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April 9, 2020

Via Email

Telecommunications Advice Letter Coordinator
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: TD_PAL@cpuc.ca.gov

Re: *Protest of Sprint Communications Company L.P. (U-5112-C) Tier 1 Advice Letter 918 Relinquishing CPCN*

Pursuant to General Rules section 7.4 of the Commission's General Order 96-B, Communications Workers of America, District 9 (CWA) protests Sprint Communications Company L.P.'s March 30, 2020 Advice Letter 918 Relinquishing Certificate of Public Convenience and Necessity. Through its advice letter, Sprint claims that it no longer needs a CPCN to conduct business in California because it can rely solely on a VoIP registration, and requests that the Commission eliminate Sprint's CPCN effective March 30, 2020. Sprint's request is not appropriate for the advice letter process because it requires complex legal and factual consideration by the Commission, including implications concerning the proposed Sprint/T-Mobile merger currently being evaluated by the Commission.[1] The Commission should swiftly reject Sprint's advice letter and order Sprint to file a formal application.[2]

[1] A.18-07-011/A.18-07-012 (consolidated) In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112-C) 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); In the Matter of the Joint Application of Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation for Review of Wireless Transfer Notification per Commission Decision 95-10-032.

[2] General Order 96-B, General Rules Section 5.2 (matters appropriate for a formal proceeding include "utility…seeks relief that the Commission can grant only after holding an evidentiary hearing, or by decision rendered in a formal proceeding." See also, General

The Commission's advice letter process is for ministerial acts.[3] Sprint's request demands far more than ministerial action by the Commission. Sprint's request hinges on its argument that, because it transitioned to IP-enabled services, the Commission no longer has regulatory jurisdiction over the company. But that is a discretionary determination the Commission will have to make after analyzing the facts and recent changes in the law. Specifically, the California legislature enacted SB 822, the California Internet Consumer Protection and Net Neutrality Act of 2018,[4] the D.C. Circuit rejected the FCC's attempt to preempt state net neutrality laws,[5] and section 710 of the Public Utilities Code, which limited Commission jurisdiction over VoIP and IP-enabled services, sunset on January 1, 2020.[6] Sprint cannot simply declare that it is no longer subject to Commission jurisdiction; the extent to which Sprint's business in California is subject to Commission regulation is a discretionary decision that must be made by the Commission.

Moreover, one can easily see through the timing of Sprint's declaration that it no longer needs a CPCN. Sprint filed its advice letter on the same day it filed a motion to withdraw its wireline application for its proposed merger with T-Mobile,[7] two days before comments were due on the proposed decision for the merger, one day before T-Mobile and Sprint announced that they would close the merger without Commission approval,[8] and just weeks before the Commission votes on the merger. These actions provide a clear window into the merger applicants' strategy to circumvent the legitimate authority and oversight of the Commission, a strategy which the Commission should strongly deplore.

Rules Section 5.3 ("whenever the reviewing Industry Division determines that the relief requested or the issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding, the Industry Division will reject the advice letter without prejudice").

[3] General Order 96-B, General Rules Section 7.6.1 (citing Commission Decision 02-02-049).

[4] SB 822 (Chapter 976, September 30, 2018), Civil Code §3100, et seq.

[5] *Mozilla Corp. v. FCC*, 940 F.3d 1, 121-145 (D.C. Cir. 2019).

[6] Pub. Utilities Code §710(h) "This Section shall remain in place until January 1, 2020 and as of that date is repealed…".

[7] Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011/A.18-07-012, March 30, 2020.

[8] Letter from Michael Sievert to Commissioner Rechtschaffen and ALJ Bemesderfer, re Application Nos. 18-07-011 and 18-07-012, March 31, 2020.

The proposed decision on the merger was issued on March 11, 2020. The applicants submitted comments on the proposed decision on April 1 – two days after filing its advice letter – describing the applicants' displeasure with the conditions that would be placed on the merger to help mitigate the merger's anti-competitive and public interest harms. The applicants appear to be attempting to eliminate the Commission's jurisdiction over the merger altogether by (1) declaring that Sprint no longer needs a CPCN so that (2) the applicants can withdraw the wireline merger application and (3) declare that the Commission has no jurisdiction over the merger because the Commission can regulate only wireline transactions (not wireless transactions[9]) so that (4) the applicants need not comply with merger conditions adopted by the Commission. These actions beg the question: would Sprint have filed its advice letter to relinquish its CPCN and would Sprint and T-Mobile have filed their motion to withdraw the wireline application if the applicants viewed the proposed decision as a more favorable one (i.e. with different and/or less conditions)? Sprint's attempt to quickly abandon its CPCN is merely a last-ditch effort to escape Commission jurisdiction of the merger so that it need not comply with the Commission's merger conditions. The Commission should not stand for the applicant's underhanded strategy which undermines the Commission's authority and obligation to protect the public interest.

[9] The applicants are wrong. Clear record in statute, case law and Commission precedent demonstrates that the Commission has full discretion and authority to approve or deny a wireless merger. Wireless carriers are "telephone corporations" and therefore subject to Commission jurisdiction pursuant to Public Utilities Code sections 216, 233 and 234. Accordingly, the Commission has asserted its jurisdiction to protect consumers of wireless services. *See, e.g.,* D.89-07-019. In a 1995 decision, the Commission, the Commission found that it is not preempted by federal law to review wireless mergers and reaffirmed its discretion and authority to impose conditions on wireless mergers where "necessary in the public interest." D.95-10-032. The Commission has since reaffirmed this finding. D.96-12-071, D.01-07-030. The Court of Appeal has also confirmed the Commission's jurisdiction over wireless terms and conditions. *Pacific Bell Wireless (Cingular) v. CPUC* (2005) 140 Cal.App.4th 718, 738.

Sprint's request to relinquish its CPCN is not appropriate for the advice letter process because it requires complex legal and factual consideration by the Commission, including implications concerning the proposed merger. The Commission should swiftly reject Sprint's advice letter and order Sprint to file a formal application.

Sincerely,

Rachael E. Koss

REK:acp

cc: Service List for A.18-07-011