

ATTACHMENT 1

Data Request Response

Stephen H. Kukta
Director, Regulatory Affairs, West Region
State Regulatory

Sprint Corporation
900 7th Street NW, Suite 700
Washington, DC 20001
Telephone: 415-572-8358
Email: Stephen.H.Kukta@sprint.com

March 20, 2020

Via email communication to: rmm@cpuc.ca.gov

California Public Utilities Commission
Consumer Protection and Enforcement Division
Attn: Rahmon O. Momoh
505 Van Ness Avenue
San Francisco, CA 94102-3298

**Re: Sprint's CONFIDENTIAL Response to CPED Data Request, Set No. 1:
"Sprint's Virgin Mobile affiliate (d/b/a Assurance Wireless) LifeLine
Reimbursement for Non-Usage Customers"**

Dear Mr. Momoh:

In response to the Consumer Protection and Enforcement Division ("CPED") of the California Public Utilities Commission ("CPUC" or "Commission") requests for the production of information entitled: Data Request, Set No. 1: "Sprint's Virgin Mobile affiliate (d/b/a Assurance Wireless) LifeLine Reimbursement for Non-Usage Customers", setting forth 14 requests for production of information ("DRs" or "RFPs"), addressed to "Sprint's Virgin Mobile affiliate" (presuming the CPUC is referring to: Virgin Mobile USA, L.P. (U 4327 C)) (referred to herein as "the Company," "Assurance," "Virgin Mobile," and "Sprint"), sent to the attention Stephen Kukta, Senior Counsel and Director, Sprint and copy to Kristin Jacobson, outside counsel to Sprint, with responses due on March 20, 2019 ("Responses" or "DR Responses"), as extended pursuant to email correspondence on March 10, 2020, please find the following Responses set forth below.

The Company's Responses are submitted subject to its accompanying request for confidential treatment pursuant to General Order No. ("GO") 66-D, which is further accompanied by a supporting declaration as required by that GO.

Prefatory Statement and Objections

Sprint objects to the RFPs on the grounds that they contain terms that are vague, ambiguous, and

susceptible to multiple interpretations (including, but not limited to, such undefined terms as “using the service,” “non-usage customers,” “monitors,” “incident,” “enquiries,” “corrective measures,” “billing issues,” “preventative measures,” “independent third party,” “actions,” and “correspondences.”)

In the brief time available since receiving the RFPs, the Company has diligently attempted to locate and identify responsive data and to produce in good faith the information requested by the DRs. The Company’s efforts to locate information in response to the DRs are ongoing. These Responses are made on the basis of information presently known to the Company and are made without prejudice to the Company’s right to amend or supplement these preliminary responses as additional information, if any, is located, and additional information is imparted by the CPUC regarding the DRs.

In responding to the DRs herein, the Company does not concede the relevancy, materiality, or admissibility of any information or documents sought by the requests, or of any response thereto. Nor does the Company waive any objections it might have, *e.g.*, as to competency, relevancy, materiality, lack of foundation, or admissibility as evidence or for any other purpose. The Company does not waive claims of confidentiality or privilege, including but not limited to attorney client work product privilege, by responding to the DRs.

The Company’s Responses herein incorporate by reference all of the objections set forth above, and such objections are not again produced in each of its Responses to the DRs.

Sprint’s Responses to DRs

Draft Responses to CPED DR-01

- Please provide a breakdown of the monthly number of California Lifeline non-usage customers affected by Sprint's (DBA Assurance Wireless) improper reimbursement of California Lifeline subsidies for non-usage customers. Provide the breakdown in Excel.*

Company Response: As discussed in detail in Confidential Addendum 1, a July 2017 coding error caused the Company, contrary to its own policy, to count inbound calls answered by voicemail as activity for purposes of the Lifeline activity rules. As a result, some Assurance Wireless subscribers remained on the Company’s rolls, even though they went more than 45 days without qualifying usage, as defined by 47 C.F.R. § 54.407(c)(2).

In response to this request, please see **Confidential Exhibit 1**, attached hereto, which lists, by month, the number of California subscribers who, based on the Company’s revised code, had been inactive for more than 45 days at the time they were included in the total number of subscribers for whom the Company sought California Lifeline subsidy.

2. *Please provide a detailed explanation of why Assurance Wireless claimed California Lifeline subsidies even though those subscribers were not using the service. Include a root cause analysis of the improper reimbursement of the CA Lifeline subsidies for non-usage customers and provide all supporting documents to substantiate your analysis.*

Company Response: Please see attached **Confidential Addendum 1**, in particular, Sections III-VI. See also, attached **Confidential Addendum 1-A** and **Confidential Addendum 1-B** containing associated supporting documentation and declarations.

