intent is for the reasons I
20 outlined, so that we can save money on our
21 decommissioning activity is to cooperate and
22 work with DISH to make this happen.

23 That would normally -- I mean, we
24 would do landlord introduction. You would
25 look for, you know, continuity of service and
26 use and rent. So, I mean these aren't, you
27 know, uncommon practices and we're motivated
28 to make it happen.

1 Q All right. Thank you.

2 So then in paragraph 5 right below
3 there, I want to point out that -- I want to
4 point out to you and ask you if from a
5 commercially-acceptable practice, these kinds
6 of vague terms would fly in a commercial
7 agreement.

8 In this PFJ, you know, it talks
9 about that the divesting defendants will
10 vacate a decommissioned cell site as soon as
11 reasonably possible after the site is no
12 longer in use, which I will acknowledge
13 you're just speaking to, correct? You're
14 claiming that New T-Mobile will be very
15 motivated to get rid of these albatrosses and
16 these expensive sites.

17 And as soon as reasonably possible
18 after making decommissioned cell sites
19 available to the acquiring defendant,
20 divesting defendants shall also make the
21 transport equipment available.

22 So, these sort of "as soon as
23 reasonably possible" language, is that
24 something that is normally in a commercial
25 contract for these cell leases and the way
26 that you all conduct business when you're
27 leasing space on these towers?

28 A I'd have to admit, I have never

1 done one of these arrangements with the
2 Department of Justice. But the unique
3 oversight that they have brought into this
4 processes, and I am not the lawyer but a
5 monitoring trustee which will be appointed,
6 and the intent on the whole arrangement here,
7 is the monitoring trustee is engaged in many
8 aspects of this deal to ensure that the terms
9 and the intent of the agreement are enforced
10 in a practical and pragmatic way.

11 I think there's a whole section in
12 here from memory. I haven't looked at this
13 document for some time around the monitoring
14 trustee, its rights, the obligations of the
15 respective parties with the monitoring
16 trustee. And so there is very much robust
17 kind of third-party oversight, which is
18 actually way more than you would normally see
19 in a commercial negotiation to have a
20 DOJ-appointed monitoring trustee oversee
21 these types of discussions and this type of
22 dialog. That's somewhat new.

23 Q And that oversight, to your
24 understanding, will be on a nationwide basis,
25 really trying to sort of figure out
26 nationally how DISH and T-Mobile are doing
27 with all these individual cell top sites on
28 the top of a Sacramento office building, for

1 example?

2 A Well, yes. I mean I am just
3 referencing back to the paragraph you took me
4 to. I mean there are fines in here of up to
5 \$50,000 per cell site week; \$50,000 per cell
6 site week, per week, if we don't -- if we
7 stand in the way of DISH on several
8 activities. And I think tri page (phonetic)
9 highlights penalties that can run north of
10 \$100,000.

11 So there's the very granular focus
12 within the monitoring trustee. I don't
13 disagree there's an umbrella activity but it
14 does go down to the site specifics.

15 Q Now I have a couple of questions
16 still on the PFJ and your testimony about
17 DISH getting ready-made cell sites
18 specifically. I think this is just a
19 clarification question.

20 The transport-related equipment
21 that clearly can offer to DISH, does that go
22 directly with the cell site that is being
23 decommissioned?

24 In other words, when you identify a
25 cell site for decommissioning and you offer
26 it to DISH, will there always be
27 transport-related equipment as it's defined
28 in the PFJ that goes along with that cell

1 site that you will be offering to DISH for
2 purchase?

3 A Pretty much in every case. So it
4 could be a combination of network elements.
5 There's always a routing facility on the cell
6 site to move traffic from the radio and the
7 base station into the fiber. That is
8 something that we wouldn't look to repurpose
9 or move.

10 And that's pretty much going to be
11 -- there is going to be a format of that on
12 every cell site.

13 In addition, there will be sites
14 with microwave dishes where we don't have
15 fiber, for example, and that equipment would
16 fall under that cause or element of the PFJ.

17 Q Okay. Thank you. So now let me
18 ask you to turn to page 17 of your testimony.
19 And, again, this is also a follow-up to a
20 question that Public Advocates had asked you.

21 A Page 17?

22 Q Yes, page 17, lines 10 through 19.
23 And in this Q and A, lines 10 through 19, I
24 read this, and you can correct me if I'm
25 wrong, sort of make a distinction between two
26 types of equipment.

27 There's certain equipment on
28 line 13 that is used in the operations of New

1 T-Mobile's business, including antennas, base
2 stations, et cetera.

3 A Yes.

4 Q And then there's the equipment in
5 line 16 through 19 which is the Asset
6 Purchase Agreement. That's where DISH will
7 have the right to purchase the
8 transport-related equipment, correct?

9 A Yeah. An 800 megahertz radio, et
10 cetera.

11 Q Just to clarify, I guess I want to
12 clarify that I thought I had heard you say
13 that DISH might have the option to purchase
14 all of the equipment that comes with these
15 decommissioned cell sites, but I'm seeing a
16 distinction and maybe my question for you is:
17 Is there a distinction -- is there an
18 equipment that DISH will have to bring
19 itself, BYOE, to the cell sites or is it true
20 that they will actually sort of walk up to a
21 ready-made cell site and you will hand them
22 the keys and they will be ready to go?

23 A Well, they're always going to have
24 to deploy if they decide and I am sure they
25 will deploy their own radio. In fact, DISH
26 has an enormous treasure trove of an enormous
27 volume of mid-band spectrum that is sitting
28 fallow unused. I don't have radios deployed

1 for some of the specific bands that DISH owns
2 and I am sure would operate on these sites.
3 So, for example, they're going to have to
4 bring new radio equipment like that. But the
5 intent of the deal is, if you imagine a cell
6 site today and we'll go back to a rooftop in
7 Sacramento, I built a few, you're going to
8 come onto the cell site and there's a whole
9 host of, you know, equipment and
10 infrastructure that's built there to support
11 the operation of the radio and the antennas
12 and everything else. And it may well be that
13 the antennas are redundant. They're part of
14 New T-Mobile network. DISH doesn't want
15 those antennas and those frequencies. So we
16 would remove those. We would remove our
17 radio that DISH won't want to use because
18 they have different banded spectrum. But a
19 lot of the ancillary equipment, the
20 structural reinforcement that's on the
21 rooftop, all those pieces, that's all going
22 to sit there.

23 So the DISH guys come along with a
24 radio -- and I mean I could have brought one
25 inside one of these packing boxes today.
26 They're not huge. They bring their radios to
27 the cell site. There are locations to mount
28 the radios and there are locations to mount

1 the antennas. So very rapidly they can go
2 and deploy their network equipment.

3 That's not dissimilar from what
4 happens in colocated towers today, which they
5 lease space from American Power. There would
6 generally be provided antennae mounts and
7 somewhere to put the equipment. But a lot of
8 our decommissioned sites I think and the
9 opportunities that the DISH will relish will
10 be those complicated rooftop builds. And if
11 I think about the city like New York or LA or
12 certainly San Francisco here, a large number
13 of cell site facilities are rooftops. We
14 don't wonder around here looking at 200-foot
15 towers.

16 And so the opportunity is very
17 large in those urban environments for DISH to
18 take on cell sites that have been built,
19 matured. I mean Sprint has been building
20 cell sites in California for the best part of
21 -- they were building in California when I
22 was building in California, maybe a year
23 later, 24 years.

