

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
(Filed July 13, 2018)

PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES

TRAVIS T. FOSS
Attorney
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1998
Email: travis.foss@cpuc.ca.gov

ADAM J. CLARK
Regulatory Analyst
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-5212
Email: adam.clark@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure, the Office of Ratepayer Advocates (“ORA”) files this protest to the Joint Application (“Application”) of Sprint Communications Company L.P. (“Sprint Wireline”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively referred to as the “Joint Applicants”) for approval of a transfer of control of Sprint Wireline to T-Mobile pursuant to California Public Utilities (“P.U.”) Code Section 854(a) (the “Proposed Transaction”).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”).² Sprint and T-Mobile US have significant California revenues and number of customers. T-Mobile US is the third largest mobile wireless carrier in the nation with 72.6 million customers,³ while Sprint is the fourth largest with 54.6 million customers.⁴ We estimate that the T-Mobile serves approximately 8.8 million customers in California, and Sprint serves approximately 6.6 million customers in California.⁵ In 2017, T-Mobile US had revenues of \$40.6 billion, including an estimated \$4.9 billion for California revenues.⁶ Meanwhile, Sprint had revenues of \$32.41 billion in 2017, with an estimated \$3.9 billion in California revenues.⁷

The Commission should consolidate the instant Application and Application 18-07-012 since both are part of the overall merger of T-Mobile US and Sprint. P.U. Code Section 854(a) requires the Commission to assess whether the Proposed Transaction will be within the public interest, therefore the Commission must rigorously

¹ Application at 1.

² Application at p. 2.

³ Application at p. 5.

⁴ Application at p. 8.

⁵ Estimate is based on the 12.14% ratio of California’s population to the national population.

⁶ T-Mobile US, Form 10-K (February 7, 2018) at p. 37. Estimate for California revenue is based on the 12.14% ratio of California’s population to the national population.

⁷ Sprint, Form 10-K (May 24, 2018) at p. 40. Estimate for California revenue is based on the 12.14% ratio of California’s population to the national population.

investigate the effects on California's voice and broadband markets. However, the Application itself is not sufficient; it lacks pertinent information and does not include California-specific commitments. As detailed below, the Commission must address these issues and others to determine whether the Proposed Transaction is in the public interest.

II. DISCUSSION

A. THE COMMISSION SHOULD APPLY THE CRITERIA SET FORTH IN PUBLIC UTILITIES CODE SECTION 854 TO DETERMINE IF THE PROPOSED TRANSACTION IS WITHIN THE PUBLIC INTEREST

The Joint Applicants correctly recognize that the Proposed Transaction is subject to P.U. Code Section 854 (a),⁸ which requires prior authorization from the Commission before the finalization of any transaction that results in the merger, acquisition, or a direct or indirect change in control of a public utility. Section 854 (a) requires the Commission to determine that an acquisition/merger is within the public interest.

The Joint Applicants claim neither Section 854 (b) nor (c) apply to the Application.⁹ Nevertheless, even if Section 854 (b) and (c) are not expressly applicable, the Commission has the authority to use the criteria set forth in those statutes where it is in the public interest to do so.¹⁰

Especially, the Commission should to consider whether this transaction will have an adverse impact on competition in the California marketplace and whether the transaction raises antitrust concerns, because "antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy."¹¹

⁸ Application at p. 1.

⁹ Application at p. 13.

¹⁰ Opinion Approving, with Conditions, Transfer of Indirect Control and Authorizing, With Conditions, Exemption from Public Utilities Code Section 852 For Some Investors in Knight Holdco (D.07-05-061), at p. 24. See also, D.02-12-068, 2002 Cal. PUC LEXIS 909, concerning the change of control of California-American Water Company.

¹¹ Northern California Power Agency v. Public Utilities Commission (1971) 5 Cal.3d 370, 377.

