

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
Sprint Communications Company L.P.
(U-5112) and T-Mobile USA, Inc., a
Delaware Corporation, For Approval of
Transfer of Control of Sprint
Communications Company L.P. Pursuant to
California Public Utilities Code Section
854(a).

Application 18-07-011

And Related Matter.

Application 18-07-012

**JOINT PROTEST OF THE PUBLIC ADVOCATES OFFICE,
COMMUNICATION WORKERS OF AMERICA, DISTRICT 9,
THE UTILITY REFORM NETWORK, AND THE GREENLINING INSTITUTE
TO THE AMENDED JOINT APPLICATION OF SPRINT AND T-MOBILE**

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I. INTRODUCTION

Pursuant to Rules 1.12¹ and 2.6 of the Commission’s Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office), Communication Workers of America, District 9 (CWA), The Utility Reform Network (TURN), and The Greenlining Institute (Greenlining) (together, “Joint Consumers”) file this protest to the September 19, 2019 Amended Joint Application (Application) of Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C) (collectively referred to as “Sprint Wireless”) and T-Mobile USA, Inc. (T-Mobile) (collectively referred to as the “Joint Applicants”) for review of a wireless transfer notification per Decision (D.) 95-10-032 (the “Proposed Transaction”).²

On July 13, 2018, Sprint and T-Mobile submitted an application for, as described in their application, “parent-level transfer of control of the Sprint Wireless CA Entities” to T-Mobile (Proposed Transaction). In the Proposed Transaction, no mention was made of any transfer of control of assets or customers to DISH Network Corporation (DISH). On January 29, 2019, DISH requested party status, opposing the Proposed Transaction on the grounds that Joint Applicants had not demonstrated that “this merger would serve the public interest and there is a reasonable basis to believe that the merger would harm California consumers by creating a national mobile voice/broadband market controlled by three companies, leading to excessive concentration in other relevant markets, and increasing prices for consumers.”

Subsequently, DISH and the Joint Applicants (Sprint and T-Mobile) reached a deal to transfer Sprint assets to DISH, via an “Asset Purchase Agreement among T-Mobile, Sprint Corporation and DISH Network Corporation” (Asset Purchase Agreement). On July 26, 2019, the U.S. Department of Justice (DOJ) provided the Asset Purchase Agreement in a Proposed Final Judgment and the Stipulation & Order in the

¹ Rule 1.12 provides parties with the opportunity to file a protest to an amended application.

² Application at p. 1.

The Application is part of a larger deal in which Sprint Corporation (“Sprint”), and all of Sprint’s subsidiaries, will become wholly-owned indirect subsidiaries of T-Mobile US, Inc. (“T-Mobile US”). See Application at p. 2.

U.S. District Court for the District of Columbia. On July 29, 2019, DISH requested to withdraw its opposition to this application.

In May 2019, the record in this case was closed by Rule 13.14 following the submission of legal briefs. The Joint Consumers subsequently opposed Joint Applicants attempt to “advise”³ the Commission with additional materials when the Joint Applicants requested the Commission to take advisement of the above-mentioned deal with DISH and agreement with the U.S. DOJ.

In order to receive the additional materials related to the Asset Purchase Agreement, on August 27, 2019, Administrative Law Judge (ALJ) Bemserderfer issued a ruling that re-opens the proceeding and takes official notice of the above-mentioned deal with DISH, and directed the Joint Applicants to amend and supplement their application with the new information regarding the deal. The ALJ Ruling also “provide[s] other parties with an opportunity for comment.” The ALJ Ruling ordered the Joint Applicants to address the following in their amended application:

- Additions to, deletions from, or modifications of any previously submitted testimony, including that of expert witnesses.
- Revisions to submitted briefs, notices, or comments, including all appendices.
- Additions to, deletions from, or modifications of previous commitments to the California Emerging Technology Fund.
- Commitments made by Sprint Spectrum, L.P., Virgin Mobile USA, L.P., or T-Mobile USA, Inc. or any subsidiaries or affiliates of any of the foregoing to the Federal Communications Commission.