3. *Please explain how Assurance Wireless monitors customer "usage", as described in 47 C.F.R. 54.407(c)(2) for data accuracy, trends, and anomalies. Please include in the Company's response, a description of the frequency at which Assurance Wireless monitors customer usage and a description of any reports generated for this purpose.*

Company Response: [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

4. *Please provide a chronological timeline of the event:*
 - a. *Date and timeframe of the incident*
 - b. *Date error was discovered*
 - c. *Names and contacts of regulatory agencies notified*
 - d. *Dates regulatory agencies were notified*

Company Response: Please see attached **Confidential Addendum 1**, which includes information responsive to RFP #4 sub-parts (a) and (b). The Company's first contact with FCC Chairman's Office and Wireline Competition Bureau was on or about August 16, 2019. The Company's first contact with the Enforcement Bureau was on or about August 19, 2019. The Company's first contact with the Office of Inspector General ("OIG") was on or about October 22, 2019. The Company's contact at the OIG is Eric Phelps. The Company's contact at the Enforcement Bureau contact is Kalun Lee.

5. *Please explain whether the California Public utilities Commission (CPUC) was notified in a timely manner. If not, please explain.*

Company Response: As explained in response to RFP #6 below, the CPUC was notified in a timely manner once the Company discovered and understood that there was a coding issue and the ramifications that it created.

6. *If the CPUC was notified, please provide all correspondences regarding the notification.*

Company Response: Please see attached **Confidential Exhibit 3**, which includes email correspondence with the CPUC regarding initial and ongoing notifications.

7. *Please provide any press release or enquiries related to this incident.*

Company Response: The Company did not issue any press releases related to the non-usage matter. The company does not understand the CPUC's use of the term "enquiries" in this context. To the extent that the CPUC is asking whether Sprint received inquiries from media outlets, the answer is yes. Sprint received requests for comment from the following outlets:

1. Android Headlines
2. Ars Technica
3. Bloomberg
4. Bloomberg Law
5. Cablefax
6. CNET
7. CNN
8. Communications Daily
9. CQ Roll Call
10. Daily Caller
11. Engadget
12. FierceWireless
13. Fox News

14. Future Net
15. Gizmodo
16. Kansas City Star
17. KCUR-FM (NPR KC)
18. KSHB-TV (NBC KC)
19. Mobile World Live
20. Nikkei
21. PaRR
22. RCR Wireless
23. Reuters
24. The Hill
25. The Verge
26. TR Daily
27. Wall Street Journal
28. WDAF-TV (Fox KC)

8. *If refunds to California Lifeline Program were determined, please provide the refund amount and explain how the refunds were calculated. Provide all documents to substantiate the refund amount.*

Company Response: The Company has determined that it collected \$34,684,170.69 in California Lifeline subsidy associated with the subscriber-months identified in response to RFP #1, above. To calculate this amount, the Company utilized the following process, for each applicable month:

1. Determined the date at which a subscriber reached 46 days of inactivity since their last valid usage.
 - a. If the subscriber had more than 45 days of inactivity at the time they were included in the total number of subscribers for whom the Company sought California Lifeline subsidy, the number of days between the end of the month and their 45th day of inactivity are calculated. The number of days between the end of the month and their 45th day of inactivity is then divided by the total number of days in that month to determine the percentage of the monthly subsidy potentially over-collected.
 - b. If the subscriber reached day 46 in a prior month, the full monthly subsidy claimed for that subscriber (i.e., 100%) is flagged.
2. Identified the Weighted Average Total for that subscriber according to the CA Weighted Average Report for that Year/Month.
3. Used the lower of the Weighted Average calculations from #1 and #2 above to

determine the percentage of the monthly subsidy potentially over-collected.

4. Multiplied the Weighted Average value from #3 by the subsidy amount for that Year/Month depending on the "FundingType" reflected in the CA Weighted Average Report for each subscriber.
 - a. 2017 = \$13.78
 - b. 2018
 - i. 1/2018 – 4/2018 = \$14.33
 - ii. 5/2018 – 12/2018 FundingType 'C' = \$23.58
 - iii. 5/2018 – 12/2018 FundingType 'F' = \$14.33
 - c. 2019
 - i. 1/2019 – 12/2019 FundingType 'C' = \$24.13
 - ii. 1/2019 – 12/2019 FundingType 'F' = \$14.88

Once it completed this calculation for each subscriber for the relevant month, the Company summed each month's potential over-collections, which yielded the total dollar figure identified above.

Attached as **Confidential Exhibit 4**, please find a .csv file that contains each individual calculation described above. The file contains the following fields:



9. *Please identify corrective measures taken to address the Lifeline non-usage billing issues.*

Company Response: Please see the attached Confidential Addendum 1, in particular, Section XI.E.

10. *Please provide (if available) preventive measures (going forward) to prevent future LifeLine non-usage billing issues.*

Company Response: First, in response to its identification of the initial coding error, Sprint undertook a massive effort to review its historic usage data in order to quantify the impact of the coding error. As part of that effort, Sprint identified and undertook a series of workstreams, including one focused on usage requirements (Quantification Workstream 2) and one focused on usage capture (Quantification Workstream 3). Workstream 2 required the Sprint Network team to ensure that activity definitions had been translated into requirements for CDR processing and updated the relevant code/logic to match usage requirements. Workstream 3 required the Sprint Network team to undertake testing to validate that code changes that were applied captured usage based on the applicable legal requirements. Each of these steps was in turn validated by a Sprint Internal Audit. These steps resulted in a detailed and validated review of current coding to screen for potential errors.

