

**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 No. 18-07-011

And Related Matter.

Application No. 18-07-012

**RESPONSE OF COMMUNICATIONS WORKERS
OF AMERICA, DISTRICT 9 TO PETITION FOR MODIFICATION**

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Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, Communications Workers of America, District 9 ("CWA") respectfully submits this response to Joint Applicants' Petition for Modification of Decision 20-04-008 ("Petition").

I. THE APPLICANTS' OLD ARGUMENT THAT THE COMMISSION CANNOT IMPOSE THE JOBS CONDITION IS LEGALLY INCORRECT; THE COMMISSION HAS FULL AUTHORITY TO IMPOSE CONDITIONS TO ENSURE THE MERGER IS FAIR AND REASONABLE TO UTILITY EMPLOYEES

To help mitigate the merger's adverse impacts on jobs, Decision 20-04-008 requires T-Mobile to have a net increase of 1,000 jobs three years post-merger.¹ The Applicants argue (again, as they did in comments on the proposed decision) that the Commission does not have authority to impose this condition on merger approval. The Applicants are wrong.

¹ D.20-04-008, Ordering Paragraph 25.

The Applicants' argument rests on their long-repeated claim that the Commission lacks jurisdiction over the wireless merger. But this Commission has already put that argument to rest.² The Commission has full discretion and authority to approve (with or without conditions) or deny a wireless merger. The Commission should deny the Petition.

A. The Commission Has Jurisdiction Over the Wireless Merger

Throughout this proceeding, the Applicants have argued that the Commission does not have jurisdiction over the wireless merger. CWA, in response, has explained that wireless carriers are “telephone corporations” and therefore subject to Commission jurisdiction pursuant to Public Utilities Code sections 216, 233 and 234 and the Commission has asserted its jurisdiction to protect consumers of wireless services.

In 1989, the Commission stated, “we reiterate that our primary focus in the regulation of the cellular industry is the provision of good service, reasonable rates, and customer convenience.”³

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993, which amended the Communications Act to provide that “no state or local government shall have any authority to regulate the entry of or the rates charged by any Commercial Mobile Service or any Private Mobile Service, except this paragraph shall *not* prohibit a state from regulating the *other terms and conditions* of Commercial Mobile Service.”⁴ By “other terms and conditions,” Congress intended “that the State *will* be able to regulate the terms and conditions of these services,” including:

such matters as customer billing information and packaging and billing disputes and other

² D.20-04-008, pp. 2-3.

³ D.89-07-019.

⁴ 47 USC § 332(c)(3)(A) (emphasis added).

consumer protection matters; facility siting issues (e.g. zoning); *transfers of control*, bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis and such other matters as fall with the State’s lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under ‘terms and conditions.’⁵

Following the Omnibus Budget Reconciliation Act of 1993, the Commission instituted an investigation of the cellular industry “to develop a comprehensive regulatory framework consistent with the Federal Budget Act” and the Commission’s “own statutory responsibilities.”⁶ The Court of Appeal also confirmed the Commission’s jurisdiction over wireless terms and conditions.⁷

Public Utilities Code sections 851-857 require the Commission to review utility mergers and other transfers of control. Section 853(b), however, allows the Commission to exempt a public utility or a public utility class from the requirements of sections 851-857. In a 1995 decision, the Commission found that “[t]he transfer of ownership interests in a CMRS entity is not tantamount to [market] entry, and Commission jurisdiction over such transfers is not preempted under the federal legislation.”⁸ However, the Commission exercised its authority to “forbear from exercising such authority” and required wireless entities to notify the Commission of proposed mergers.⁹ The Commission reasoned that the cellular market was nascent at that time and consumers were not yet highly dependent on wireless services. Thus, the Commission found that, at that time, a “standing” merger review could have disrupted competition in the

⁵ House Report No. 103-111 at 251 (emphasis added).

⁶ I.93-12-007.

⁷ *Pacific Bell Wireless (Cingular) v. CPUC* (2005) 140 Cal.App.4th 718, 738.

⁸ D.95-10-032, Conclusion of Law 9.

⁹ *Id.*, pp. 15-18.

cellular industry.¹⁰

The Commission’s 1995 decision did not, however, abolish the Commission’s authority to approve or deny a proposed wireless merger in the future. Indeed, the 1995 decision went on to find that the Commission is *not* preempted by federal law to review wireless mergers in California and reaffirmed the Commission’s discretion and authority to impose conditions on wireless mergers where “necessary in the public interest.”¹¹ The Commission has since reaffirmed this finding.¹² The Commission has full discretion and authority to regulate wireless mergers. The Applicants’ repeated claim that the Commission has no jurisdiction over the wireless transaction is (still) legally incorrect.