This proceeding must now go forward and consider the effect of the Asset Purchase Agreement on the original Joint Application and on California consumers. However, the Commission’s statutory duty remains the same; to determine whether the transfer of control of Sprint to T-Mobile (now including a transfer of assets to DISH) is in the public interest for California. For this phase of the proceeding, the Joint Consumers include by reference all of the issues within the scope of the initial phase of the

³ See Motion Of Joint Applicants To Advise The Commission Of DOJ Proposed Final Judgment, filed July 26, 2019.

proceeding, which were set forth in the October 4, 2018, “Amended Assigned Commissioner’s Scoping Memo and Ruling.” Those issues continue to be relevant and necessary to consider. In addition, the Joint Consumers recommend that the issues listed below should be included in a second amended Scoping Memo and Ruling, to be issued after the Prehearing Conference scheduled for October 10, 2019.

For the Commission to meet its statutory duty under Section 854, it must have a complete record, including an understanding of the newly proposed asset transfer. The August 27th ALJ Ruling notes that the Commission would have “a radically incomplete record on which to base a decision”⁴ unless the Joint Applicants provided additional information and analysis about the new elements of the transaction. However, the Amended Application does not meet the requirements of Section 854 or the requirements of the August 27th ALJ Ruling and, therefore, the Commission cannot ensure that the newly proposed Asset Purchase Agreement will be in the public interest for California consumers. The Amended Application contains limited or incomplete information and does not fully explain the effect of the Asset Purchase Agreement on California-specific commitments.

The Commission should rigorously investigate the effects of the newly proposed Asset Purchase Agreement on mobile wireless voice and broadband customers in California, including on: competition, innovation, pricing, low income and diverse communities, service quality, emergency services, safety, account migration, employment, net neutrality, privacy, and arbitration clauses. The Commission should also assess the companies’ financial condition and fitness to operate, including DISH. As detailed below, the Commission must address these issues and others to determine whether the Proposed Transaction (as redefined in the Amended Application) is in the public interest.

⁴ August 27, 2019, ALJ Ruling at 5.

II. DISCUSSION

A. The Amended Application Fails To Comply With The ALJ Ruling Because It Does Not Contain Revised Testimony

The ALJ Ruling ordered the Joint Applicants to provide additions to, deletions from, or modifications of any previously submitted testimony, including that of expert witnesses.⁵ However, the Amended Application includes no testimony from the Joint Applicants' expert witnesses, including no updates to their economic or network models, 5G coverage maps, or testimony on customer data privacy. It also does not contain an adequate showing by DISH that the revised transaction is in the public interest.

The Joint Consumers intend to provide testimony that shows that the Amended Application is deficient. However, it should be noted that the Joint Consumers' testimony in the initial phase did the same thing; that is, demonstrated that the Joint Applicants failed to provide sufficient information to justify granting it. In response, the Joint Applicants submitted voluminous rebuttal testimony, less than one week before evidentiary hearings were scheduled to begin. In their rebuttal testimony, Joint Applicants presented for the first time new arguments and information that should have been included in their initial application or before intervenor testimony had been served. Joint Applicants' "rebuttal" testimony was in effect their case-in-chief, and the Joint Consumers had no opportunity to respond.

As a result, the Joint Consumers were required to file a motion to amend and supplement their testimony in order to address the voluminous new information and testimony in the Joint Applicants' "rebuttal" testimony. On February 26, 2019, the ALJ granted the motion for additional testimony in part, and extended the briefing schedule for this proceeding. In other words, Joint Applicants' failure to provide its case-in-chief in its application caused substantial delay in this proceeding.

In order to prevent this from occurring again, and in light of the fact that the Amended Application contains no expert testimony and is fatally deficient, the Joint

⁵ ALJ Ruling at 5.

Consumers respectfully request that Joint Applicants be ordered to fully comply with the ALJ Ruling and provide their case-in-chief prior to intervenors' testimony.

B. The Scope Of This Proceeding Should Be Amended To Include The Newly Proposed Asset Purchase Agreement

This Proposed Transaction dissolves the fourth main wireless carrier and proposes the creation of a possibly inferior substitute to become a new fourth carrier. This could have profound impacts on competition, jobs, and quality of service, among other things. Especially, the Commission should examine whether approving the Asset Purchase Agreement and creating a new wireless carrier is more beneficial to California than simply keeping Sprint as a strong and viable fourth carrier. The Joint Consumers believe the Amended Application does not provide sufficient information to answer in the affirmative.