B. THE COMMISSION SHOULD SHARE THE RECORD DEVELOPED IN THIS PROCEEDING WITH THE USDOJ AND FCC

For reasons stated herein, it is in the public interest to perform a thorough review of this proposed merger. In addition, the record developed in this proceeding will be highly relevant and useful to the Federal entities that are simultaneously performing a national review of this merger, the United States Department of Justice (“USDOJ”) and the Federal Communications Commission (“FCC”). ORA recommends that the record developed in this proceeding should be proactively shared with both the USDOJ and the FCC, so that those entities have California-specific information relevant to a national review of the proposed transaction. California can, and should, provide California-specific data and analysis that will inform the broader public interest review that the USDOJ and the FCC are undertaking, on the impacts of the merger on both wireless and broadband service in California.

C. REIMBURSEMENT OF COSTS TO REVIEW THE APPLICATION

ORA seeks reimbursement of its costs to review this merger Application. ORA reached out to Sprint and T-Mobile seeking an agreement to cover its costs, but the Joint Applicants stated that they would only do so pursuant to a Commission order. Therefore, ORA seeks a ruling granting its request.

California expressly authorizes the Commission to obtain reimbursement for the costs of considering a proposed merger; in fact, the law requires it. AB 96, the 2017 California Budget Bill Act, provides:

The Public Utilities Commission shall require any public utility requesting a merger to reimburse the commission for those necessary expenses that the commission incurs in its consideration of the proposed merger.¹²

¹² AB 96, California Budget Act of 2017.
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB96

The provision for reimbursable merger expenses is not new; it was also contained in the 2014, 2015, and 2016 budget bills.

ORA's expenses to retain an expert consultant to review the merger and analyze the alleged public benefits are an integral part of the Commission's consideration of the proposed merger. Additionally, the Commission has granted ORA's request to be reimbursed in the past. In A.15-07-009, the Charter/Time Warner merger application, ORA requested and was granted reimbursement for its expenses to retain a consultant to review and analyze the merger.¹³

D. THE COMMISSION SHOULD CONSOLIDATE APPLICATION 18-07-012 AND APPLICATION 18-07-011 SINCE BOTH ARE PART OF THE OVERALL MERGER OF SPRINT AND T-MOBILE US

On July 13, 2018, T-Mobile US and Sprint, through their respective California subsidiaries, filed two Applications to the Commission. The instant Application is for the transfer of control of Sprint Wireline, a certificated competitive local exchange carrier ("CLEC") and non-dominant interexchange carrier ("NDIEC"), to T-Mobile, and the other (Application 18-07-011) requests the Commission approve the transfer of control of T-Mobile to acquire Sprint Wireless. The Joint Applicants explain that the transfers of control are merely components of a larger nationwide merger wherein T-Mobile US will acquire Sprint.¹⁴

The Commission should take a holistic approach in conducting its review of these applications and consolidate this Application with Application 18-07-011. In addition to increasing efficiency and optimizing the use of Commission resources, combining the Applications will allow the Commission to evaluate the proposed transfers of control in the context of the larger Sprint and T-Mobile US merger. Combining both Applications, and assessing the full extent of impacts to California consumers, will more accurately assess whether the merger is in the public interest.

¹³ See Reporter's Transcript of September 28, 2015 Pre-Hearing Conference in A.15-07-009, at p.50: "ALJ BEMESDERFER: I have a motion before me from ORA for ordering the Applicants to pay for the expenses of ORA's expert. I'm granting that motion."

¹⁴ Application at p. 2.

E. THE COMMISSION SHOULD REQUIRE ADDITIONAL INFORMATION ON THE SERVICES SPRINT WIRELINE PROVIDES IN ORDER TO ASSESS THE EFFECTS OF THE TRANSACTION

The Application fails to provide sufficient information on the services that Sprint Wireline provides and the customers it serves. The Application simply explains that Sprint Wireline provides services as a CLEC/NDIEC, including VoIP and wholesale services, to a “limited number” of enterprise and carrier customers.¹⁵ To accurately assess the effects of the Proposed Transaction, the Commission should require the Joint Applicants to submit additional information, including: a list of specific service offerings with corresponding customer and line counts, information on contracts and terms of service, information on the location of its infrastructure and services, identification of customers of wholesale services, service agreements with other carriers, outage information, and pricing information.