24 Q Do you know if DISH has been
25 building in California for a long time?

26 A I don't think DISH has built very
27 much yet. Actually, I don't know. I mean,
28 again, I would ask the DISH folks. But they

1 have built cell sites I believe already. How
2 many in California, I don't know.

3 Q And let me ask you about a
4 different type of equipment that may or may
5 not -- I guess I want to clarify from you
6 whether DISH will have the right to obtain
7 this equipment from you all, which is on
8 page 18 of your testimony you talk about the
9 Sprint-specific generators, the cells on
10 wheels and the cells on light trucks. And I
11 just want to clarify that in your testimony
12 you very specifically say that you plan --
13 New T-Mobile plans on keeping that equipment
14 for itself; is that correct?

15 A Yes. Let me read the sentence.
16 Where is that on this page?

17 Q Page 18, line 11 through 15 of your
18 testimony.

19 A Right. That's correct.

20 Q Okay. So that is -- okay. Let me
21 ask you if you -- back on the equipment that
22 DISH will be expected to provide including
23 these COLTS, COWS, generators and then in
24 addition to the radios, antennas in a typical
25 5G cell site, do you have a ballpark cost
26 estimate? Let's stick with your cell tower
27 on the Sacramento rooftop. Do you have a
28 ballpark estimate in your experience of what

1 that might cost?

2 A As I said, I mean the value of the
3 improvements to secure the cell site could
4 run into hundreds of thousands of dollars. I
5 mean is that going to be part of the
6 transaction? No. I think the equipment will
7 be fairly nominal in value in terms of the
8 equipment that DISH looks to, to purchase.

9 Q Are you familiar, Mr. Ray, with the
10 California Public Utility Commission Rules on
11 pole attachments, placement of, you know,
12 third-party equipment on utility-owned poles?

13 A I used to be. I'm a little rusty
14 there. So my experience there is '95
15 through 2000.

16 Q Maybe just let me ask you: Are you
17 aware of whether DISH and/or New T-Mobile, as
18 you build out your network and DISH as it
19 builds out its network, will have the
20 scenario of the build-out to comply with
21 these rules? Will they be placing equipment
22 on utility-owned poles?

23 A I don't know that.

24 Q All right. Thank you. All right.
25 Last couple of questions I will turn to the
26 CETF MOU.

27 A Yes.

28 Q And the first question I have is on

1 page 10 of that MOU. And it's the paragraph
2 that starts, "The commitment is for 90
3 percent versus 100 percent of sites."

4 A I see that.

5 Q And it acknowledges the variability
6 in siting, permitting, spectrum clearing time
7 frames, backhaul acquisition and other
8 factors beyond New T-Mobile's control that
9 may impact your commitment -- your build-out
10 commitments pursuant to this MOU. Do you see
11 that?

12 A I do.

13 Q Do you believe that -- or are you
14 anticipating that these same factors that may
15 be out of New T-Mobile's control are also
16 relevant to decommissioning sites, some if
17 not all of them?

18 A I'm not sure they map at all.

19 Q And so then the other four bullet
20 points, the regulatory or other imposed
21 divestiture of assets, force majeure,
22 acquiring necessary equipment or backhaul,
23 siting moratoriums, do you think those would
24 apply at all in your decision of what to
25 divest or not for cell sites?

26 A No. I'm not really following, but.

27 Q You're not following or you don't
28 believe these are relevant to your decision

1 about whether to decommission and the time
2 frame under which to decommission?

3 A The paragraph is stating that there
4 are always factors that can impact your
5 ability to, in this case, build out new
6 network. I don't think they necessarily map
7 across to decommissioning. I mean, if
8 there's a force majeure event I think that is
9 pretty obvious. That is going to impact
10 everybody and everything.

11 In principal, I mean you're not
12 going through siting moratoriums for
13 decommissioning. We have talked about
14 equipment. There's very little regulatory or
15 permitting activity involved in taking
16 something out. It's all on the front end of
17 putting something in or putting something
18 out.

19 Q Okay. Do you know whether you'll
20 have to get approval from I guess either the
21 property owner or whoever is controlling the
22 site that you want to decommission, will
23 there be a process that you will have to go
24 through with New T-Mobile to do that
25 decommissioning?

26 A Absolutely. We spend a lot of time
27 working collaboratively with our landlords
28 and often we may be decommissioning site "x"

1 but we have 10 others with, you know, the
2 landlords. And so we're very careful in
3 making sure we don't create difficulty or
4 impose, you know, challenges for landlords.

5 And it's exactly what we did with
6 MetroPCS. We decommissioned several thousand
7 cell sites in that process. So we have very
8 recent experience in doing this. And it was
9 a very successful program.

10 Q All right. Thank you. So now
11 page 11 of the MOU talks about the unserved
12 and underserved areas that New T-Mobile has
13 agreed to prioritize for its planned 5G
14 network improvements. Do you see that?

15 A I do.

16 Q And I guess one question I have is
17 have you started the process yet to identify
18 these 10 areas?

19 A I believe there's some work that's
20 been done already in collaboration with the
21 CETF on this but I'm not current on the
22 status.

23 Q Do you know whether you expect
24 this, the identification of these 10 unserved
25 and underserved areas to be public, public
26 knowledge, publicly-announced, public
27 knowledge?

28 A I don't know the answer to that. I

1 don't see why not, but I don't know the
2 answer.

3 Q Do you believe that the
4 identification of these 10 unserved and
5 underserved areas will impact which cell
6 sites you decide to decommission?

7 A No.

8 Q And how is that if you've
9 identified one of these areas, would you be
10 willing to decommission cell sites in these
11 areas?

12 A Well, this is talking about adding
13 improvements in those areas.

14 Q Uh-huh. Serving these areas,
15 correct?

16 A That's correct, incremental
17 activities in these areas.

18 Q Okay.

19 A I mean, are you asking could there
20 be decommissioning in these areas of
21 redundant sites and facilities?

22 Q Yes.

23 A Yeah. But that wouldn't curtail
24 the goal and objective to improve the service
25 in the unserved and underserved areas. Those
26 two things aren't binding.

27 Q Okay. Thank you. So then on
28 page 12 of the MOU, there's discussion on

1 number -- well, let's see. It's under
2 Emergency Preparedness and Response
3 Installations at County Fairgrounds?

4 A I see that, yes.

5 Q I was going to ask you the same
6 question of whether you're aware of whether
7 the process of identifying the 10 fairgrounds
8 that New T-Mobile has agreed to serve has
9 started.

10 A Again, I believe there has been
11 dialog between CETF an T-Mobile on potential
12 locations. So I believe there has been
13 dialog but I am not current.

14 Q And whether the identification of
15 these fairgrounds would be public knowledge,
16 same thing?

17 A I don't know the answer to that.

18 MS. MAILLOUX: Okay. All right. Thank
19 you. That's all I have for Mr. Ray.

20 Thank you.

21 ALJ BEMESDERFER: Very good.

22 Mr. Goodman. Do you have anything?

23 MR. GOODMAN: Just very briefly, your
24 Honor.

25 CROSS-EXAMINATION

26 BY MR. GOODMAN:

27 Q Good afternoon, Mr. Ray. I am Paul
28 Goodman of Greenlining Institute.

1 I have a few questions about how
2 the FCC and DOJ commitments will affect
3 deployment to communities of color. And just
4 to make sure we are on the same page, can we
5 agree by "communities of color" we mean areas
6 where 30 percent or more of households are
7 occupied by people of color?

8 A Okay.

9 Q If you look at the CETF MOU at page
10 3, the fourth bullet point, the third line of
11 that bullet point uses the phrase "with all
12 deliberate speed." I am just curious, does
13 that term mean something specific in your
14 industry?