Second, the Company now includes BJN within the scope of its Sarbanes-Oxley compliance program. As a result, BJN is now subject to General IT Controls. These limit access to BJN and provide a change management process.

Third, the Company is in the process of formalizing the Workstream 2 and Workstream 3 processes into Assurance Wireless' ongoing governance. That governance process provides for a monthly meeting of cross-functional stakeholders and process owners to review five separate workstreams of input/process/system changes to ensure correct implementation. In addition, the process provides that known changes should be communicated and implemented independent of the regular governance meeting. As part of the monthly meeting, stakeholders and their management are required to confirm that there have been no changes to covered processes or that any changes to their processes are executing as intended.

One of the governance workstreams (Governance Workstream 2) is dedicated to usage capture and processing. Thus, as part of Governance Workstream 2, Directors in Sprint

Network ([REDACTED]) and Sprint IT ([REDACTED]) are required to understand changes to the Network/IT processes used to administer defined usage and use existing change-control processes to ensure identified updates are implemented in a controlled manner. Existing control processes already required sign-off and agreement from business end users prior to implementation, but the new processes require the business end user to complete testing and communicate the results with the Network/IT team. Existing control processes also required review and sign-off by the Network/IT Directors, but the new processes require more documentation of the changes, including, among others, test conditions and the differences in the code. As an additional backstop, Assurance plans to conduct a monthly review of a group of sample customers to confirm that their usage is being properly captured by Sprint systems.

Finally, the Company will formalize and adopt as part of its Sarbanes-Oxley compliance program the 13-month trend review it undertakes in conjunction with its Lifeline subsidy filings. This review will be expanded to include a trend of the review of the exclusions each month.

11. *Please include in the Company 's response, a description of the frequency at which Assurance Wireless monitors customer usage and a description of any reports generated for this purpose.*

Company Response: Please see the Company's response to RFP #3, above.

12. *Please confirm whether or not Assurance Wireless has engaged an independent third party to check its review of Lifeline customer usage and operational changes. If yes, please identify the independent third party.*

Company Response: Yes. [REDACTED]

13. *Please provide a list of actions (fines, consent decree, etc.) taken by other state regulatory and government agencies against Assurance Wireless (Sprint) regarding the Lifeline non-usage incident. Please include the contact person (if any) for each agency.*

Company Response: To date, no state regulatory or government agency has taken actions (fines, consent decree, etc.) against Assurance Wireless, Virgin Mobile or Sprint regarding the Lifeline non-usage incident.

14. *Please provide copies of any (and future) correspondences with other regulatory or law enforcement agencies regarding Assurance Wireless' Lifeline non-usage incident.*

Company Response: The Company objects to this RFP on the basis that it is overly burdensome, seeks potentially confidential and privileged communications, and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing, the Company is producing certain correspondence with the FCC, to the extent that it directly pertains to impacts that the Company's Lifeline non-usage incident had on the California LifeLine program, and further provided the communications are not confidential, privileged, subject to confidential settlement negotiations or confidential settlement terms, or otherwise protected from disclosure. Please see attached **Confidential Exhibit 5**.

If you have any questions regarding the content of the Company's response to the DRs, please do not hesitate to contact me at the addresses or number set forth above, or Kristin Jacobson at (707) 816-7583 and via email at: kristin@kljlegal.com.

Sincerely,

/s/ Stephen Kukta

Stephen H. Kukta

Cc: Kristin L. Jacobson
Outside Counsel to Sprint
Law Offices of Kristin L. Jacobson

CONFIDENTIAL - ADDENDUM 1

CONFIDENTIAL - ADDENDUM 1-A

CONFIDENTIAL - ADDENDUM 1-B

CONFIDENTIAL – EXHIBIT 1

CONFIDENTIAL – EXHIBIT 2

CONFIDENTIAL – EXHIBIT 3

CONFIDENTIAL – EXHIBIT 4

CONFIDENTIAL - EXHIBIT 5

ATTACHMENT 2

Data Request Response Addendum 1

CONFIDENTIAL
Addendum 1

OVERVIEW

I. INTRODUCTION 1

II. EXECUTIVE SUMMARY 1

III. CAPTURING ALL RELEVANT SUBSCRIBER ACTIVITY INVOLVES QUERYING A SERIES OF COMPLEX SYSTEMS..... 3

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] **REGULATORY CHANGES IN 2016..... 8**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

D. SUSPENSION OF INACTIVITY RULE AS PART OF HURRICANE RELIEF..... 21

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

I. Introduction

In August 2019, Sprint voluntarily disclosed to the California Public Utilities Commission (“CPUC”) that [REDACTED] a July 2017 code change had caused its systems to register activity [REDACTED]

[REDACTED], contrary to company policy, [REDACTED]. Once it understood the problem, Sprint rapidly corrected the errors and undertook a massive effort to quantify their impact.

