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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 Relater Matter.

Application 18-07-012

**ADMINISTRATIVE LAW JUDGE’S RULING
RE-OPENING RECORD TO TAKE ADDITIONAL EVIDENCE AND
DIRECTING JOINT APPLICANTS TO AMEND APPLICATION (A.) 18-07-012**

1. Background

On July 26, 2019, Sprint Communications Company, L.P. and T-Mobile USA, Inc. (Joint Applicants) filed a motion entitled “Motion of Joint Applicants to Advise the Commission of DOJ Proposed Final Judgment” (Motion). The stated purpose of the Motion is to make Commission officially aware of a proposed final judgement (Proposed Final Judgement) and related stipulation and order (Stipulation & Order) filed by the United States Department of Justice (DOJ) in the U.S. District Court for the District of Columbia on July 26, 2019.

The Proposed Final Judgment and the Stipulation & Order (collectively, DOJ Settlement) reflect conditions accepted by Joint Applicants and others to resolve the competition-related questions raised by the DOJ during its review of the proposed merger between Joint Applicants (Transaction). (Copies of the

Proposed Final Judgment and the Stipulation & Order are attached to this ruling as Exhibits 1 and 2.)

The DOJ Settlement is subject to judicial review under the Tunney Act, 15 U.S.C. § 16(b) and is contingent on closing the Transaction. In addition, sixteen states including California have sued to block the Transaction in the Federal District Court in the Southern District of New York. That lawsuit is slated to go to trial in the 4th quarter of 2019.

On July 31, 2019, the Commission's Office of Public Advocate (Cal-PA) and the Communications Workers of America District 9 (CWA) jointly filed opposition to Joint Applicant's Motion. On August 22, 2019, with my permission, Joint Applicants filed a reply to their opposition.

Although the Motion is titled a request to inform the Commission of the action of the DOJ, the relief requested in the motion is prompt Commission approval of the Transaction and, as a separate but related matter, approval of the transfer of Sprint's California wireline assets to T-Mobile. Without addressing the legal theories advanced by Joint Applicants in support of these requests, I will simply note that they are more appropriately addressed in the final decision in this docket than in a ruling on a procedural motion.

2. Discussion

A motion "to inform the Commission" of an action by a separate government body is not well-formed, but rather than reject it out of hand I have chosen to interpret it as a motion to re-open the record and enter into it the exhibits attached to the Motion. These exhibits include, in addition to the Proposed Final Judgment and the Stipulation & Order, an Asset Purchase Agreement among T-Mobile US, Inc., Sprint Corporation and Dish Network Corporation (Dish Network), dated as of July 26, 2019 (Asset Purchase

Agreement) filed with the Securities and Exchange Commission as an exhibit to T-Mobile's most recent Form 8-K. (The T-Mobile Form 8-K, including a copy of the Asset Purchase Agreement, is attached hereto as Exhibit 3.)

The taking of official notice by the Commission is governed by Rule of Practice 13.9:

"Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."

California Evidence Code Section 450 et seq.:

§ 452. Matters which may be judicially noticed.

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:¹

- (a) (Omitted);
- (b) (Omitted);
- (c) Official acts of the legislative, executive and judicial departments of the United States and of any state of the United States;
- (d) to (g) (Omitted); and
- (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

The Proposed Final Judgment and the Stipulation & Order, which are official documents of the United States Department of Justice, are clearly noticeable under § 452 (c). The noticeability of the Asset Purchase Agreement is less obviously covered by the official acts provision of § 452 (c), since the act in

¹ Evidence Code § 451 lists matters which must be judicially noticed, none of which are matters discussed in this ruling.

question – filing the Asset Purchase Agreement by means of the Form 8-K – was performed by an officer of T-Mobile rather than by an official of any branch of government. However, the T-Mobile officer filed the Asset Purchase Agreement and signed the Form 8-K in compliance with the applicable securities laws and under penalty of perjury. Under those circumstances, the terms of the Asset Purchase Agreement are not reasonably subject to dispute and can be immediately and accurately determined by examining the facsimile copy attached to the T-Mobile Form 8-K. Accordingly, I find that the Asset Purchase Agreement is officially noticeable pursuant to § 452 (h).

Cal PA and CWA object strenuously to the Motion. First, they note, as I have, that the Motion is improperly framed as a “motion to advise” rather than as a motion to take official notice. If it were properly framed as a motion to take official notice, they argue, it would be too late since the evidentiary record is closed.² The three documents that are the subject of the motion amount to new evidence that fundamentally changes the Transaction.³ If I re-open the record to admit these documents, they argue, the Commission should order Joint Applicants (and possibly Dish Network as well) to submit an amended application that reflects that revised Transaction and hold new hearings at which other parties would have the opportunity to cross-examine Joint Applicants’ witnesses about the revised Transaction.

² Cal PA and CWA argue that judicial notice may not be taken pursuant to Evidence Code § 451 (the mandatory notice section). But the analysis in this ruling finds a different source of approval in § 452 (the permissive notice section.)

³ In its current form, the Transaction adds Dish Network as a fourth national wireless carrier, requires the transfer of certain spectrum assets to Dish Network as well as sale to Dish Network of certain of Joint Applicants’ subsidiaries that offer prepaid plans. No evidence regarding these changes to the Transaction is in the record.

Because the three documents appear to fundamentally change the Transaction, I agree with Joint Applicants that this proceeding will have a radically incomplete record on which to base a decision unless I re-open the record to admit them. But I also agree with Cal PA and CWA that if I re-open the record to admit the three documents, I must order Joint Applicants to amend the wireless transfer application to identify the changes in the Transaction brought about by the three documents and provide other parties with an opportunity for comment. In connection with the order set out below, I will also schedule a pre-hearing conference to set a revised scope and schedule for the re-opened proceeding.

IT IS RULED that:

1. The record of this proceeding is re-opened.
2. The Commission takes official notice of the documents attached to this ruling as Exhibits 1, 2, and 3.
3. Exhibits 1, 2, and 3 are admitted into the record of this proceeding.
4. Sprint Spectrum, L. P. (U3062C) and Virgin Mobile USA, L. P. (U4327C) and T-Mobile USA, Inc. a Delaware Corporation, shall amend Application (A.) 18-07-012 for review of wireless transfer notification per Commission Decision 95-10-032, A.18-07-012. Such amended application shall address the changes in the terms and conditions of the proposed merger that are reflected in the officially noticed documents admitted by this ruling and any other material differences between the amended application and the original application in this docket. Such differences shall include, but not be limited to, the following:
 - i. Additions to, deletions from, or modifications of any previously submitted testimony, including that of expert witnesses.

- ii. Revisions to submitted briefs, notices, or comments, including all appendices.
 - iii. Additions to, deletions from, or modifications of previous commitments to the California Emerging Technology Fund.
 - iv. 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.
5. The motion of Joint Applicants for immediate approval of the wireline transfer Application 18-07-011 is denied.

Dated August 27, 2019, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemesderfer
Administrative Law Judge