

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 Matters.	Application 18-07-012

**MOTION OF THE PUBLIC ADVOCATES OFFICE  
TO AMEND AND SUPPLEMENT TESTIMONY  
AND FOR ADDITIONAL HEARINGS**

**I. INTRODUCTION**

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) moves to amend its testimony, provide supplemental testimony, and requests additional hearings. Also, in accordance with Rule 11.1 Public Advocates Office requests shortened time for a response to this motion. Specifically, the Public Advocates Office requests that the fifteen-day response period be shortened so that responses would be made orally on the first day of evidentiary hearings, February 5, 2019. The Public Advocates Office has acted as expeditiously as possible to analyze the new information that Sprint Communications Company L.P., Sprint Spectrum L.P, Virgin Mobile USA, L. P. and T-Mobile USA, Inc (jointly, Sprint/T-Mobile) provided as part of its rebuttal testimony on January 29, 2019.

In its rebuttal testimony, Sprint/T-Mobile presents for the first time new arguments and information that should have been included in its initial application or before intervenor testimony had been served. Due process requires that the Public Advocates Office and other intervenors be provided a meaningful opportunity analyze and respond to this new information. Accordingly, this motion requests permission for the Public Advocates Office to amend and supplement the testimony served on January 7, 2019, in response to this new information.

Additionally, the Public Advocates Office requests that additional hearing dates be scheduled in order to consider this new information. The Public Advocates Office requests that these actions be taken to remedy the clear due process violations created by Sprint/T-Mobile's withholding of new information until just days before evidentiary hearings were set to begin.

The general rule at the Commission is that the applicant bears the burden of proof for its application, and the application must be complete. Indeed, in past cases, the Commission has found that an incomplete application is grounds for rejecting the application.<sup>1</sup> In the face of its incomplete application, the proper procedure would have been for Sprint and T-Mobile to file an amended application. Rather than file a new application Sprint and T-Mobile determined to submit voluminous new testimony that responds to issues raised by the October 4, 2018 Amended Scoping Memo (rather than just those issues raised in the Public Advocates Office's protest), under the guise of rebuttal.

While the Public Advocates Office understands and supports the need for a full and complete record, this should not come at the expense of well-established due process principles. This proposed merger is an immensely important development in the telecommunications market, that will have long lasting impacts on competition and the public interest, in terms of choice, cost, services, investment in California, jobs in California, coverage for both rural and urban populations. Therefore, the Public Advocates Office requests this opportunity to respond to the Joint Applicants' new information, documentation, and arguments, in order to ensure that the record is complete.

## **II. BACKGROUND**

Sprint/T-Mobile filed their application on July 13, 2018. The original application, which consists of 36 pages of written text and approximately 50 pages of attachments is less than 100 pages long. The original application did not address many issues that are essential to a full and fair evaluation of the proposed merger and its implications on competition in the market, monopoly power, and impacts to customers.

In recognition of the insufficiency of the original application, on October 4, 2018, the Assigned Commissioner issued his Amended Scoping Memo, which identified the following issues:

---

<sup>1</sup> See, e.g., *Marin Telemanagement Corporation*, (D.95-01-044) 1995 Cal. PUC LEXIS 43 \* 42; Public Utilities Code section 854 sets forth the requirements for an applicant seeking a merger; subsection (3) provides that the applicant bears the burden of proof that the requirements of this section are met.

1. How would the merger impact competition for services currently provided by Sprint or T-Mobile in any metropolitan area or other geographically distinct market?
2. What new services, if any, that are not currently provided by T-Mobile or Sprint, are contemplated to be provided by the merged entity? How would the merger impact competition for such services in any metropolitan area or other geographically distinct market?
3. What are the relevant markets to consider?
4. Would the merger give the merged company monopsony power or increase the tendency to exercise monopsony power, including market power over equipment suppliers?
5. What merger-specific and verifiable efficiencies would be realized by the merger?
6. How would the merger affect innovation?
7. How would the merger affect the market for special access services, including backhaul services?
8. How would the merger affect the ability of independent competitive wireless carriers to obtain backhaul services?
9. Would the merger increase the market power of the incumbent local exchange carriers and their wireless affiliates?
10. How would the merger impact the quality of, and access to, service to California consumers in metropolitan areas, rural areas, or other geographically distinct markets? What services would be affected?
11. How would the merger impact the LifeLine program?
12. Which California utilities would operate the merged properties in the state?
13. Would the merger preserve the jurisdiction of the Commission to effectively regulate those utilities and their operations in California?
14. Would the benefits of the merger likely exceed any detrimental effects?

