



FILED
02/26/19
10:12 AM

KJB/ilz 2/26/2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).

Application 18-07-011

And Related Matter.

Application 18-07-012

ADMINISTRATIVE LAW JUDGE'S RULING DENYING IN PART AND GRANTING IN PART THE MOTION OF THE PUBLIC ADVOCATES OFFICE TO AMEND AND SUPPLEMENT TESTIMONY AND FOR ADDITIONAL HEARINGS; AND REVISING THE SCHEDULE OF THIS PROCEEDING

1. Background

At the close of evidentiary hearings, the Public Advocates Office (Cal Advocates) filed the instant motion, seeking additional time to amend and supplement its testimony and additional hearings in which to consider the allegedly new material contained in the Joint Applicants' rebuttal testimony. Joint Applicants' Response denies that their rebuttal testimony introduces new material or in any other substantive way prejudices Cal Advocates. Joint Applicants also claim that any delay in the timetable of this case is prejudicial to them.

2. Discussion

In considering whether to grant this motion, I have reviewed the rebuttal testimony, including exhibits, filed by Joint Applicants as well as their Response to the motion of Cal Advocates and Cal Advocates' Reply to Joint Applicants' Response.

As a rule, the Commission frowns upon using rebuttal testimony as a means for introducing evidence and argument for the first time:

"Providing the basic justification in rebuttal is unfair, since parties are not generally given the opportunity to respond to rebuttal with testimony of their own. When the utility has the evidentiary burden, we caution against the use of rebuttal testimony to provide the basic justification. As a matter of fairness, we must seriously consider wither striking such testimony or extending the proceeding, at the utility's risk, to allow for responsive testimony from the other parties."¹

In its Motion and Reply, Cal Advocates asserts that Joint Applicants have introduced for the first time in the testimony of rebuttal witnesses new arguments or evidence regarding a host of topics including:

1. New T Mobile's "in Home Broadband" offering;
2. Joint Applicants' FCC Filings (563 pages);
3. Joint Applicants' "Network Model";
4. California Specific County Level Maps;
5. Customer Migration;
6. Privacy;
7. The IKK Model; and
8. Wholesale Services.

¹ *In the Matter of the Application of Southern California Water Company* Decision 04-03-039 at 84-85.

In their Response to the Cal Advocates motion, Joint Applicants deny that any portion of their rebuttal testimony was new material and specifically seek to rebut the claims listed above.

Upon review of the contrary pleadings of the parties and the rebuttal testimony that is the subject of their disagreement, I conclude that, regardless of whether Joint Applicants' rebuttal testimony contains new evidence and arguments, the sheer volume of the material together with the complexity of the subject matter has worked a disadvantage to Cal Advocates that requires a remedy.

However, I also conclude that the remedy sought by Cal Advocates is greater than necessary to cure this disadvantage. As Cal Advocates acknowledges in its Reply, an alternative to taking in additional testimony and holding more hearings is available, namely, an extension of time for the preparation of opening briefs and permission to Cal Advocates to include new rebuttal arguments and evidence in its opening brief. Accordingly, the schedule in this proceeding will be adjusted by moving the date for submission of opening briefs to March 29, 2019 and the date for submission of reply briefs to April 12, 2019. The anticipated date for a proposed decision remains unchanged; consequently, I find that the revised schedule does not work a hardship on Joint Applicants.

IT IS RULED that:

1. The motion of the Public Advocates Office to amend and supplement previously filed testimony is granted, subject to the following condition: additional evidence and arguments responsive to the rebuttal testimony of Joint Applicants may be included in its opening brief.

2. The motion of the Public Advocates Office for additional hearings is denied.
3. The date for submission of opening briefs is changed from March 1, 2019 to March 29, 2019.
4. The date for submission of reply briefs is changed from March 15, 2019 to April 12, 2019.

Dated February 26, 2019, at San Francisco, California.

/s/ KARL J. BEMESDERFER
Karl J. Bemesderfer
Administrative Law Judge