The Consumer Protection and Enforcement Division’s pending DR-01, issued February 11, 2020, asks, among other things, that the Company “provide a detailed explanation of why Assurance Wireless claimed California Lifeline subsidies even though those subscribers were not using the service” (RFP #2), and “provide a chronological timeline of the event” (RFP #4).

Because the systems involved are so complex, a unified, largely chronological, factual account is the best way for Sprint to help CPED understand what happened as quickly and thoroughly as possible. We present that account here. Because the issues interrelate, however, factual details in many sections may bear on more than one RFP.

As noted in the footnotes, factual representations are supported by documents and/or declarations being submitted with this narrative.

II. Executive Summary

To aid the reader’s understanding and assessment of the detailed account that follows, we first outline the narrative and summarize the basic facts.

[REDACTED]

[REDACTED] Then, at the end of 2016, regulatory changes cut the activity window in half. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Almost immediately thereafter, the Oregon PUC sent a flurry of inquiries, reporting that a number of Oregon Lifeline customers who had lost their phones or had them stolen still appeared to be active. [REDACTED]

[REDACTED]

[REDACTED]

This has been a painful experience for the Company. Sprint hopes, however, that the following account will provide a factual basis for resolution of the matter.

III. Capturing All Relevant Subscriber Activity Involves Querying a Series of Complex Systems

As an initial matter, the Company's inactivity-tracking process relies on a complex set of interrelated systems that are each maintained and operated by different groups of Sprint employees and contractors. [REDACTED]

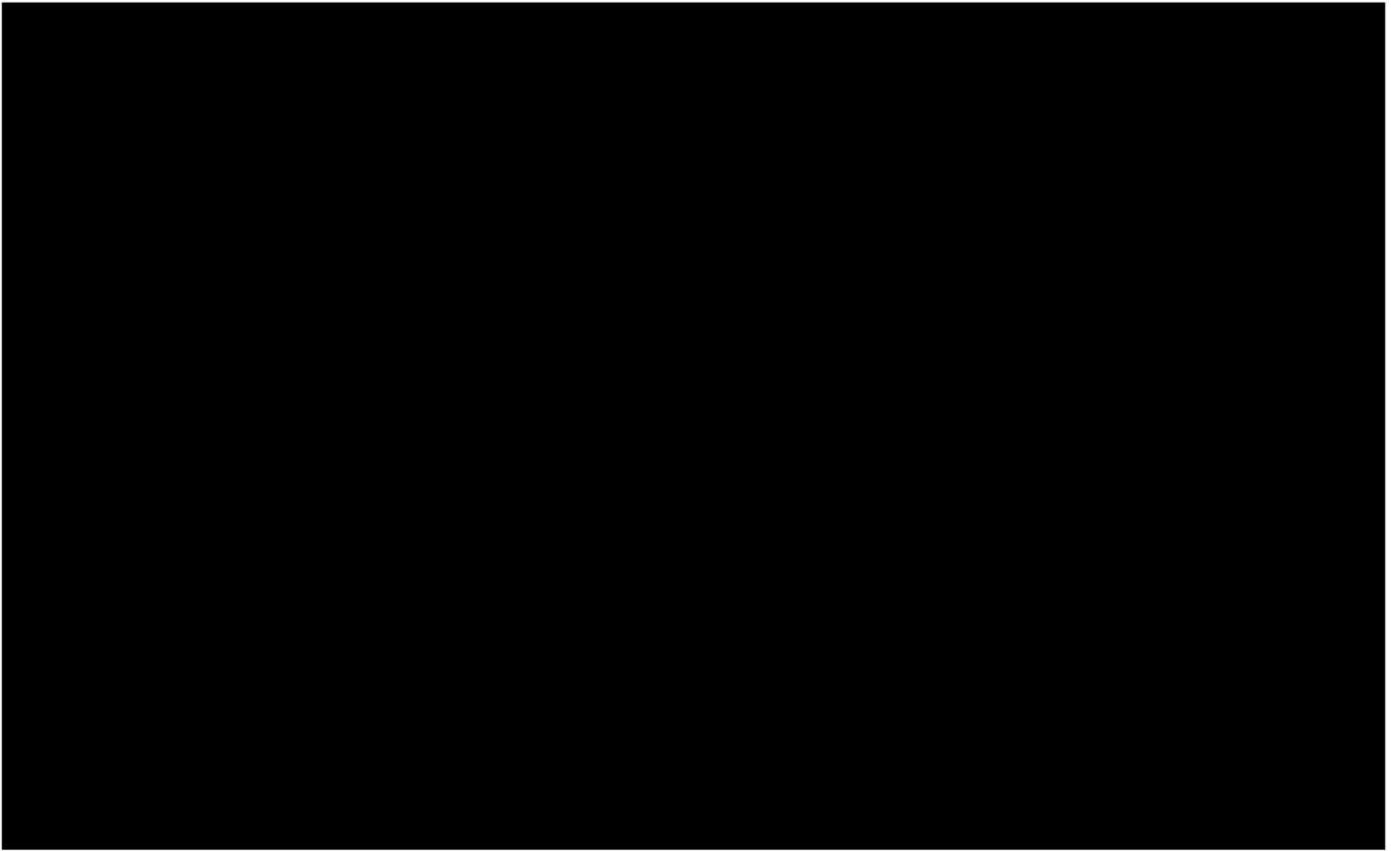
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regulatory Changes in 2016