The parties to this transaction, which now include DISH, must address key questions relevant to whether this newly proposed Asset Purchase Agreement is in the public interest. In addition to the issues already put forth in the original Scoping Memo, the relevant issues to consider should include the following:

1. Is DISH's entry into the cellular telephone wireless network market economically viable? With the customers and assets that DISH will be acquiring together with its existing assets, will it then possess the financial and technical capacity to become a viable competitor in California's wireless market?
2. If DISH's cellular wireless business will be economically viable, will that activity represent a sufficient competitive challenge to New T-Mobile so as to offset the increased concentration that the merger will produce?
3. Is DISH, as a Mobile Virtual Network Operator (MVNO) operating on New T-Mobile's network for the first several years of the settlement, an adequate replacement for Sprint to serve customers in the prepaid market?
4. Can a client MVNO, new to the mobile wireless market, realistically be expected to provide the same level of competitive check that Sprint, a competitive Mobile Network Operator (MNO), currently exerts on T-Mobile?
5. How will DISH use credit checks to screen potential prepaid customers?
6. How will DISH's new involvement in the prepaid market affect customer choice within rural and urban areas in California?

7. Will DISH maintain service for all customers currently served by Sprint's Boost brand?
8. Will DISH be able to maintain a sufficient number of retail locations offering prepaid Boost brand services going forward?
9. Does DISH have sufficient experience managing and maintaining a cellular telephone service network?
10. What is the timeline for DISH to obtain a Wireless Identification Registration from the Commission?
11. Is DISH able to perform as a cellular carrier in California, providing adequate levels of customer service?
12. Does DISH have experience fully utilizing its existing spectrum holdings for the benefit of Californians?
13. Will DISH provide equivalent cellular speeds to more or fewer customers than Sprint does now?
14. How does the transaction with DISH affect New T-Mobile's 5G deployment plans in rural and urban areas of California? Does DISH as a standalone company have an equivalent 5G deployment plan?
15. Will DISH be capable of procuring compatible handsets for its new customers?
16. Will customer privacy improve or decline as a result of a transfer of assets to DISH?
17. What is DISH's history of consumer protections? Can it adequately protect the customer data obtained from children?
18. Does DISH have adequate third-party risk management practices data breach prevention?

C. Additional Evidentiary Hearings Are Necessary Because There Are Material Issues Of Disputed Fact

The Joint Consumers' review of the Amended Application indicates that Joint Applicants, including DISH, have failed to demonstrate that the new Proposed Transaction, which includes the Asset Purchase Agreement with DISH, is in the public interest. In addition, the Joint Consumers have found that the Amended Application does not answer the issues listed above. Therefore, evidentiary hearings are likely necessary.

D. Proposed Schedule

As described above, the Amended Application is deficient and must be supplemented with additional testimony before it can found to comply with the ALJ

Ruling, or capable of being approved. Also, evidentiary hearings are likely necessary. Therefore, the Joint Consumers recommend a schedule that includes Amended Testimony in support of the Amended Application, which constitutes Joint Applicants' case-in-chief. The proposed schedule for Joint Applicants' Amended Testimony, Intervenor Testimony, Rebuttal Testimony, Hearings, and briefs, is set forth below.

EVENT	DATE
Prehearing Conference	October 10, 2019
Revised Scoping Memo	October 22, 2019
Amended Testimony Submitted by Joint Applicants and DISH	November 1, 2019
Intervenor Opening Testimony	December 5, 2019
Rebuttal Testimony	December 19, 2019
Evidentiary Hearings	January 13-17, 2020
Opening Briefs	February 10, 2020
Reply Briefs	February 24, 2020
Proposed Decision	2 nd Quarter of 2020

III. CONCLUSION

The proposed merger would unite two of the largest providers of mobile wireless services in California and likely reduce competition and consumer choice in both the markets for consumer telephone and broadband services. The Joint Consumers urge the Commission to review the concerns detailed herein to determine if the proposed transaction is in the public interest.

Respectfully submitted,

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