15. Should the Commission impose conditions or mitigation measures to prevent significant adverse consequences and, if so, what should those conditions or measures be?

Based on the application and information provided by Sprint/T-Mobile in response to data requests, the Public Advocates Office prepared and served its testimony on January 7, 2019. In its January 29<sup>th</sup> rebuttal testimony, Sprint/T-Mobile sought to supplement its application by presenting new arguments and new information, some of which was not in response to the Public Advocates Office's testimony. In addition to almost 1,000 pages of written testimony and exhibits, the rebuttal testimony incorporates another approximately 3,000 pages of materials from Sprint/T-Mobile's submission to the FCC.

Sprint/T-Mobile's almost 4,000 pages of "rebuttal" testimony is their case in chief. Standing alone, their application does not respond to the issues raised in the scoping memo and is insufficient to show that this merger is in the public interest. The Amended Scoping Memo, which was necessitated by the Joint Applicants' insufficient application, contains an extensive list of issues to be addressed. The Joint Applicants' rebuttal testimony constitutes an effort to supplement an insufficient application. The new information included in Joint Applicants' rebuttal testimony is summarized in Attachment A.

### **III. THE INTERESTS OF JUSTICE AND DEVELOPMENT OF THE RECORD REQUIRE THAT THE PUBLIC ADVOCATES OFFICE BE ALLOWED TO AMEND ITS TESTIMONY AND TO SERVE SUPPLEMENTAL TESTIMONY**

Because Sprint/T-Mobile has provided this information as part of its rebuttal testimony, it has deprived intervenors of the opportunity to respond to that testimony, in clear violation of the Public Advocates Office's and other intervenors' due process rights.<sup>2</sup> This is especially true since this new information was provided just days before evidentiary hearing are to begin. The Public Advocates Office will not have a meaningful opportunity to analyze, conduct discovery on and respond to this new information. Thus, due process remedies are required in this case

---

<sup>2</sup> See, e.g., *In the Matter of the Application of Southern California Water Company*, (D.04-03-039), "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 either striking such testimony or extending the proceeding, at the utility's risk, to allow for responsive testimony from the other parties." (D.04-03-039, at 84-85; footnote omitted, 2004 Cal PUC Lexis 95 \*125-26.)

Allowing intervenors the opportunity to respond to the new information will ensure that the Commission will have a full and complete record to determine whether the proposed transfer of control is in the public interest and should be granted. To this end, additional time is required so that the Public Advocates Office may conduct discovery on the new information provided and submit amended and supplemental testimony responsive to this new information. Based on its preliminary review, the Public Advocates Office requests that it be allowed to serve amended and supplemental testimony on March 5, 2019. Consistent with this request the Public Advocates Office requests that the Commission require that Sprint/T-Mobile respond to all data requests within 5 business days and establish a process to promptly address all discovery disputes. This remedy will ensure that Sprint/T-Mobile does not compromise the Commission's and the Public Advocates Office's ability to meaningfully assess and respond to the new information.

#### **IV. TO ENSURE DUE PROCESS, ADDITIONAL HEARING DATES SHOULD BE SCHEDULED TO ALLOW FOR PROPER NOTICE AND CONSIDERATION OF SPRINT/T-MOBILE'S NEWLY DISCLOSED INFORMATION**

As discussed above, the Public Advocates Office will not have the opportunity to analyze the new information Sprint/T-Mobile disclosed as part of its rebuttal testimony or to perform discovery on it. As such, the Public Advocates Office cannot cross-examine Sprint/T-Mobile witnesses who sponsor this new information. This motion requests that additional hearing dates be scheduled in order to allow for proper review of this new information and to conduct cross-examination. The Public Advocates Office proposes that the additional hearing dates be scheduled to commence no earlier than 21 days after the Public Advocates Office's amended and/or supplemental testimony.

While the need for additional hearing dates will likely delay a decision in this proceeding, it is necessary in order to fully address the new information. Furthermore, any delay is directly attributed to Sprint/T-Mobile for failing to timely provide this information and informing the Commission that its application was not complete.

