

**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 Matter

Application 18-07-012

**DISH NETWORK CORPORATION
POST-DECEMBER 2019 HEARING BRIEF
ON THE JOINT APPLICATION FOR REVIEW
OF WIRELESS TRANSFER NOTIFICATION
PER COMMISSION DECISION 95-10-032**

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Dated: December 20, 2019

I. INTRODUCTION AND SUMMARY

Pursuant to the procedural schedule established in the Assigned Commissioner’s Amended Scoping Ruling issued on October 24, 2019 (the “Amended Scoping Ruling”), DISH Network Corporation (“DISH”) respectfully submits this brief regarding the evidentiary hearings that took place on December 5-6, 2019. The hearings were scheduled after the Commission reopened the record of this transaction in light of the proposed divestiture of Sprint’s prepaid assets to DISH (the “DISH Divestiture”) pursuant to the terms of a proposed Final Judgment (“Proposed Final Judgment”) and Asset Purchase Agreement entered into in connection with the above-captioned merger.

The evidentiary hearings demonstrated that upon consummation of the divestiture, DISH would become a nationwide mobile wireless carrier and operate in compliance with all California state law requirements, including protecting the privacy of customers’ personal information. Intervenors’ speculative disparagement of DISH’s financial, technical, and operational readiness to provide low-cost, high-quality service to consumers, deploy a 5G network and become a vibrant competitor in the wireless market is without merit, as the record makes clear.¹

DISH understands that Joint Applicants will address the evidence regarding DISH’s entry as a fourth facilities-based mobile wireless carrier, and thus DISH will not address those issues in this brief. However, DISH wishes to provide these limited comments addressing Public Advocates Office (“PAO”) witness Kristina Donnelly’s testimony raising concerns about DISH’s ability to protect the privacy of its future wireless customers. The

¹ See generally Hearing Tr., 1569–1681 (Cross-examination of Jeff Blum); Hearing Ex. Jt Appl. 19, *In re Application of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations et al.*, WT Docket No. 18-197, *Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification*, FCC 19-103 (rel. November 5, 2019) (the “FCC Merger Approval”) at 162–69 & Exhibit H (DISH FCC buildout Commitments).

record evidence established during the hearing demonstrates DISH's long history of protecting consumer privacy, and DISH's commitment to protecting the privacy of future wireless customers.

The DISH Divestiture will facilitate and accelerate DISH's entry into the wireless market as the nation's fourth facilities-based mobile wireless carrier. DISH's entry will increase competition and serve the public interest, consistent with the requirements of California Public Utilities Code Section 854. For these reasons, among others, DISH respectfully requests that the Commission approve the merger of T-Mobile and Sprint.

II. THE WEIGHT OF EVIDENCE DEMONSTRATES DISH WILL PROTECT THE PRIVACY OF WIRELESS CUSTOMERS

DISH already has a robust privacy policy in place for its satellite television customers that details what data DISH collects and how it might be used, as well as customers' privacy rights under California law.² DISH also has a privacy policy, which includes collection and use of location information, for customer data derived from customers' use of mobile devices to view programming.³

As DISH has explained, the company is currently finalizing plans for privacy protections for the wireless customers it will acquire as a result of the DISH Divestiture and future wireless operations. Thus, to the extent wireless operations present any privacy issues unique to this line of business; DISH will address them at the appropriate time.⁴ Indeed, DISH witness, Jeff Blum, testified that the company currently has a team of employees working on regulatory compliance issues for its wireless operations to ensure

² Hearing Exh. Pub Adv-007 (Supp. Testimony of Kristina Donnelly), at Exh. 1 (DISH privacy policy for satellite customers).

³ *Id.*, at Exh 3 (DISH Anywhere Privacy Policy), at p.1, 2.

⁴ *Id.*, at Exh. 2 (DISH response to PAO Data Request 001-37).

that DISH will be “fully compliant” with applicable privacy regulations.⁵

1. PAO Criticisms of DISH Privacy Policy are Unfounded

Ms. Donnelly’s criticisms of DISH’s future wireless policies should be rejected. As an initial matter, Ms. Donnelly testified that she is not aware of any data breach or complaint filed against DISH alleging a violation of state privacy laws⁶ during its more than 30 years of operation in California.⁷ Instead, she raised two hypothetical concerns about the sufficiency of DISH’s existing privacy policy for *satellite* customers to protect the company’s future *wireless* customers: 1) the collection and use of geolocation data; and 2) the collection and use of data from minors.⁸ These concerns ignore the fact that DISH has stated that it is still developing its wireless privacy policy and intends to comply with all relevant laws.

In addition, the evidence established during the hearing further demonstrates that Ms. Donnelly’s hypothetical concerns are based on an inaccurate reading of DISH’s own policies. For example, Ms. Donnelly criticized DISH’s existing privacy policy for satellite customers on the basis that it does not address the collection or use of location data.⁹ However, as demonstrated by Exhibit 3 to Ms. Donnelly’s testimony, DISH has a separate “DISH Anywhere” policy for satellite television subscribers who access programming via mobile devices. That policy explicitly addresses the collection and use of location data.¹⁰

2. The CCPA Comprehensively Addresses PAO Concerns

⁵ Hearing Tr., 1642:26-1643:4.

⁶ Hearing Tr., 1456:6-1457:4.

⁷ Hearing Tr., 1456:2-5.

⁸ Hearing Tr., 1457:6-15.

⁹ Hearing Exh. Pub Adv-007, at p.7.

¹⁰ *Id.*, at Exh 3 (DISH Anywhere Privacy Policy), at p.1, 2.

The CCPA, which will go into effect on January 1, 2020, provides comprehensive privacy protections for California customers. Ms. Donnelly acknowledged that the CCPA applies to DISH,¹¹ and that the CCPA explicitly restricts the collection and use of geolocation information and data from minors, and that she had no reason to believe DISH would not comply with the CCPA.¹²

Despite these facts, Ms. Donnelly asserted a general concern that the CCPA might provide inadequate protection for wireless customers because it allows for the collection and use of de-identified data.¹³ Ms. Donnelly did not provide any specific example of the way in which she believes a DISH wireless customer's privacy could be compromised due to the release of de-identified data. Further, Ms. Donnelly could not provide an example of the way in which a minor's privacy could be compromised by the release of de-identified data and acknowledged that data collected from minors is provided by the parent,¹⁴ thus the child's parent has complete control over what data might be disclosed.

III. CONCLUSION

The evidence established during the evidentiary hearing demonstrates that the Sprint/T-Mobile merger, including the DISH Divestiture, is in the public interest. Among other reasons, DISH has demonstrated that it has the financial, technical and operational readiness to operate, and will be compliant with all applicable laws, including those related to consumer privacy. Based on the record before it, DISH respectfully submits that Commission should approve this proposed merger without delay.

¹¹ Hearing Tr., 1465:12-14, 1465:21-24.

¹² Hearing Tr., 1466:6-16.

¹³ Hearing Tr., 1473:10-20.

¹⁴ Hearing Tr., 1483:23-1484:3.

Signed and dated December 20, 2019 at Walnut Creek, CA.

/s/

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