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-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)	Application 18-07-011 (Filed July 13, 2018)
And Related Matter.	Application 18-07-012

OPPOSITION OF THE PUBLIC ADVOCATES OFFICE, COMMUNICATIONS WORKERS OF AMERICA DISTRICT 9, THE UTILITY REFORM NETWORK AND THE GREENLINING INSTITUTE TO THE MOTION OF JOINT APPLICANTS TO WITHDRAW WIRELINE APPLICATION

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Dated: April 10, 2020

I. INTRODUCTION

Pursuant to California Public Utilities Commission (Commission) Rules of Practice and Procedure 11.1, the Public Advocates Office at the California Public Utilities Commission, Communications Workers of America District 9, The Utility Reform Network (TURN), and the Greenlining Institute (collectively herein referred to as "Joint Advocates") oppose the *Motion of the Joint Applicants to Withdraw Wireline Application* (Motion) in the above referenced proceeding. On March 30, 2020,[1] Sprint Communications Company L.P. (U-5112-C) (Sprint) and T-Mobile USA, Inc. (T-Mobile) (collectively herein referred to as "Joint Applicants") filed this Motion to remove the Joint Applicants' application for transfer of Sprint's wireline assets to T-Mobile from Commission review. Simultaneously with the filing of the Motion, Sprint sent what it claimed to be a Tier 1 Advice Letter (AL) to the Communications Division seeking to relinquish its Certificate of Public Convenience and Necessity (CPCN).[2]

The Joint Applicants' Motion is improper on several grounds. The Joint Applicants state that they informed the Commission that Sprint would be discontinuing its Time-Division Multiplexing (TDM) services and transitioning to Internet Protocol (IP) services at the outset of this transaction, yet it was not until March 30, 2020 – two days before the Joint Applicants announced the close of the transaction[3] and after over 20 months of review by the Commission and other parties – before Sprint deemed the transitions complete enough to attempt to relinquish its CPCN. They then incorrectly

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[1] Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011 et al, filed Mar. 30, 2020 (Motion).
[2] *See* Sprint Communications Company L.P.'s ("Sprint") Advice Letter 918, filed Mar. 30, 2020 (Tier 1 AL). Since its filing, the Communications Division has suspended the Tier 1 AL from taking effect.
[3] *See* Letter from Michael Sievert, President and Chief Operating Officer of T-Mobile, to the Honorable Clifford Rechtschaffen, Commissioner at the California Public Utilities Commission, and the Honorable Karl Bemesderfer, Administrative Law Judge at the California Public Utilities Commission, re: Application Nos. 18-07-011 and 18-07-012, filed Mar. 31, 2020. (March 31 T-Mobile Letter).

claimed that the Commission has no authority to regulate or review the transaction between T-Mobile and Sprint because the Commission does not have authority over IP-enabled services.[4] The Joint Applicants completely ignore the fact that Public Utilities Code Section 710,[5] prohibiting Commission regulation of IP-enabled services, including Voice over Internet Protocol (VoIP), lapsed in January 2020.[6] Therefore, the Joint Applicants are incorrect to declare that the Commission has no authority to regulate the transfer of Sprint's wireline assets to T-Mobile.

II. JOINT APPLICANTS MISSTATE THE COMMISSION'S AUTHORITY

A. The Commission Has Authority.

The Commission has jurisdiction over the transfer of control of Sprint Wireline and is not prevented from regulating VoIP under federal or state law. Sprint and T-Mobile incorrectly argue that the Commission lacks jurisdiction to review the Wireline Application because Sprint Wireline exclusively provides VoIP services and has requested to withdraw its CPCN.[7] As of January 2020, the prohibition of the Commission's authority over IP-enabled services expired.[8] The Commission is, therefore, *no longer* prohibited by the statute from regulating VoIP.