15 A I'm sorry. Which bullet point?

16 Q I'm sorry. So on page 3 of the
17 CETF, fourth bullet point, third line down.

18 A Let me just read.

19 Q Certainly.

20 A Okay. I have read it.

21 Q So in your industry does the term
22 "with all deliberate speed" have a specific
23 meaning?

24 A I think it would translate to as
25 fast as we can. I think that's the intent of
26 the statement here.

27 Q Thank you. Just a moment. On page
28 5 of your testimony, you state that one of

1 the methods of DOJ and FCC commitments will
2 be accelerating build out.

3 A I'm sorry. Is this the CETF memo?

4 Q I'm sorry. Your testimony, page 5.
5 I'm clearly very excited.

6 A I'm shuffling documents. I'm
7 getting there. I'm sorry. Page reference?

8 Q Page five?

9 A Page five.

10 Q Starting at line 14?

11 A I've read the first sentence.

12 Q So, actually, if you would take a
13 look at the second one. I apologize.

14 A Okay.

15 Q So, it's your position that the FCC
16 commitments will actually accelerate the rate
17 at which you deploy broadband. So you'll be
18 moving faster to get your network built out?

19 A Yes. As part of the process with
20 the FCC and finalizing the commitments with
21 the FCC, we accelerated a volume of radio
22 overlay activity from the second three-year
23 period in the program to the first three-year
24 period in the program. And we also agreed
25 with CETF to advance and build out more
26 mid-band spectrum in several areas during the
27 other phases of the program, too.]

28 Q So when looking at your build out

1 plan for these areas, did you determine
2 whether build out would serve communities of
3 color?

4 A I don't recall that I did that, no.

5 Q And Ms. Mailloux asked you about
6 the 10 years you were going to expand
7 service. Did you take a look at whether any
8 of those areas included any communities of
9 color?

10 A I didn't do that work.

11 Q I have one more question. If you
12 go back to the CETF agreement, on page 10,
13 the first full paragraph, it stated the
14 commitment is for 2025. That paragraph
15 states that if the close of the transaction
16 is delayed until late 2019, CETF will meet
17 and confer with New T-Mobile about expanding
18 the 5G mobile commitment until 2026.

19 To your knowledge, have they agreed
20 to extend the build out agreement?

21 A No. To be perfectly frank, I don't
22 want to. We want to move with the build in
23 this transaction as fast as we can. And if
24 we can get started early in 2020, then I'm
25 confident we can reach the original
26 commitments.

27 MR. GOODMAN: Thank you. I have no
28 further questions, your Honor.

1 ALJ BEMESDERFER: All right. Do we
2 have any redirect for this witness?

3 MS. TOLLER: Can we take a brief break,
4 your Honor, and I will assess that?

5 ALJ BEMESDERFER: All right. We will
6 go off the record briefly.

7 (Off the record.)

8 ALJ BEMESDERFER: We will go back on
9 the record.

10 Ms. Toller, further questions for
11 this witness?

12 MS. TOLLER: No. We don't, your Honor.
13 We are done. Thank you.

14 EXAMINATION

15 BY ALJ BEMESDERFER:

16 Q Mr. Ray, I have a couple of
17 clarifying questions, and they have to do
18 with the decommission cell site. It is my
19 understanding, correct me if I'm wrong, that
20 in order for DISH, or anybody else for that
21 matter, to build out a 5G network, using a
22 decommission cell site, you have to put a new
23 radio on it, a 5G radio. Am I right about
24 that?

25 A Yes. For 5G purposes, they would
26 have to deploy, especially in their own
27 spectrum bands, yes.

28 Q Is there any other piece of the

1 equipment that T-Mobile would be selling or
2 giving to DISH that would have to be replaced
3 in order to create a 5G network? Are the
4 other pieces of equipment there repurposable,
5 as they stand?

6 A It will depend on the age of the
7 installation, your Honor. I mean, in some
8 cases there is a lot of equipment that could
9 be reused. Fiber cable at the tower, for
10 example, could be reused, if it is recent.
11 DISH may determine as their routing radio,
12 they may determine there is equipment they
13 want to put in new.

14 Q Okay.

15 A It is tough to estimate. I think
16 it is primarily going to be based on age of
17 the cell site.

18 Q So there is no technical barrier to
19 using that equipment, but age may dictate
20 that they want to replace it?

21 A Yeah. If there is fiber running up
22 at the tower, for example, to feed the radio.

23 Q Okay.

24 A They could reuse that fiber. They
25 may determine the fiber is not in sufficient
26 condition or it has been damaged somehow.

27 Q Then I have one other question
28 having to do with handsets. Is my

1 understanding correct that most, maybe all,
2 handsets are backward compatible? That is to
3 say, a 4G handset works with a 3G network, et
4 cetera?

5 A Yes. That is typically --
6 backwards compatibility is --

7 Q So a 5G handset will work on a 4G
8 network if the owner of that handset happens
9 to be in an area where there is only 4G
10 capability, or 4G LTE capability, his handset
11 will work, or her handset will work --

12 A Sorry to talk over you.

13 Absolutely correct. We are
14 actually launching, we have launched some 5G
15 handsets earlier this year. We are just
16 launching two new ones tomorrow. And we
17 always ensure, when we move to next
18 generation that there is forward-backward
19 compatibility on prior G services. We
20 actually have backward 2G services on most of
21 these devices, and these devices.

22 ALJ BEMESDERFER: I have no further
23 questions. Mr. Ray, you may step down.

24 THE WITNESS: Thank you.

25 MS. TOLLER: Thank you, your Honor.

26 ALJ BEMESDERFER: Ms. Toller, let's
27 move in -- let's have the parties move their
28 exhibits at this point.

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Ms. Koss.

MS. KOSS: Yes, your Honor. I would like to the move Exhibit CWA-15, CWA-16 and CWA-17 into the record.

ALJ BEMESDERFER: Any objection? Hearing none, they are in the record.

(Exhibit No. CWA-15 was received into evidence.)

(Exhibit No. CWA-16 was received into evidence.)

(Exhibit No. CWA-17 was received into evidence.)

MS. TOLLER: Your Honor, we would move Mr. Ray's testimony, which are Joint Applicants Exhibit 28, and then Joint Applicants Exhibit 28-C for the confidential version.

ALJ BEMESDERFER: Objection? Hearing none, they are admitted.

(Exhibit No. JA-28 was received into evidence.)

(Exhibit No. JA-28-C was received into evidence.)

ALJ BEMESDERFER: Mr. Sievert is next on my list here.

MR. BLOOMFIELD: Your Honor, are we on the record? Do you want to be on the record?

ALJ BEMESDERFER: Let's go off the record.

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(Off the record.)

ALJ BEMESDERFER: Back on the record.

Good afternoon, Ms. Donnelly.

KRISTINA DONNELLY, called as a witness by Public Advocates Office, having been sworn, testified as follows:

THE WITNESS: I do.

ALJ BEMESDERFER: While we were off the record I was handed two exhibits for identification. The first is the Public Version of the Reply Testimony of Kristina Donnelly on the Proposed Transfer of Control of Sprint to T-Mobile: Customer Privacy Impacts of Divestiture to DISH Network, which will be marked in order Public Advocates-14, confidential version will be 14-C.

(Exhibit No. PAO-14 was marked for identification.)

(Exhibit No. PAO-14-C was marked for identification.)

ALJ BEMESDERFER: Your witness.

DIRECT EXAMINATION

BY MS. SCHAEFER:

Q Good afternoon, Kristina. How are you doing?