B. The Applicants’ Claim that the Commission Cannot Impose the Jobs Condition is Legally Incorrect; the Commission is Legally Authorized to – and Must – Mitigate Harms to Utility Employees

Before authorizing a merger, Public Utilities Code section 854 requires the Commission to find, based on record evidence, that the merger is in the public interest.¹³ The Commission must consider, on balance, a range of criteria, including whether the merger is fair and reasonable to utility employees, and whether it provides measures to mitigate “significant adverse consequences that may result.”¹⁴ Thus, the Commission not only can – but *must* – ensure, by imposing conditions, that the merger is in the public interest. Moreover, the record

¹⁰ *Id.*, p. 16 (standing merger approval process “could inhibit the growth of competition to impose more restrictive requirements on CMRS providers than is necessary to discharge our responsibilities to protect the public interest”).

¹¹ *Id.*, pp. 15-18.

¹² D.01-07-030; D.96-12-071 (“we still remain concerned that the terms and conditions of service offered by each CMRS provider continue to provide adequate protection to consumers”). The Commission again reaffirmed its jurisdiction in D.20-04-008, pp. 2-3.

¹³ Pub. Utilities Code §§ 854(b) and (c).

¹⁴ *Id.*, §§ 854(c)(1)-(8).

fully supports the need to mitigate the merger’s impacts on utility workers. Overwhelming record evidence showed that the merger would harm Sprint and T-Mobile retail workers in California by eliminating more than 3,000 California jobs from retail store closures, depressing industry wages and violating worker rights. Yet, the Applicants argue that the Commission cannot legally condition the merger on T-Mobile having a net increase of 1,000 jobs three years post-merger. The Applicants’ arguments are unconvincing and should be swiftly rejected.

First, the Applicants rely on *Pac. Tel. & Tel. Co. v. Pub. Util. Comm’n* to argue that, without express statutory authorization, the Commission lacks “power to formulate the labor policies of utilities.”¹⁵ However, the Applicants fail to mention that subsequent cases “have cast serious doubt on the continuing vitality of much of the reasoning in *Pac. Tel.*”¹⁶ Specifically, the California Supreme Court in *General Tel. Co. of Cal. V. Pub. Util. Comm’n*. reasoned that “*Pac. Tel.* does not prohibit intervention in a private utility’s hiring practices when ‘statutory policies are implicated.’”¹⁷ In other words, the Commission has authority to intervene in a utility’s hiring decisions to further policies enacted in the Public Utilities Code – here, to ensure that the merger is fair and reasonable to utility employees pursuant to Public Utilities Code section 854. Thus, the Applicants’ argument fails.

The Applicants also point to a Commission decision, Decision 05-11-028, *In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control*,¹⁸ to argue that the Commission cannot use its authority to mandate specific

¹⁵ *Pac. Tel. & Tel. Co. v. Pub. Util. Comm’n* (1950) 34 Cal.2d 822, 829.

¹⁶ *General Tel. Co. of Cal. v. Pub. Util. Comm’n* (1983) 34 Cal.3d 817, 824.

¹⁷ *Id.* at 826 (discussing *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, superseded by statute on other grounds).

¹⁸ *In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. Inc. for Authorization to Transfer Control*, D.05-11-028, 2005 WL 3354926 (Nov. 18, 2005).

hiring levels. But the Applicants misrepresent this decision. Decision 05-11-028 says nothing about the Commission’s lack of authority to condition a merger on increases in employment levels. Rather, the Commission determined that, in the specific context of the merger between SBC and AT&T, placing restrictions on headcount reductions was unwarranted.¹⁹ The Commission reasoned that concerns over job losses from the merger were unsupported. Quite the opposite, here, the Commission imposed a condition to help mitigate the merger’s job losses shown by overwhelming record evidence. Furthermore Decision 05-11-028 places no limitation on the Commission’s authority to condition a merger on an increase in jobs. Thus, the Applicants’ argument fails.

Notably, the Applicants also omit from their Petition several merger approvals where the Commission required employee protections, including certain staffing levels. These decisions include, for example, Decision 15-12-029, *Joint Application of Liberty Utilities Co.*, approving a merger that maintained stable employment levels and ensured employee compensation and benefits at current or greater levels,²⁰ Decision 02-12-068, *In re California-American Water Co.*, approving a merger where the applicant committed to no layoffs for a year along with no decreases in employee compensation or value of employee benefits,²¹ Decision 01-06-007, *In re Citizens Telecommunications Co. of Cal.*, approving a merger that protected employees from any negative changes to positions, income or benefits and assumed all union contracts without

¹⁹ *Id.* at *27.