Even during the existence of the statutory prohibition on Commission regulation of VoIP, the Commission exercised its merger transaction approval authority pursuant to Section 854 when it analyzed proposed mergers of VoIP providers in the state. In 2016, the Commission authorized the merger of Charter Communications (Charter) and Time Warner Cable, Inc. (Time Warner), both

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[4] Motion at 3.
[5] All statutory references are to the California Public Utilities Code.
[6] *See* TURN and The Greenlining Institute Joint Protest to AL 918, filed Mar. 31, 2020, at 2-3 (Joint AL Protest). *See also* Protest of AL 918 of the Public Advocates Office, filed Apr. 7, 2020, at 2 (Public Advocates Office Protest); Protest of Sprint Communications Company L.P. (U-5112-c) Tier 1 Advice Letter 918 Relinquishing CPCN, Communications Workers of America, filed Apr. 9, 2020, at 2 (CWA Protest). Each protest is attached as an appendix to this opposition.
[7] Motion at 3-4.
[8] *See* Joint Protest of AL at 2.

providers of VoIP services.[9] There, the Commission found that Charter itself put issues related to VoIP and broadband into the scope of the proceeding by relying on those services to demonstrate benefits for the merger (as the ALJ finds that Joint Applicants have done here with wireless and broadband services). Nearly every condition imposed by the Commission on Charter was structured to address New Charter's IP-enabled offerings, including requiring Charter to obtain a CPCN for its voice services.[10] In 2015, Comcast Corporation (Comcast), a wireline provider, sought approval by the Commission under Section 854 for the acquisition of Time Warner's wireline assets, including its VoIP services.[11] In these cases involving VoIP providers, the Commission found that it has an obligation and the authority to determine whether the proposed merger is in the public interest for California consumers. Furthermore, the California Supreme Court has held that the Commission's public interest analysis must include a consideration of the competitive implications of the proposed transactions.[12]

The Joint Applicants also wrongly assert that state agencies, such as the Commission, are preempted by federal law from regulating VoIP and IP-enabled services. It is far from "well established" that "federal law preempts state [Public Utilities Commissions] PUCs from subjecting VoIP to public utility or common carrier regulation, such as the preapproval requirement for transfers

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[9] D. 16-05-007 (A.15-07-009).

[10] D. 16-05-007, p 20. *See e.g.*, OP 2d: "Within thirty days of the closing of the Transaction, executive officers of Charter Fiberlink, TWCIS and Bright House Networks shall cause their respective companies to comply with the certification requirements imposed by the Commission in Decision (D.) 13-05-035 by executing, on behalf of their respective companies, the certification required by D.13-05-035." It is notable that Charter did not file an Application for Rehearing of the Commission's findings that it had authority to review the VoIP elements of the merger.

[11] *See* D.15-07-037, p. 4, 6 (noting that the ALJ rejected Comcast/Time Warner arguments that the Commission was prevented from conducting a review because the parties were VoIP providers and issued a Proposed Decision with conditions on the providers).

[12] Proposed Decision at p. 3, note 8, citing *Northern California Power Agency v. Public Utilities Commission* (1971) 6 Cal. 3d 370, 377.

of public utilities under Section 854."[13] The Joint Applicants rely primarily on an Eighth Circuit case from 2018[14] and the Federal Communications Commission's (FCC) *Restoring Internet Freedom Order*[15] to argue that the Commission has no authority over VoIP provision because it is in an information service. However, despite the Joint Applicants' attempt to discount the 2019 DC Circuit *Mozilla* decision,[16] the *Mozilla* decision specifically vacated the FCC's preemption of all states from regulating information services.[17] In overturning the FCC's attempt to preempt states from regulating IP-services, the DC Circuit vacated "the portion of the [*Restoring Internet Freedom Order*] that expressly preempts any state or local requirements that are inconsistent with its deregulatory approach."[18] The DC Circuit expressly stated that the FCC "ignored binding precedent by failing to ground its sweeping Preemption Directive – which goes far beyond conflict preemption—in a lawful source of statutory authority. *That failure is fatal*."[19]

Accordingly, the specific portion of the *Restoring Internet Freedom Order* that the Joint Applicants rely on to claim that this Commission is preempted from regulating information services was expressly vacated by the DC Circuit Court. *Mozilla*'s rejection of the FCC's preemption argument for information services directly conflicts with the Eighth Circuit's holding in *Charter* that a state was preempted from regulating VoIP due to its classification as an information service, weakening the Joint Applicants' attempt to rely on the *Charter* case to support its arguments.[20]

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[13] Motion at 4.
[14] *See* Motion at 4, fn.12 (citing *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 717 (8th Cir. 2018) (*Charter*)).
[15] *See* Motion at 4, fn.12 (citing *Restoring Internet Freedom*, 33 FCC Rcd. 311 (2018) (*Restoring Internet Freedom Order*).
[16] Motion at 4, fn.12 specifically states that *Mozilla* was "vacated on other grounds." *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019) (*Mozilla*).
[17] *Mozilla*, 940 F.3d at 74.
[18] *Mozilla*, 940 F.3d at 74 (internal quotations removed).
[19] *Id*., 940 F.3d at 74 (emphasis added).
[20] Motion at 3, 4.