In December 2016, extensive changes to the Lifeline regulations went into effect.³⁷ Those modifications (some since reversed) included: allowing support for stand-alone Internet access service, adopting minimum service standards for voice and broadband, establishing a National Eligibility Verifier, modifying the list of federal programs used to validate Lifeline eligibility, and establishing a budget for the Lifeline program.³⁸ Of particular relevance here, the Commission added additional categories of usage (a text sent by a subscriber, use of data by a subscriber, and the purchase of additional data by a subscriber) that would satisfy the activity rule, and shortened the inactivity period from 60 to 30 days and the cure period from 30 days to 15 for the subscriber to resume activity.³⁹

[REDACTED]

[REDACTED]

³⁷ *Lifeline and Link Up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd. 3962 (WCB 2016).

³⁸ *Id.* ¶¶ 6–7, 10.

³⁹ *Id.* ¶¶ 411–15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Suspension of Inactivity Rule as Part of Hurricane Relief

In September 2017, the Commission waived the inactivity rules for the entire state of Florida as part of hurricane disaster relief, so inactivity from Florida (and parts of Georgia) disappeared for months.¹⁵⁰

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵⁰ *Lifeline and Link Up Reform and Modernization, et al.*, Order, 32 FCC Rcd. 6860 (WCB 2017). See also *Lifeline and Link Up Reform and Modernization*, Order, 33 FCC Rcd. 11236 (WCB 2018); *Connect America Fund*, Order, 34 FCC Rcd. 8118 (WCB 2019).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sprint’s poor financial condition during this time is well documented. In connection with its application for consent to its proposed merger with T-Mobile, Sprint explained that “it is in a very difficult situation that is only getting worse” and “Sprint is not on a sustainable competitive path.”¹⁹¹ The court reviewing a challenge to that transaction concluded that “Sprint’s financial situation . . . remains poor and hamstrings any meaningful investment efforts.”¹⁹² Indeed, the court observed that “Sprint’s most effective way of reducing its financial difficulties to date has been through cost cutting efforts.”¹⁹³ The court ultimately concluded that “Sprint is caught in a vicious cycle caused by its inability to finance meaningful network investment, which perpetuates a low-quality network that drives away customers and limits Sprint’s ability to generate the cash necessary to reduce its financial constraints.”¹⁹⁴

[REDACTED]

[REDACTED]

¹⁹¹ Letter from Samuel L. Feder, Sprint Corp., to Marlene Dortch, Secretary, FCC, WT Docket No. 18-197, at 2 (filed Apr. 15, 2019).

¹⁹² *State v. Deutsche Telekom AG*, No. 19 CIV. 5434, 2020 WL 635499, at 29 (S.D.N.Y. Feb. 11, 2020).

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 32.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



END COMMERCIALLY SENSITIVE CONFIDENTIAL INFORMATION



ATTACHMENT 3

Settlement Agreement

SETTLEMENT AGREEMENT BETWEEN THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION AND ASSURANCE WIRELESS USA, LP

The California Public Utilities Commission’s (“Commission” or “CPUC”) Consumer Protection and Enforcement Division (“CPED”) and Assurance Wireless USA, LP (U-4327-C) (“Assurance Wireless” f/k/a Virgin Mobile USA, L.P.), Sprint Corporation (“Sprint”), and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Company”),¹ collectively referred to herein as “Settling Parties,” have agreed on the terms of this “Settlement Agreement,” which they now submit for consideration and approval by the Commission via a resolution.

I. GENERAL PROVISIONS

- A. This Settlement Agreement represents a compromise of all disputes between the Settling Parties and is intended to be a full, complete and final resolution of all issues related to CPED’s investigation into Assurance Wireless’ collection of LifeLine subsidy support for certain subscribers whose only usage over a 45-day period were calls answered by the subscribers’ voicemail rather than personally answered by the subscribers, during July 2017 through September 2019 (the “Reimbursement,” which is the subject of the CPED investigation and this Settlement Agreement), for alleged failures to comply with the Public Utilities Code, General Order 153, any other applicable California resolution, rule or general order, and any applicable federal rules or regulations that the CPUC may claim or assert that it has the right to enforce, including but not limited to 47 USC §254(f) and 47 CFR §54.405(e)(3).