A I'm fine. How are you?

Q Do you have your testimony in front of you?

1 A I do.

2 Q Are you the sole author of your
3 testimony?

4 A I am.

5 Q In the information contained in
6 your testimony, is it true and correct to the
7 best extent of your knowledge?

8 A Yes.

9 Q Do you have any corrections that
10 need to be made to your testimony?

11 A I do not.

12 MS. SCHAEFER: Okay. Your Honor, Ms.
13 Donnelly is available for cross.

14 ALJ BEMESDERFER: All right. Who is
15 going to cross Ms. Donnelly?

16 MS. TAFF-RICE: Your Honor, Anita
17 Taff-Rice for DISH will do the cross.

18 ALJ BEMESDERFER: Go ahead.

19 CROSS-EXAMINATION

20 BY MS. TAFF-RICE:

21 Q Good afternoon.

22 A Good afternoon.

23 Q I'm just wondering, before you
24 prepared your testimony for this proceeding,
25 did you have a working familiarity with
26 DISH's operations here in California?

27 A I was aware that DISH was
28 operational in California, but not any of the

1 specifics, no.

2 Q So you wouldn't be aware that DISH
3 has actually been serving customers in
4 California for more than 30 years?

5 A I'm not aware.

6 Q I guess you are also not aware
7 whether DISH has ever suffered a data breach
8 in which customer proprietary information was
9 disclosed in California?

10 A I'm not aware.

11 Q And are you also aware of any
12 privacy complaints that have been filed
13 against DISH here in California?

14 A I am aware that DISH has been
15 involved in a few lawsuits regarding do not
16 call lists, and DISH calling people that have
17 put themselves on do not call lists.

18 Q That is not quite what I meant.
19 What I was wondering was: Are you aware that
20 there are a number of state laws in
21 California that protect the privacy of
22 various groups, such as medical information,
23 minor information?

24 A Sorry. Am I aware that there are
25 privacy laws in California?

26 Q Yes.

27 A Yes, I'm aware.

28 Q So my question really was: Are you

1 aware of any complaints that have been filed
2 against DISH in California for violating a
3 state California privacy law?

4 A I'm not aware.

5 Q Thank you.

6 Would it be fair to say that you
7 focus on two primary concerns in your
8 testimony. One is whether the way in which
9 DISH collects and perhaps shares geolocation
10 information on customers?

11 A Sorry? That is one, yes.

12 Q Another primary concern seems to be
13 the way in which DISH may collect or use
14 information collected from minors?

15 A Correct.

16 Q You mention in your qualifications,
17 which is Attachment A to your testimony, you
18 participated in a proceeding here at the
19 Commission, it is P like Paul, 18-03-014. Do
20 you recall that in your testimony?

21 A Yes.

22 Q And that was a proceeding that the
23 Commission opened to actually examine whether
24 or not there should be special privacy rules
25 imposed on wireless carriers, wasn't it?

26 A No. It wasn't. It was a petition
27 in front of the Commission to open a
28 proceeding to look at privacy policies of

1 wireless carriers.

2 Q And the petition was filed in part
3 by TURN?

4 A Correct.

5 Q Are you aware of the disposition of
6 that proceeding?

7 A It is closed.

8 Q And it was dismissed because the
9 Commission felt that the newly-enacted
10 California Consumer Privacy Act actually took
11 care of most of the issues that were raised
12 in that petition?

13 A That was not the conclusion, from
14 what I remember. I would have to look back
15 at the exact language. But from what I
16 recall, the Commission stated that it wanted
17 to see sort of whether the CCPA, the
18 California Consumer Privacy Act, would handle
19 some of the concerns. And that if there were
20 concerns that were raised, or if there were
21 concerns that were identified after the
22 implementation of the CCPA, then the
23 Commission could open a proceeding at that
24 time.

25 Q Okay. And to the best of your
26 knowledge, had the Commission opened any
27 subsequent proceeding to look into privacy
28 rules for wireless carriers?

1 A Not to my knowledge, but the CCPA
2 has not gone into effect yet.

3 Q Yes. But the monitoring that the
4 Commission engaged its staff to undertake has
5 been ongoing since the issuance of Decision
6 11-18-003?

7 A I don't have any knowledge of what
8 the Commission has been monitoring in regards
9 to that issue.

10 MS. TAFF-RICE: Your Honor, I would
11 need to give the witness a cross-examination
12 exhibit. May I approach?

13 ALJ BEMESDERFER: You may. I believe,
14 Ms. Taff-Rice, we can call this DISH-1.

15 (Exhibit No. DISH-01 was marked for
16 identification.)

17 MS. TAFF-RICE: I believe we can, which
18 is better than DISH-0.

19 Q I will give you a few minutes to
20 look at this if you need to review the
21 addition?

22 A Is there any particular page or?

23 Q I can go to specific pages. I just
24 wanted you to refresh your recollection
25 generally.

26 A Okay.

27 Q If you could turn to page 10 of
28 Decision 18-11-03, which has been marked as

1 DISH Exhibit No. 1. In the middle of the
2 page, this is the Commission's discussion of
3 its holding, it says:

4 While the conclusion of this
5 Decision is a denial of the
6 petition, due in largest part to the
7 Act -- referring to the CCPA, the
8 California Consumer Privacy Act --
9 the enactment of which was
10 subsequent to the filing of the
11 Petition and which enactment could
12 not reasonably have been known with
13 certainty by the Petitioners at the
14 time of their Petition filing -- the
15 filing of the Petition was itself of
16 reasonable merit.

17 So, in your opinion, looking at
18 that language in the order, is it fair to say
19 that the reason the petition was denied was
20 in largest part due to the enactment of the
21 CCPA?

22 A That is what that paragraph says.
23 I will also note that the findings of fact
24 had some other reasons why they -- why the
25 Commission denied the petition.

26 Q Okay. Further down on that page on
27 page 10, the last full paragraph that starts
28 on that page, says:

1 We have consider these
2 recommendations in the Public
3 Utilities Commission within 90 days,
4 will begin monitoring informal
5 complaints and formal complaints
6 regarding telecommunications
7 privacy, and the annual report
8 results of that monitoring to the
9 Commissioners' offices, the
10 Commission -- I'm sorry -- the
11 Communications Division Director and
12 the General Counsel.

13 So does reviewing that paragraph
14 refresh your recollection as to whether or
15 not the Commission is already actively
16 monitoring privacy complaints?

17 MS. SCHAEFER: Your Honor, objection.
18 Ms. Donnelly is part of the Public Advocates
19 Office and is not part of the Commissioners'
20 offices, the Communications Division Director
21 or the General Counsel's office.

22 THE WITNESS: I also can't recollect
23 something that happened after this decision
24 was published.

25 BY MS. TAFF-RICE:

26 Q So since this decision was
27 published you have not maintained any
28 awareness of privacy monitoring --

1 ALJ BEMESDERFER: Hold on,
2 Ms. Taff-Rice. There is an objection that I
3 want to rule on.

4 I'm going to sustain your objection.
5 Continue.

6 BY MS. TAFF-RICE:

7 Q Since this decision was issued in
8 November of 2018, have you had any awareness
9 of Commission activities in monitoring
10 privacy complaints in California?

11 A I'm not aware.

12 Q Okay. On page 11 the Commission
13 states, in the second full paragraph:

14 If there appears to be a need for
15 additional consumer PI -- which I
16 believe is personal, or proprietary
17 information -- privacy rules in the
18 future, the Commission can open a
19 rulemaking at that time.