F. SPRINT WIRELINE IS DISCONTINUING ITS TIME DIVISION MULTIPLEX SERVICES AND TRANSITIONING CUSTOMERS TO INTERNET PROTOCOL SERVICES

The Application claims that, post-transaction, Sprint Wireline will experience no change in its day-to-day operations and will continue to honor its existing contractual obligations.¹⁶ However, the Application also explains that Sprint Wireline is currently transitioning its services from a TDM network to VoIP services and that “existing contracts would need to be modified accordingly for those customers who wanted to continue service.”¹⁷ The Commission should consider the need, if any, for Sprint Wireline to continue to honor its existing contractual obligations post-transaction. The Commission should also consider Sprint Wireline’s current transition from TDM network services to VoIP services and determine how the Proposed Transaction may effect that technological transition. The Commission should require the Joint Applicants to submit

¹⁵ Application at 6 and 14.

¹⁶ Application at 3.

¹⁷ Application at 15. Footnote 36.

additional information on customer notices of the transition, flash-cut transitions, location and schedule of transitions, impacts to customers whose equipment does not support VoIP, and back-up battery requirements.

**G. THE CPUC NEEDS MORE DATA ON THE
PURPORTED BENEFITS OF THE PROPOSED
TRANSACTION**

The Application fails to identify California-specific benefits of the Proposed Transaction. The Application claims the Proposed Transaction, as part of T-Mobile USA's acquisition of Sprint Corporation (Sprint Wireline's parent company), will allow the combined companies to deploy a 5G network more quickly than is possible without the merger. The Application mentions "complementary and essential assets" that will allow the combined companies to operate a "superior 5G network," but provides little detail on these assets other than "spectrum and sites."¹⁸ The Application also claims the merger of Sprint Corporation and T-Mobile USA will provide over \$40 billion in synergies,¹⁹ but does not offer any California-specific details associated with this figure.

The Commission should consider if and how the purported benefits, i.e. the deployment of a wireless 5G network, relate to the Proposed Transaction given Sprint Wireline's apparent independence from its affiliate's mobile wireless service operations. The Joint Applicants fail to explain how the purported benefits will affect Sprint Wireline's wholesale and enterprise customers. In fact, the Application states the Proposed Transaction will not have "any impact" on what is currently Sprint Wireline's provision of CLEC or NDIEC services or competition in that market.²⁰

The Commission should require the Joint Applicants to demonstrate California-specific benefits related to the purported "massive synergies" and "unprecedented services" that form the basis of the Proposed Transactions alleged benefits.

¹⁸ Application at 2 to 3.

¹⁹ Application at 3.

²⁰ Application at 3.

III. PROCEDURAL MATTERS

The Assigned commissioner and Administrative Law Judge should hold public participation hearings throughout the combined service territories of Sprint Wireline, Sprint Wireless, and T-Mobile in California to receive feedback from the public on this Proposed Transaction. As noted previously, the Joint Applicants should be required to amend the Application to ensure it affirmatively addresses all of the issues required to be addressed including all topics under Section 854(b)(c) and (d) and Section 706(a).

Furthermore, the Joint Applicants' proposed expedited schedule is aggressive and unrealistic given the number of customers and important services that the Joint Applicants and their affiliates provide in California. ORA continues to work on a proposed modified schedule and looks forward to discussing during the proceeding's prehearing conference.

IV. CONCLUSION

For the aforementioned reasons, ORA protests the Application as Joint Applicants have not demonstrated that the proposed merger complies with Section 854. The proposed merger would affect important wholesale services in California, in addition to uniting two of the four largest providers of mobile wireless services in the State. ORA urges the Commission to review the concerns detailed herein to determine if the proposed transaction is in the public interest.

Respectfully submitted,

/s/ Travis T. Foss
TRAVIS T. FOSS

Attorney for the
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1998
E-mail: travis.foss@cpuc.ca.gov

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