¹ Sprint is the ultimate parent of Assurance Wireless, the Sprint subsidiary which operates as an eligible telecommunications carrier under the Assurance Wireless name brand. In April 2020, T-Mobile and Sprint merged, with Sprint continuing as a surviving corporation and as a wholly owned subsidiary of T-Mobile (the “Merger”).

- B. The Settling Parties have agreed upon the resolution of each issue addressed in the Settlement Agreement on the basis that its approval by the Commission should not be construed as an admission or concession by any of the Settling Parties regarding any matter of fact or law that may have been in dispute in this proceeding. Furthermore, consistent with Rule 12.5 of the Commission's Rules, the Settling Parties intend that the approval of this Settlement Agreement by the Commission should not be construed as a precedent or statement of policy of any kind for or against any of the Settling Parties in any current or future proceeding with respect to any issue addressed in the Settlement Agreement.
- C. This Settlement Agreement reflects the direct and good-faith negotiation between the Settling Parties. The Settling Parties agree that this Settlement Agreement is integrated. Accordingly, if the Commission rejects or modifies any portion of this Settlement Agreement or modifies the obligations placed upon the Company from those that the Settlement Agreement would impose, each Party shall have the unilateral right to withdraw from the Settlement Agreement. If the Commission adopts this Settlement Agreement with modifications, all Parties must consent to the modifications or any Party may void this Settlement Agreement, but only after such Party provides the other Parties to the Settlement Agreement with the opportunity to meet and confer in good faith regarding the proposed modifications.
- D. The Settling Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of his or her execution of this document. All rights and remedies of the Settling Parties with respect to the Settlement Agreement are limited to those available before the Commission.

- E. The Settling Parties agree to use their best efforts to obtain Commission approval of the Settlement Agreement through the resolution process and will not in any way oppose its adoption. The Settling Parties will request that the Commission approve the Settlement Agreement without any change, finding that the Settlement Agreement is reasonable, consistent with the public interest and, consistent with applicable laws.
- F. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute the same instrument.
- G. This Settlement Agreement was jointly prepared by the Settling Parties and any uncertainty or ambiguity existing in the Settlement Agreement will not be interpreted against any party on the basis that such party drafted or prepared the Settlement Agreement.
- H. This Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Settling Parties with respect to the subject matter set forth herein or otherwise relevant to this investigation.
- I. The Settling Parties agree that the obligations set forth in this Settlement Agreement are without prejudice to positions that each of the Settling Parties have taken, or may hereafter take, in any proceeding in another state, or any proceeding at the Commission. In accordance with the Commission's Rules of Practice and Procedure, Rule 12.5, the Settling Parties intend the Commission's adoption of this Settlement Agreement to be binding on each of the Settling Parties, including their legal successors, predecessors, assigns, partners, joint ventures, shareholders, members,

representatives, agents, attorneys, parent or subsidiary companies, affiliates, officers, directors and/or employees, and all divisions within the Commission.

- J. If the CPUC adopts this Settlement Agreement through a resolution, the CPUC and all of its divisions agree to release and refrain from instituting, directing, or maintaining any violations or enforcement proceedings against the Company (including its legal successors, predecessors, assigns, partners, joint ventures, shareholders, members, representatives, agents, attorneys, parent or subsidiary companies, affiliates, officers, directors and/or employees) related to the investigation described in paragraphs II(A)(1) and II(A)(2), based on information: (a) known, or that could have been known, to CPUC or CPED at the time CPED executes this Settlement Agreement, or (b) substantially similar to the facts the Company has disclosed to CPUC and CPED to date.
- K. This Settlement Agreement may only be amended or changed by a written agreement signed by all Settling Parties and approved by the Commission.

II. BACKGROUND

- A. The Settling Parties fully support this Settlement Agreement, including its reasonableness in light of the entirety of the record, consistent with the law and in the public interest. The Company does not admit liability, and CPED agrees to not contradict the Company's factual description of what led to, and the relevant conduct that is the subject of, the investigation, including the following:
1. On August 23, 2019, Assurance Wireless representatives met with the Commission's Communications Division ("CD") disclosing that Assurance had, contrary to company policy, received compensation for California LifeLine

participants whose only activity over 45 days had been inbound calls answered by voicemail. Sprint had also voluntarily disclosed this same issue to the Federal Communications Commission in late August 2019. On December 11, 2019, CD referred to the Utilities Enforcement Branch (“UEB”) of CPED a possible enforcement action against Assurance Wireless (f/k/a Virgin Mobile, which is wholly owned by Sprint).

2. On February 11, 2020, UEB sent Sprint its first set of data requests. Sprint cooperated with UEB in responding to all data requests, and explained the following: On July 8, 2017, Assurance Wireless implemented a code change in its systems that resulted in an inadvertent error. That error resulted in Assurance Wireless, contrary to its policy, treating incoming calls answered by a subscriber’s voicemail as qualifying usage. Assurance Wireless estimates that beginning in July 2017 and continuing until September 2019, a total of 3,026,628 subscriber line-months, yielding \$34,684,170.70 in compensation from the California LifeLine program, were affected by this error.