20 To the best of your knowledge, has
21 the Commission opened any Rulemaking
22 regarding privacy rules for wireless
23 carriers?

24 A No.

25 MS. SCHAEFER: Your Honor, I object
26 again. The Public Advocates Office is not
27 involved in rulemaking.

28 ALJ BEMESDERFER: She asked if she had

1 knowledge of Commission activities. I think
2 she can answer that question.

3 MS. TAFF-RICE: Thank you, your Honor.

4 Q Would you say that you have a
5 working familiarity with the contents of the
6 California Consumer Privacy Act?

7 A Yes.

8 Q And isn't it correct that under the
9 California Consumer Privacy Act information,
10 such as geolocation information, has specific
11 requirements on collection and usage?

12 A There are specific requirements
13 that apply to geolocation under circumstances
14 for certain businesses.

15 Q But if you have a business that
16 triggers the applicability of the CCPA, then
17 there are rules that govern the way you can
18 collect and/or use geolocation information?

19 A If you are a business that is
20 covered under the CCPA, under certain
21 conditions, yes, geolocation information is
22 covered.

23 Q And is it your opinion that DISH is
24 one of those businesses that would be covered
25 by the CCPA?

26 A I'm not aware. I would have to
27 look back at the law, the specifics of the
28 law.

1 Q Well, subject to check, may I
2 represent that if you are a business
3 operating in California, and you have
4 revenues of \$25 million, and you interact
5 with and collect information from consumers,
6 you will be subject to the rules of the CCPA?

7 A Not all of the information that is
8 collected by businesses is subject to the law
9 to my understanding of the provisions.

10 Q But geolocation information is?

11 A Under certain circumstances.

12 Q Even given that -- I mean I can
13 show you a copy of the statute, if you need
14 to do that -- can you at least accept my
15 representation that CCPA does in fact apply
16 to DISH?

17 A I would appreciate a copy of the
18 statute, if you would like me to make that
19 conclusion.

20 MS. TAFF-RICE: Your Honor, I'm happy
21 to show this to the witness. Unfortunately,
22 I only have two copies. I did not bring
23 enough for everyone.

24 So may I approach the witness?

25 ALJ BEMESDERFER: Let's go off the
26 record for a minute.

27 (Off the record.)

28 ALJ BEMESDERFER: Let's go back on the

1 record.

2 Ms. Taff-Rice.

3 BY MS. TAFF-RICE:

4 Q Ms. Donnelly, could I direct your
5 attention to Section C of the document I've
6 just handed you, which is, for the record,
7 Section 1798.140 of the CCPA. And it is the
8 section on definitions.

9 A Uh-uh.

10 Q The Section C defines the term
11 "business," correct?

12 A Correct. Just to be clear, as I
13 stated earlier, I wasn't disputing whether or
14 not DISH would be counted as a business. I
15 was stating that geolocation information
16 would be covered under the law, to my
17 understanding. I'm not a lawyer. A business
18 would be covered under the law under certain
19 circumstances, depending on when and where
20 and how that information is collected.

21 So while we can go through the
22 definition, and I'm sure DISH will ultimately
23 qualify, because they have gross revenues in
24 excess of \$25 million, to my knowledge, there
25 are other circumstances that I would need to
26 consider in order to determine whether or not
27 the CCPA adequately covers geolocation
28 information for wireless customers.

1 Q What factors would you have to take
2 into account?

3 A Whatever the rest of the statute
4 is, that I don't remember off the top of my
5 head.

6 Q Okay. But there is no question
7 that, in your mind, because we could look at
8 the same section, there is no question that
9 geolocation information is in fact covered by
10 the CCPA?

11 A Under certain circumstances, yes.

12 Q Are you also aware whether the CCPA
13 covers information collected from minors?

14 A Yes. There is a section that
15 describes how information collected from
16 children must be handled.

17 Q Okay. Do you know whether the
18 Commission has expressed any opinion on the
19 suitability of the CCPA to adequately protect
20 personal information for wireless carrier
21 customers?

22 A I don't know. I don't know.

23 Q Are you aware that the CCPA will be
24 administered by the California Attorney
25 General's Office?

26 A I am.

27 Q Are you aware that the California
28 Attorney General's Office recently issued

1 some draft regulations that will provide
2 guidance to the companies that comply with
3 the CCPA as to how to do that?

4 A Yes.

5 Q And are you aware that the
6 Commission has proposed filing comments on
7 those draft regulations?

8 A Yes.

9 Q Do you know the contents of those
10 comments?

11 A I have seen a draft of the
12 comments, but I don't know if it was final.
13 I believe that they discussed that at the
14 Commission meeting today, but I was here, so
15 I don't know how that discussion went.

16 Q Yes. You are correct about that.

17 So you don't know whether or not
18 the Commission voted to approve submitting
19 those comments in the draft regulations?

20 A I don't.

21 Q Can we get to the Commission did in
22 fact vote to submit those comments?

23 A Sure.

24 Q Okay. Do you know whether or not
25 there was any concerns expressed in these
26 comments about the adequacy of the CCPA to
27 protect wireless carrier customer personal
28 information?

1 A I saw the draft of the comments. I
2 didn't read it very carefully. I merely
3 skimmed it. I don't recall if it expressed
4 any particular concerns about that
5 specifically.

6 MS. TAFF-RICE: Your Honor, I would
7 like to mark a cross exhibit DISH No. 2, a
8 copy of those comments.

9 ALJ BEMESDERFER: All right. We will
10 go off the record for a minute.

11 (Off the record.)

12 ALJ BEMESDERFER: Back on the record.

13 While we were off the record I was
14 handed a document entitled DISH
15 Cross-Examination Exhibit 2, CPUC Comments on
16 California Attorney General Draft Regulations
17 Implementing the California Consumer Privacy
18 Act. As indicated, this is DISH-2.

19 (Exhibit No. DISH-02 was marked for
20 identification.)

21 ALJ BEMESDERFER: Ms. Taff-Rice.

22 MS. TAFF-RICE: Thank you, your Honor.

23 Q So the exhibit that has just been
24 handed to you, that has been marked as DISH
25 Exhibit No. 2, is actually on a cover
26 Memorandum that is dated November 25th, 2019.
27 And the author is listed as Kimberly Lippi,
28 who is in the Public Utilities Legal

1 Division, correct?

2 A That is what it says, yes.

3 Q Then attached to the back of that
4 are the actual comments that the Commission
5 was proposing to issue to the -- in response
6 to the California Attorney General's proposed
7 regulation, correct?

8 A It appears to be, yes.

9 Q And have you had a moment to
10 familiarize yourself with these documents?

11 A Just now?

12 Q Yes.

13 A How familiar would you like me to
14 be?

15 Q I can ask you a specific question.
16 I want to make sure: You would agree these
17 are authentically the documents?

18 A I have no idea. They seem to be.

19 Q It does have the seal of California
20 on it.

21 A Actually, it doesn't.

22 Q The attachment?

23 A I see, yes.

24 Q And it does have -- it is on the
25 Public Utilities letterhead?

26 A Yes.

27 Q You have no reason to doubt the
28 authenticity?

1 promote state policy such as energy and water
2 efficiency and conservation.

3 "The CPUC believes that the
4 exceptions contained in the CCPA itself" --
5 and it lists in code sections -- "as well as
6 the regulatory exception contained in the
7 price regulation" --

8 MS. SCHAEFER: Your Honor, this is
9 California Public Advocates Office.

10 Public Advocates Office would like
11 to issue an objection that this is not a
12 product of the Public Advocates Office.