Therefore, the federal law is far from settled as a clear circuit split exists regarding the FCC's preemption authority and the ability of states to regulate information services. It must also be noted that the California Constitution prevents agencies from declaring any state statute unenforceable "on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."[21] Until an appellate court explicitly rules that this Commission cannot exert authority over transactions involving VoIP services, the Commission must continue to follow its statutory mandates.

Joint Applicants also argue that the Commission is preempted from reviewing the wireline transaction because the nature of the Sprint's wireline services are now "interstate" and the FCC preempts state commissions from regulating interstate services.[22] However, to date, the Commission's authority pursuant to Section 854 to conduct a merger review involving public utilities operating in California has not been found to be in conflict with longstanding federal jurisdiction over interstate services. This merger proceeding should be treated no differently. The Commission is not imposing rate regulation or authority over the interstate *services* offered by Sprint Wireline, either when it filed its Wireline Application[23] or as it proposes to withdraw it. The Commission's obligations under Section 854 do not implicate issues of federal separations, but instead address critical issues of consumer protection, safety, and nondiscrimination raised by the merger of the corporate entities that are parties to the transaction.

B. Joint Applicants Present an Overly Narrow Interpretation of Section 854.

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[21] *See* Article III, Section 3.5(c).
[22] Motion at 4-5.
[23] A.18-07-011, at p. 2, 4 describing Sprint Wireline as both a CLEC and a non-dominant interexchange carrier offering services exclusively to a limited number of enterprise and carrier customers.

The Joint Applicants argue that the Commission's authority pursuant to Section 854 is limited to transactions involving public utilities holding CPCNs.[24] Public Utilities Code Section 854 states that any merger seeking to acquire a public utility doing business in California must first secure approval from the Commission to do so. Nowhere does Section 854 state that the utility must hold a CPCN to trigger approval from the Commission. Further, Sections 216, 233 and 234, when read together, state that any corporation using any facilities to transmit voice communications for compensation in California is a telephone corporation and public utility subject to the jurisdiction of the Commission. Nothing limits the Commission's jurisdiction to transfers involving a CPCN holder, nor do they limit jurisdiction to transfers of TDM networks. The Commission takes Section 854 approval very seriously, as evidenced by its imposition of fines against Mitel for executing a merger transaction without first receiving Commission approval.[25]

The Joint Applicants further argue that because Sprint has notified the Commission of its intent to withdraw its CPCN, the Sprint Wireline application transaction no longer requires Commission approval. However, the Communications Division suspended the effect of Sprint's AL 918 that purported to relinquish its CPCN. Therefore, Sprint still holds a CPCN in this state. To that end, even though a CPCN is not required to trigger an approval of a merger via Section 854, Sprint still has a CPCN. Because Sprint still has its CPCN due to the suspension of its AL seeking to relinquish it, the Joint Applicants' reliance on the language in the Mitel decision that dismisses an application for transfer because Mitel had relinquished its CPCN, no longer applies.[26] In Mitel, the

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[24] Motion at 3-4.
[25] D.19-12-008 at 8 ("On November 30, 2018, the date on which the Transaction was executed, Mitel held a CPCN . . . . Mitel is a public utility and an applicant in this proceeding. . . Mitel is subject to monetary penalties for the violation [of Section 854(a)].").
[26] *See* D.19-12-008 at 14-15.

Commission stated that the request by Mitel to relinquish its CPCN would be granted, if Mitel followed the mandated customer notice requirements.[27]

Even if the Communications Division, and by extension the Commission, released Sprint's AL from suspension, Sprint's relinquishment of its CPCN negates neither the Commission's authority over the Joint Applicants as public utilities per Sections 216, 233, and 234, nor the Commission's Section 854(a) authority to approve mergers involving California public utilities, as discussed above.

III. CONCLUSION

For the reasons set forth above, the Joint Applicants' Motion to Withdraw Sprint's Wireline Application must be denied.

Dated: April 10, 2020

Respectfully submitted,
/S/

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[27] *See id*. at 14.