²⁰ *Joint Application of Liberty Utilities Co.*, D.15-12-029, 2015 WL 9595951, at *9 (Dec. 17, 2015).

²¹ *In re California-American Water Co.*, D.02-12-068, 2002 WL 31936761, at *23 (Dec. 19, 2002).

modification,²² and Decision 97-03-067, *In re Pacific Telesis Group*, approving a merger where the applicants committed to adding 1,000 new jobs in California.²³

In short, while the Applicants might not like it, the Commission has full legal authority and discretion to condition the merger on a jobs requirement. The Commission should deny the Petition.

II. THE APPLICANTS' ARGUMENT THAT IT SHOULD NOT HAVE TO COMPLY WITH THE JOBS REQUIREMENT BECAUSE OF COVID-19 IS UNCONVINCING AND SHOULD BE FLATLY REJECTED

The Applicants argue that, even if the Commission has the authority to impose the jobs condition (which it does), the economic crisis due to COVID-19 ultimately makes the condition “infeasible and unwarranted.” The Commission should not be swayed by the Applicants’ last-ditch effort to avoid mitigating harm to workers from a *key element of the merger’s projected cost savings – store closures*.

Record evidence showed that 902 of 3,241 (28%) stores in California would close from the merger, eliminating 3,342 California jobs.²⁴ Indeed, the record reflects that store closures are a key element of the projected cost savings from the merger,²⁵ and that T-Mobile acknowledged the merger would result in a significant number of postpaid store closings in California.²⁶ For postpaid retail jobs, the record evidence showed that the merger would result in a net loss of 1,707 jobs in California.²⁷ For prepaid retail jobs, record evidence showed that the merger would

²² *In re Citizens Telecommunications Co. of Cal.*, D.01-06-007, 2001 WL 902193, at *26 (June 7, 2001).

²³ *In re Pacific Telesis Group*, D.97-03-067, 1997 WL 406220, at *38-39 (Mar. 31, 1997).

²⁴ Exh. CWA-1, p. 52.

²⁵ *Id.*, citing New Street Research “Sprint/T-Mobile Redux: Refreshing Synergies and Scenarios,” p. 28 (April 15, 2018).

²⁶ Exh. CWA-2, p. 6.

²⁷ Exh. CWA-1, p. 54; Exh. CWA-18, p. 6.

result in closing 545 Metro and Boost Mobile stores and 1,635 associated retail job losses in California.²⁸

Tellingly, between the announcement of the proposed merger in April 2018 and November 2019, the Applicants closed a net 225 prepaid retail locations.²⁹ In the Los Angeles area, the second largest wireless market in the country, the Applicants closed a net 116 prepaid retail locations, reducing their prepaid retail footprint by 15%. This was a 12% reduction of Metro locations and 20% reduction in Boost locations.³⁰ From April 2020 to July 2020, in California, T-Mobile closed 16% of Sprint retail locations, 6% percent of T-Mobile branded stores and 2% of Metro stores.³¹ 6% of Boost stores were also closed during this period.³² The much higher rate of Sprint store closures compared to T-Mobile store closures is striking and consistent with reporting that suggests T-Mobile would prefer to close Sprint locations since the rebranding costs are lower. Moreover, the shrinking prepaid retail footprint in California directly contradicts the Applicants' claims throughout this proceeding that there was no plan to change the retail footprint and that the merger would create jobs.

Now, pointing to "the major consequences the ongoing COVID-19 pandemic has had on the economy and the long-term effects it may have on companies like T-Mobile over the next several years,"³³ the Applicants argue T-Mobile should not have to mitigate harm to workers

²⁸ *Id.*

²⁹ *Id.* Quite notably, since November 2019, there have been 110 additional store closings.

³⁰ *Id.* Since November 2019, the Los Angeles metro area prepaid store closings rose to 18%, including 15% of Metro stores and 25% of Boost Mobile locations.

³¹ Information about store closures was obtained by running a Python script to scrape details from each company website's store locator. April data was captured between April 17 and April 27, and July data was captured in the second week of the month.

³² On July 1, 2020, DISH completed its purchase of Boost.

³³ Petition, pp. 15-16.

from the merger's store closures. This is a red herring. Hundreds of stores have closed as a result of the merger (the majority of which are Sprint stores), and there will be more. The Commission should not allow T-Mobile to avoid mitigating harm to workers from this key element of the merger's projected cost savings. Moreover, from a policy standpoint, given COVID-19, if there was ever a time to ensure that a multi-billion-dollar merger does not harm workers, that time is now. The Commission should deny the Petition.

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Respectfully submitted,

/s/

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