13 ALJ BEMESDERFER: I'm going to overrule
14 it. This is a Commission official document,
15 and I think Ms. Taff-Rice is within her
16 rights to ask questions about it. It deals
17 with the subject of privacy, which is the
18 topic of this witness' testimony. This
19 witness represents the Commission. This is
20 an official Commission position on privacy.
21 I think she can ask questions about that.

22 Go ahead, Ms. Taff-Rice.

23 BY MS. TAFF-RICE:

24 Q Thank you, your Honor. Just to
25 finish that sentence, that the Commission is
26 saying that it wants to make sure that
27 whatever regulations are promulgated, quote,
28 preserve the CPUC's existing data and privacy

1 rules as they pertained to the utilities
2 collection, maintenance and provision of
3 customer data for established purposes,
4 correct?

5 A That's what it says, yes.

6 Q I don't see anything in these
7 comments that suggest that the CPUC believes
8 that the CCPA is inadequate to protect the
9 privacy of customers of wireless carriers.

10 Do you?

11 A Having not read in detail the
12 entire letter, I'll take your word for it
13 that that's not included in here.

14 Q Okay. Thank you. In your
15 testimony, the concerns that you raise about
16 DISH's privacy policies or collection of
17 data, are those your opinions alone?

18 A Can you clarify?

19 Q Do you represent -- is that the
20 official view of the Public Advocates Office?

21 A Um, yes.

22 Q But it would not be the official
23 view of the Public Utilities Commission?

24 A No.

25 Q Because the Public Utilities
26 Commission speaks only through formal
27 decisions that have been approved by three
28 out of five Commissioners?

1 A And because the Public Advocates
2 Office is a separate entity, yes.

3 Q In your opinion, if DISH complies
4 fully with the CCPA, is there any reason to
5 believe that wireless customers who transfer
6 to it would be susceptible of having their
7 personal information jeopardized?

8 A Yes.

9 Q In what way?

10 A I would need to review the
11 specifics of the law again, but I know that
12 there are a number of stipulations that
13 exempt businesses from complying with the
14 specifics of the law under certain
15 circumstances.

16 Q But you don't have any specifics
17 off the top of your head?

18 A I know that the law exempt -- to my
19 recollection, the law exempts data that are
20 de-identified, and my understanding of data
21 that are generated by wireless devices and
22 other internet-connected devices, a person's
23 identify could be easily reidentified from
24 just small pieces of information. So even
25 something that has been de-identified might
26 still put an individual in jeopardy.

27 Q So let me just try to pars pieces
28 of that out. Is it your testimony that DISH

1 should be required to protect from collection
2 or disclosure de-identified customer
3 information?

4 A Can you point me to the spot in my
5 testimony where I state that.

6 Q That's what you just said --

7 A I didn't --

8 Q -- de-identified data as an example
9 of the way in which the CCPA is not adequate
10 to protect consumers of wireless carries.

11 A But I did not say that therefore
12 DISH should be held to some specific standard
13 that you just specified.

14 Q So you don't have any opinion on
15 whether or not DISH should be required to
16 protect de-identified data of its wireless
17 customers?

18 MS. SCHAEFER: Your Honor, that's a
19 legal conclusion. I object.

20 ALJ BEMESDERFER: I'm going to ask Ms.
21 Taff-Rice to tell me what she means by
22 "de-identified data."

23 MS. TAFF-RICE: Not to sound flippant
24 at all, but Im using that term exactly as the
25 witness did. And what it means to me is data
26 that has been disaggregated from identifiable
27 factors so that you might get data that says
28 20,000 DISH customers did X, but there's no

1 names mentioned. There's no characteristics
2 that would allow you to figure out who those
3 20,000 people are.

4 ALJ BEMESDERFER: Now you can restate
5 your question to the witness.

6 BY MS. TAFF-RICE:

7 Q So with that as the definition, is
8 it your opinion that DISH should be required
9 as part of -- critical to this merger to
10 protect against collection or use of
11 de-identified customer data?

12 A So your question is should the
13 Commission require DISH as a result of this
14 merger to protect against the collection and
15 distribution of geolocation information from
16 their customers?

17 Q No. You got it right up until the
18 very end. De-identified data. If you
19 substitute de-identified data instead of
20 geolocation data.

21 A I would have to think more about
22 that to really be able to state one way or
23 the other whether I would say that that's
24 something that I would recommend that the
25 Commission would do in order to approve this
26 merger.

27 Q Are you aware of any Commission
28 rule or regulation that requires any utility

1 under its jurisdiction to protect against the
2 collection or disclosure of de-identified
3 customer data?

4 A I know that the Commission has
5 rules that apply to energy companies and the
6 data that they collect about their customers.
7 I'm not a hundred percent sure whether those
8 rules have any specifics about de-identified
9 data or what those specific rules are.

10 Q What is your definition of
11 personally identifiable data?

12 A Personally identifiable data is --
13 the definition of personally identifiable
14 data is in a federal statute. I don't know
15 it off the top of my head. There's a legal
16 definition for it.

17 Q But isn't just the plain English
18 meaning of personally identifiable something
19 that you can tell the person's identity from?

20 A If you're asking about plain
21 language, sounds reasonable. Sure.

22 Q So the Commission has rules on the
23 collection and use of personally identifiable
24 data, right?

25 A For a definition that's outlined in
26 the law, yeah.

27 Q All right. We just talked about
28 the General Order -- I think it was -- 168,

1 General Order 107.

2 A Mm-hmm. Yes.

3 Q Those would be examples.

4 A I haven't looked at those General
5 Orders in a while, but that's what this says,
6 yes.

7 Q Are you familiar with the process
8 that the Commission uses to register wireless
9 carriers in the State of California?

10 A Generally, yes.

11 Q It's a form that's filled out and
12 submitted to the Commission, right?

13 A From my understanding, yes.

14 Q Do you know whether that form has
15 any requirement on it that a wireless carrier
16 submit a privacy policy in order to be
17 registered in California?

18 A I'm not sure.

19 Q Okay. What if I asked you about
20 other telecommunications carriers, for
21 example, competitive local exchange carriers?
22 They have to obtain something called a
23 Certificate of Public Convenience and
24 Necessity in order to operate in California,
25 correct?

26 A Correct.

27 Q As part of that CPCN application
28 process, is there a requirement to submit a

1 privacy policy?

2 A I don't know.

3 Q If I represent to you that there is
4 no such requirement, isn't it true --

5 A That there is no such requirement?

6 Q -- there is no such requirement to
7 submit a privacy policy in order to get a
8 CPCN to operate as a CLEC in California, then
9 your suggestion that DISH has no privacy
10 policy --

11 MS. SCHAEFER: Your Honor, objection.
12 Overbroad. This -- Ms. Donnelly does not --
13 she doesn't work with CPCN licenses like
14 this. And this is extending beyond a
15 reasonable --

16 ALJ BEMESDERFER: I'll sustain that
17 objection.

18 BY MS. TAFF-RICE:

19 Q Ms. Donnelly, is one of your
20 criticisms of DISH's participation -- as a
21 potential recipient of divested assets in
22 this merger, is one of your criticisms that
23 it has not yet developed a policy specific to
24 wireless customers?

25 A Can you point to me where I wrote
26 that in my testimony just so I can be sure
27 that I have the right language.

28 Q On page 4, "DISH's privacy policy

1 does not provide customers with meaningful
2 options to controlled collection of data from
3 children," and beginning on page 6, "DISH has
4 not established a customer location
5 information policy which is especially
6 critical for mobile wireless customers."