III. AGREEMENT

- A. California LifeLine Fund Repayment and Interest.** The Company agrees to reimburse the California LifeLine Fund in the amount of \$34,684,170.70, and an additional sum of \$7,002,760.60, in interest, subject to the Commission’s approval of this Settlement Agreement. In determining the appropriate interest to impose, CPED used Sprint’s borrowing cost between July 2017 and September 2019 plus an additional 15% representing any potential benefits that may have accrued to Sprint

due to its collection of the subsidy at issue from the CA Lifeline Fund.² Within 15 business days of execution of this Settlement Agreement, the Company, or a party acting on its behalf, will deposit the reimbursement amount of \$34,684,170.70 (the “Reimbursement Payment”) to be held in escrow in the Commission’s Advanced Collection Account. On or after the date the Commission approves the resolution adopting the Settlement Agreement without modification (the “Settlement Effective Date”), the Reimbursement Payment in the Advanced Collection Account will be released to the LifeLine Program Fund. Until the Settlement Effective Date and except as provided by paragraph III(b), the Reimbursement Payment shall remain segregated in the Advanced Collection Account, held in escrow pursuant to the terms of this Settlement Agreement, and shall not be spent, transferred, committed, used, obligated or encumbered in any way. Within 15 business days of the Settlement Effective Date, the Company, or a party acting on its behalf, will remit an additional \$7,002,760.60 to the CPUC.

B. Return of Funds. Should the Settlement Effective Date not occur within 90 days of the execution of the Settlement Agreement—unless such date is extended by agreement in writing of all the Settling Parties—the Settlement Agreement will become null and void, the Reimbursement Payment, together with any interest accrued thereon, shall

² The interest amount is based on Sprint’s Securities and Exchange Commission filings for years 2017-2019, Sprint’s average cost of money during that period (which was approximately 6.5%), and the time value of money interest to the annual accrued principal balance until the time that Sprint offered to remit the balance to the Commission in December 2019. The Company does not concede that it received a material net economic benefit from or that the time value of money or net economic benefit are appropriate bases for calculating any payment element exceeding the reimbursement.

immediately be returned to the depositor, and no further payment shall be due by or on behalf of the Company pursuant to this Settlement Agreement.

C. Reasonableness, Public Interest, Consistency with Laws, and Precedent.

1. **No Intentional Misconduct:** The CPUC has imposed fines and penalties on public utilities engaging in intentional misconduct, gross negligence, or other egregious behavior often resulting in the loss of life or destruction of property. According to Sprint, the facts of this case involve an unintentional coding error. CPED did not find evidence of intentional misconduct. Moreover, Sprint, the entity that made the coding error, was acquired by T-Mobile and for all practical purposes, no longer exists.
2. **Federal LifeLine Settlement Includes CA Subscribers:** In November 2020, Sprint and the FCC entered into a Consent Decree to resolve the FCC’s investigation regarding Sprint’s compliance with 47 CFR 54.407 in all states (including California) where Sprint is an Eligible Telecommunications Carrier (“ETC”) collecting from the Federal Lifeline Fund. The Consent Decree includes the same subject matter along with other usage issues. Sprint agreed to make a total settlement payment to the US Treasury in the amount of \$200 million with no finding of liability.
3. **Substantial Risk of No Recovery if Litigated:** The Commission has not updated G.O. 153 to reflect the FCC’s non-usage rule and therefore Sprint claims that it is not specifically precluded from collecting from the California LifeLine fund based on subscriber inactivity or non-usage.³ Moreover, even at the Federal level, the relevant

³ In R.20-02-008 on LifeLine, the Commission has tasked a working group to update G.O. 153 to reflect Commission decisions and resolution. See Assigned Commissioner’s Scoping Memo and Ruling, issued April 13, 2020.

regulation provides that “answering an incoming call from a party other than” the phone company or its representative constitutes “‘usage’ of the LifeLine service,” with no distinction between calls answered personally or by voicemail. 47 C.F.R. 54.407(c)(2)(iii). However, calls answered by voicemail are not specifically enumerated in 47 C.F.R. § 54.407(c)(2).