#### **V. CONCLUSION**

For the reasons provided in this motion, including ensuring that due process requirements are met, the Public Advocates Office requests that the Commission grant this motion to allow the Public Advocates Office to amend and supplement its testimony. Additional hearings should

also be scheduled to allow for proper consideration of the new information Sprint/T-Mobile has disclosed.

Respectfully submitted,

/s/ TRAVIS T. FOSS  
TRAVIS T. FOSS,

Attorney for the  
Public Advocates Office

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

February 4, 20119

## **Attachment A**

### Summary of New Information/Arguments Raised by Joint Applicants' Rebuttal Testimony<sup>1</sup>

<b>Witness Name</b>	<b>Testimony Location</b>	<b>General Description of New Information/ Arguments Raised</b>
G. Michael Sievert	Section D: In-Home Broadband (Pgs. 28, 30, 31, 32)	Mr. Sievert provides new information and new arguments related to New T-Mobile's In-Home Broadband not previously provided including: information on subscription types, claims on cost savings, data plans, and stand-alone T-Mobile's plans on launching in-home broadband.
G. Michael Sievert	Attachment B to Testimony – Joint Opposition	Mr. Sievert refers to the company's reply to joint opposition filed at the FCC when discussing the claimed benefits and details of the merger. Mr. Sievert then attaches 563 pages of the company's reply to the joint opposition filed at the FCC. While the Public Advocates Office received a copy of this document through discovery (through a data request), it is the first time the companies submit this information as part of their arguments.
Neville R. Ray	Section VII: Network Model (Pgs. 26 & 27:1-7)	Mr. Ray provides new information and arguments related to the Network Model. The new information and arguments provided are in Pgs. 26 and Pg. 27 Lines 1-7 related to how T-Mobile uses the model to build its network.
Neville R. Ray	Pg. 40-41 California County levels maps  Attachment D to Testimony – California Projected 2021 & 2024 5G County Level Coverage	The California county level projected coverage is new information provided in rebuttal testimony.

---

<sup>1</sup> This summary was prepared by Public Advocates Office for purposes of this motion in a short amount of time. Due to the high volume of documents issued in Rebuttal Testimony by T-Mobile/Sprint (an estimated 4,000 pages), this list may not constitute a complete index of all new information or arguments presented by T-Mobile/Sprint. The Public Advocates Office reserves the right to respond to respond to all issues in the Joint Applicants' Rebuttal Testimony.

Witness Name	Testimony Location	General Description of New Information/ Arguments Raised
Neville R. Ray	Pg. 48 Lines 11-30 and Pg. 49 Lines 1-9	Mr. Ray provides new information and arguments related to MetroPCS customer migration.
Susan Brye	Pg. 5 – 7	Ms. Brye rebuttal testimony contains new information that was not provided as part of the CPUC Application or in response to the Public Advocates Data Request submitted to the company. Ms. Brye’s testimony answers questions that do not directly respond to Intervenor testimony and contain significantly new information that the Public Advocates Office has not had the opportunity to conduct discovery on these items in order to thoroughly investigate the company’s claims.
Mark A. Israel	Entire testimony - Discussion on Israel, Katz and Keating,” or “IKK” model	Mr. Israel states that the Public Advocates Office’s Economist Consultant (Dr. Lee Selwyn) Intervenor Testimony does not mention or discuss the IKK Model and incorrectly claims that Dr. Selwyn had access to the model since mid-September. T-Mobile/Sprint did not include as part of their CPUC Application/filing access to the models nor detailed discussions/explanations of the IKK model. The Public Advocates Office issued a data request requesting a copy of the unredacted version of the model and received access by December 21; a few days before filing of Intervenor Testimony. The model is highly complex and the time available was not sufficient to permit the required analysis. It is prejudicial in rebuttal for the Joint Applicants to introduce new information and arguments to which the Public Advocates Office has not been given the time to review and respond to. The Public Advocates Office requests the opportunity to respond to Mr. Israel’s testimony.
Thomas Keys	Wholesale discussion (Pgs. 12-13)	Mr. Keys provides new information and makes new arguments related to which carriers are the predominant wholesale providers of MVNOs. This is new information that the Public Advocates Office has not had the opportunity to conduct discovery on these items in order to thoroughly investigate the company’s claims.