7 Isn't that saying that DISH has
8 failed to submit a privacy policy that, in
9 your view, protects potential wireless
10 customers that it will get into divestiture?

11 A Well, DISH has failed to submit a
12 privacy policy that applies to wireless
13 customers period.

14 Q But don't you actually express some
15 concerns about the privacy policies that DISH
16 provided in discovery in this case?

17 A Yes.

18 Q And you also express some concerns
19 about privacy policies that you found on
20 DISH's website?

21 A Yes.

22 Q So is it or is it not your
23 testimony that DISH's existing privacy
24 policies are adequate when it receives the
25 Boost and Virgin Mobile customers?

26 A I'm sorry. Can you repeat the
27 question.

28 Q Is it or is it not your testimony

1 that DISH's existing privacy policies will be
2 adequate to protect customers that will be
3 divested to it, which are the Boost and
4 Virgin Mobile customers?

5 A It is not my testimony that DISH's
6 privacy policies are adequate.

7 Q You think they are not adequate?

8 A Correct.

9 Q And the reason you think they are
10 not adequate is because you have concerns
11 about DISH's collection of geolocation data?

12 A I have concerns about the means to
13 which DISH allows customers to opt out of
14 targeted advertising. I have concerns about
15 the means in which DISH communicates with its
16 customers. DISH requires customers to submit
17 requests in writing rather than online or
18 through their account. DISH's policies also
19 state that customers must go to DISH's
20 third-party partners in order to opt out of
21 the targeted advertising but doesn't provide
22 a complete list of all of those companies.
23 So if a customer did wish to opt-out, they
24 wouldn't have all the information. Let's
25 see.

26 Q Are you finished?

27 A One second, please. I'm also
28 concerned because I think DISH has not

1 provided sufficient information to parents or
2 guardians for how they can better protect
3 their children when it comes to the data they
4 generate through the use of DISH's services.

5 Q Okay. And those concerns are
6 addressed by the requirements of the CCPA,
7 aren't they?

8 A No.

9 Q Well, we talked earlier --

10 A Not necessarily.

11 Q Yeah. We talked earlier about
12 geolocation data is protected --

13 A Sometimes. Under certain
14 circumstances.

15 Q -- under the CCPA. There are
16 requirements in the CCPA as to how data can
17 be collected and used for minors?

18 A Under certain circumstances.

19 Q Are you aware whether the CCPA has
20 requirements on the ways in which the
21 customer can opt out of having their data
22 used?

23 A There are specifics in the law,
24 yes.

25 Q And you think those are inadequate?

26 A I don't know. I'm also not aware
27 of how DISH will be implementing the CCPA.
28 So I don't know if DISH will adequately carry

1 out the requirements of the law.

2 Q Do you have any reason to believe
3 that DISH will act in a lawless manner?

4 A I don't know.

5 Q You have no evidence that DISH has
6 ever violated a California privacy law?

7 MS. SCHAEFER: Your Honor, objection.
8 This calls for speculation.

9 ALJ BEMESDERFER: No. Overruled.
10 She's asking if she has any knowledge of
11 whether DISH has ever violated. She can ask
12 that.

13 THE WITNESS: I acknowledge that DISH
14 has violated federal law when it comes to
15 customer privacy, yes.

16 BY MS. TAFF-RICE:

17 Q But you have no knowledge of DISH
18 violating a California privacy law? You
19 testified to that earlier?

20 A I have no knowledge, no.

21 Q Finally, I'd like to turn to
22 Exhibit No. 7 in your testimony. I'm sorry.
23 It's Exhibit 5 -- Exhibit 5. This is a
24 series of screen shots --

25 A Yes.

26 Q -- from the DISH website?

27 A Yes.

28 Q Did you capture these screen shots

1 yourself?

2 A I did.

3 Q Okay. So one of the concerns you
4 have is that when a customer is setting up a
5 profile is that one of the options -- to
6 describe yourself, one of the options is a
7 category for a kid, right?

8 A I believe that it would be
9 describing someone else on the account, not
10 the account holder, if they were setting up
11 an account for a kid since, to my knowledge,
12 DISH doesn't allow anyone under the age of 18
13 to be a primary account holder.

14 Q That was exactly my question
15 because if you look on the first page, it's
16 not numbered but it's the first page that has
17 a screenshot, in the middle of the page
18 there, it says that only admin, which, I
19 think, means administrative profiles, have
20 the ability to add new profiles into the
21 account, correct?

22 A Correct.

23 Q So do you interpret that to mean
24 that if a child wanted to have a profile the
25 admin, probably the parent, would be the one
26 that would have to add that profile?

27 A Correct.

28 Q So any information that was

1 disclosed about the child would be under the
2 guidance of the parent?

3 A Correct.

4 MS. TAFF-RICE: Your Honor, I believe
5 that's all the questions I have.

6 ALJ BEMESDERFER: Thank you, Ms.
7 Taff-Rice.

8 Are there any other questions for
9 this witness?

10 (No response.)

11 ALJ BEMESDERFER: Any redirect?

12 MS. SCHAEFER: Could we take a short
13 recess, your Honor?

14 ALJ BEMESDERFER: I'm sorry. Would you
15 say that again.

16 MS. SCHAEFER: Could we take a short
17 recess?

18 ALJ BEMESDERFER: Yes. We'll take a
19 five-minute break.

20 We'll go off the record.

21 (Off the record.)]

22 ALJ BEMESDERFER: Back on the record.

23 Do you have some redirect for this
24 witness?

25 MS. SCHAEFER: The Public Advocates has
26 no redirect for Ms. Donnelly.

27 ALJ BEMESDERFER: All right.

28 Ms. Donnelly, you're excused.

1 THE WITNESS: Thank you, your Honor.

2 MS. SCHAEFER: Would we be able to
3 enter Ms. Donnelly's confidential and public
4 versions of her testimony into the record at
5 this time?

6 ALJ BEMESDERFER: Any objection?

7 Hearing no objection --

8 MS. TOLLER: No. Oh, I'm sorry.

9 Ms. Taff-Rice, do you have an objection?

10 MS. TAFF-RICE: No. I don't have an
11 objection.

12 ALJ BEMESDERFER: Do you want to move
13 your cross exhibits in, Ms. Taff-Rice?

14 MS. TAFF-RICE: Yes, DISH-1 and 2,
15 please.

16 ALJ BEMESDERFER: Objection?

17 (No response.)

18 ALJ BEMESDERFER: Hearing none, they
19 are admitted.

20 (Exhibit No. PAO-14 was received
21 into evidence.)

22 (Exhibit No. PAO-14-C was received
23 into evidence.)

24 (Exhibit No. DISH-01 was received
25 into evidence.)

26 (Exhibit No. DISH-02 was received
27 into evidence.)

28 ALJ BEMESDERFER: With that, we come to
the end of today. Oh, no. No. No. Off the
record.

1 (Off the record.)

2 ALJ BEMESDERFER: Let's go back on the
3 record.

4 Mr. Bloomfield, go ahead.

5 MR. BLOOMFIELD: Actually I think the
6 other witnesses -- well, we have some
7 witnesses, too, don't we?

8 ALJ BEMESDERFER: Let's go off the
9 record for a moment.

10 (Off the record.)

11 ALJ BEMESDERFER: Let's go back on the
12 record.

13 While we were off the record, we had
14 a colloquy about introducing the testimony
15 for witnesses from whom cross has been waived
16 and I am going to start with the Joint
17 Applicants.