4. Full Cooperation: Despite the lack of a California specific inactivity rule, Sprint acknowledges that but for the coding error and in accordance with its policies, it would not have sought California LifeLine Fund subsidy reimbursement for the impacted subscriber accounts. Sprint consistently communicated to CD staff that it would refund any impacted subsidies, and once that amount was determined in December 2019, Sprint offered a full reimbursement to the California LifeLine Fund.
5. Sprint timely brought the coding error to the attention of the CPUC once it was discovered and has collaborated in good faith through the entire process.
6. Settlement is Significant: Because the financial impact of the coding error was sizeable, amounting to a \$34,684,170.70 reimbursement to the California LifeLine fund, CPED and Sprint have agreed that Sprint should pay an additional \$7,002,760.60 to the California Lifeline fund, representing interest, as explained in III. A. Thus, the total settlement amount is \$41,686,931.30.
7. Timeliness of Settlement Payment: In accordance with the Settlement Agreement, the Company or its agent will deposit the Reimbursement Payment into the CPUC’s Advance Collection Account within 15 business days of execution of this Settlement Agreement and, within 15 business days of the Settlement Effective Date, the Company, or a party acting on its behalf, will remit an additional

\$7,002,760.60. The timing of the Settlement Payment is particularly beneficial as the California LifeLine fund is under mounting pressure to support the growing needs of qualifying Californians, many of whom are negatively impacted by the COVID-19 pandemic, and increasingly reliant on vital LifeLine services.

D. Ongoing Compliance. Sprint's successor in interest, T-Mobile, shall review its programming one year after the Resolution Effective Date to ensure proper treatment of ineligible subscribers. T-Mobile shall complete its review within one year and 30 days after the Resolution Effective Date. T-Mobile shall report to the CPED the results of that review within 15 business days of its completion.

IV. CONCLUSION

The parties mutually believe that, based on the terms and conditions stated above, this Settlement Agreement is reasonable, is consistent with the law and, is in the public interest.

By signing below, each of the undersigned represents and warrants that she/he is authorized to sign this Settlement Agreement on behalf of the party for whom she/he signs and thereby binds such party to the terms of the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the Effective Date _____.

Dated: February 12 , 2021

Assurance Wireless USA, LP (U-4327-C)

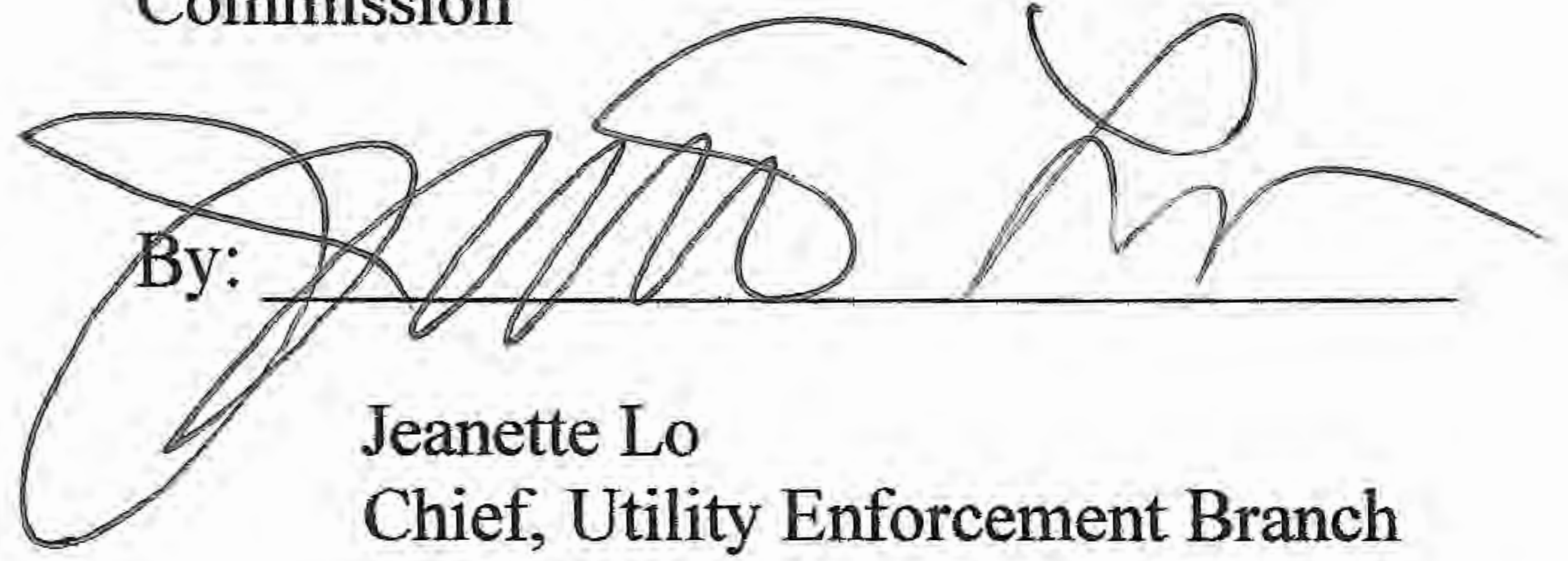
By: 

Kathleen Ham
Sr. Vice President, Govt. Affairs
T-Mobile US, Inc.

Dated: February 12, 2021

Consumer Protection & Enforcement
Division of the California Public Utilities
Commission

By: _____

A handwritten signature in black ink, appearing to read 'Jeanette Lo', is written over a horizontal line. The signature is fluid and cursive.

Jeanette Lo
Chief, Utility Enforcement Branch