18 Ms. Toller.

19 MS. TOLLER: Your Honor, we'll see if
20 we can do this correctly. We're up to Joint
21 Applicant Number 29. So I would like to
22 first move in the Supplemental Testimony of
23 Thomas Keys which we would mark as Joint
24 Applicant-29 for the public version and Joint
25 Applicant Number 29-C for the confidential
26 version.

27 Your Honor, I will hand these all to
28 you at the end, if that's okay.

1 ALJ BEMESDERFER: Good.

2 MS. TOLLER: All right. And then next,
3 your Honor, we would like to move in the
4 Supplemental Testimony of Brandon Dow Draper
5 and that would be Joint Applicant-30. There
6 is no confidential version of this.

7 And then, your Honor, we would like
8 to move in the Supplemental Testimony of
9 Peter Sywenki as Joint Applicant-31. And
10 there is no confidential version of this.

11 And then we would like to move in,
12 your Honor, Supplemental Testimony of Timothy
13 Bresnahan as Joint Applicant-32. No
14 confidential version.

15 And lastly, your Honor, we would
16 like to move in the Supplemental Testimony of
17 Mark Israel as Joint Applicant-33, no
18 confidential version. And I was going to
19 also put the request for admissions in but
20 those have already been moved in by Cal PA.
21 So I think that concludes the Joint
22 Applicants additional testimony for witnesses
23 for which cross has been waived.

24 ALJ BEMESDERFER: Since cross has been
25 waived for all these witnesses, all of those
26 pieces of testimony will be admitted.

27 (Exhibit No. JA-29 was marked for
28 identification.)

(Exhibit No. JA-29-C was marked for

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identification.)
(Exhibit No. JA-30 was marked for identification.)
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(Exhibit No. JA-33 was marked for identification.)
(Exhibit No. JA-29 was received into evidence.)
(Exhibit No. JA-29-C was received into evidence.)
(Exhibit No. JA-30 was received into evidence.)
(Exhibit No. JA-31 was received into evidence.)
(Exhibit No. JA-32 was received into evidence.)
(Exhibit No. JA-33 was received into evidence.)

ALJ BEMESDERFER: All right. Let's go on to the Public Advocates.

MS. SCHAEFER: The Public Advocates office would like to enter into the record the Testimony of Shelly Lyser, which is the Executive Summary. We would like to offer that as Public Advocates-15 and there is no confidential version and we are gathering that right now.

ALJ BEMESDERFER: Thank you. And it will be admitted.

(Exhibit No. PAO-15 was marked for identification.)

1 (Exhibit No. PAO-15 was received
2 into evidence.)

3 ALJ BEMESDERFER: Is there any other
4 testimony?

5 Ms. Chong.

6 MS. CHONG: Your Honor, the California
7 Emerging Technology Fund would like to offer
8 the Supplemental testimony of Sunne Wright
9 McPeak, President and CEO. I have no idea
10 what number we're on.

11 MS. TOLLER: Hold on. We can help you
12 with that.

13 MR. BLOOMFIELD: It's number 4.

14 MS. CHONG: Number 4.

15 ALJ BEMESDERFER: It will be admitted.

16 (Exhibit No. CETF-04 was marked for
17 identification.)

18 (Exhibit No. CETF-04 was received
19 into evidence.)

20 MS. CHONG: Thank you, your Honor.

21 ALJ BEMESDERFER: Okay. Let's go to
22 Ms. Koss. And then, Mr. Goodman, you're
23 going to bring up the trailer.

24 MR. GOODMAN: Okay. Great. Thank you.

25 ALJ BEMESDERFER: Ms. Koss.

26 MS. KOSS: Thank you. Yes.

27 CWA would like to move the
28 Supplemental Testimony of Debbie Goldman

1 dated November 22nd, 2019. I believe it will
2 be CWA-18.

3 ALJ BEMESDERFER: Thank you. And last
4 but not least.

5 (Exhibit No. CWA-18 was marked for
6 identification.)

7 (Exhibit No. CWA-18 was received
8 into evidence.)

9 MR. GOODMAN: Thank you, Your Honor.
10 I'd like to enter the supplemental testimony
11 of Paul Goodman which will be GLI-4.

12 ALJ BEMESDERFER: Very well. All of
13 those pieces of testimony will be admitted
14 without objection.

15 (Exhibit No. GLI-04 was marked for
16 identification.)

17 (Exhibit No. GLI-04 was received
18 into evidence.)

19 ALJ BEMESDERFER: Is there anything
20 else anybody else would like to discuss
21 before we end today?

22 MS. KOSS: I just have a quick
23 question. Would the Joint Applicants kindly
24 prepare and circulate the full exhibit list
25 at the end of hearing?

26 MS. TOLLER: Nothing would give us more
27 pleasure.

28 (Laughter.)

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MS. KOSS: I figured as much.

ALJ BEMESDERFER: All right. We'll go off the record. Today is concluded. We'll see you all tomorrow morning, 9:00 o'clock.

(Whereupon, at the hour of 4:33 p.m., this matter having been continued to 9:00 a.m., December 6, 2019, at San Francisco, California, the Commission then adjourned.)]

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, ANA M. GONZALEZ, CERTIFIED SHORTHAND REPORTER
NO. 11320, IN AND FOR THE STATE OF CALIFORNIA, DO
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TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN
THIS MATTER ON DECEMBER 5, 2019.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE
EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.
EXECUTED THIS DECEMBER 11, 2019.


ANA M. GONZALEZ
CSR NO. 11320

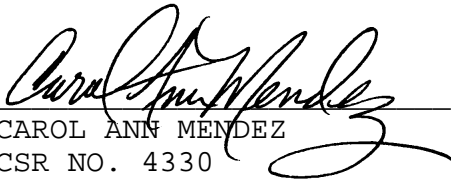
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BEFORE THE PUBLIC UTILITIES COMMISSION
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CERTIFICATION OF TRANSCRIPT OF PROCEEDING
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EXECUTED THIS DECEMBER 11, 2019.

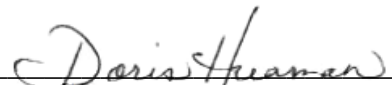

CAROL ANN MENDEZ
CSR NO. 4330

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, DORIS HUAMAN, CERTIFIED SHORTHAND REPORTER
NO. 10538, IN AND FOR THE STATE OF CALIFORNIA, DO
HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
PREPARED BY ME COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN
THIS MATTER ON DECEMBER 5, 2019.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE
EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.
EXECUTED THIS DECEMBER 11, 2019.



DORIS HUAMAN
CSR NO. 10538

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BEFORE THE PUBLIC UTILITIES COMMISSION
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STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, JASON STACEY, CERTIFIED SHORTHAND REPORTER
NO. 14092, IN AND FOR THE STATE OF CALIFORNIA DO
HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
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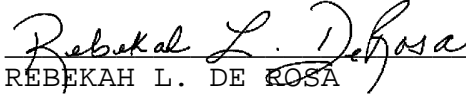
JASON A. STACEY
CSR NO. 14092

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BEFORE THE PUBLIC UTILITIES COMMISSION
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CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, REBEKAH L. DE ROSA, CERTIFIED SHORTHAND
REPORTER NO. 8708, IN AND FOR THE STATE OF CALIFORNIA,
DO HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
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REBEKAH L. DE ROSA
CSR NO. 8708

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BEFORE THE PUBLIC UTILITIES COMMISSION
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CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, SHANNON ROSS, CERTIFIED SHORTHAND REPORTER
NO. 8916, IN AND FOR THE STATE OF CALIFORNIA, DO
HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
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EXECUTED THIS DECEMBER 11, 2019.



SHANNON ROSS
CSR NO. 8916