APPENDIX A

Communications Workers of America, District 9's Protest to Sprint Communications Company, L.P. Advice Letter 918

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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,

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REK:acp

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

APPENDIX B

Public Advocates Office's Protest to
Sprint Communications Company, L.P. Advice Letter 918

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Re: Protest of the Public Advocates Office to Sprint Communications Company L.P. (U-5112-C) Advice Letter 918

I. Introduction

Pursuant to Rule 7.4 of the California Public Utilities Commission's (Commission) General Order (G.O.) 96-B, the Public Advocates Office at the California Public Utilities Commission ("Public Advocates Office") hereby protests Sprint Communications Company L.P. (U-5112-C) (Sprint) Advice Letter (AL) 918, dated March 30, 2020. AL 918 purports to notify the Commission of Sprint's intention to abandon its Certificate of Public Convenience and Necessity (CPCN) and cease providing service as a public utility.[1] AL 918 states that Sprint will no longer provide service using Time-Division Multiplexing (TDM) and will now offer Internet Protocol (IP) services, including Voice over Internet Protocol (VOIP) service.[2] The AL argues that Sprint does not need a CPCN to continue providing its services in California and will instead use a VoIP Registration number, which Sprint filed for on the same day it served AL 918.[3]

The Public Advocates Office protests Advice Letter 918 on the grounds that: (1) The relief requested in the advice letter requires consideration in a formal application and is otherwise inappropriate for the advice letter process; and (2) The relief requested in the advice letter is unjust, unreasonable, and/or discriminatory.

[1] AL 918 at 1.

[2] AL 918 at 1.

[3] AL 918 at 1.

Sprint's requested relief and the supporting arguments raise complex and nuanced issues. For example, AL 918 fails to address the status of Sprint's California customers and how the technology transition was noticed, the fact that Sprint's legal interpretation ignores the current status of state law regarding VoIP service, and the implications raised by the abdication of Sprint's CPCN on the Commission's review of (Applications 18-07-011 and 18-07-012, which seek approval for the proposed merger between Sprint and T-Mobile (collectively, Joint Applicants).[4] As such, the relief requested by AL 918 is inappropriate for the advice letter process. The Commission should reject AL 918 and direct Sprint to file an application if it wishes to relinquish its CPCN.

II. Discussion

A. Sprint's Representation of the Commission's Jurisdiction of IP Enabled Services and VoIP is Flawed and Must Be Reviewed in Detail.

Contrary to Sprint's assertions, it is not well established that VoIP is an "information service" not subject to public utility regulation.[5] The California legislature allowed the law that previously prohibited the Commission from regulating IP-enabled services, Public Utilities Code § 710, to sunset on January 1, 2020, several months prior to Sprint filing AL 918.[6] The facilities-based IP services, such as those offered by Sprint wireline, require a more detailed analysis and trial of fact rather than a Tier 1 Advice Letter. Furthermore, Public Utilities (PU) Code § 2896 gives the Commission express authority over "telephone corporations." PU Code §§ 233 and 234, define "telephone line" and "telephone corporation," and, when read together with § 2896, imply that any corporation using any facilities to transmit communication by telephone for compensation in California is a telephone corporation regardless of the technology used to facilitate communication. Therefore, the status of regulatory authority over information services in California does not impact the authority of the Commission to regulate Sprint as a telephone corporation, a status which Sprint will still hold as long as it sells voice services in California.

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[4] On April 1, 2020, Commissioner Rechtschaffen, the assigned Commissioner over A.18-07-011 et al, ruled that the Joint Applicants "shall not begin merger of their California operations until *after* the CPUC issues a final decision on the pending applications." Assigned Commissioner's Ruling, A.18-07-011 et al, filed Apr. 1, 2020 (emphasis original).

[5] *See* AL at 2.

[6] In addition, The California Legislature passed Senate Bill (SB) 822, *the California Internet Consumer Protection and Net Neutrality Act of 2018.* SB 822 was codified in California Civil Code Title 15 Internet Neutrality §3101 before Sprint filed AL 918. The law imposes common carriage obligations on certain IP enabled services, although the Attorney General's office is not currently enforcing the law due to federal court proceedings on net neutrality. The Legislature's passing of SB 822 further demonstrates the recent shift in regulation of IP enabled services.

The Commission should reject AL 918 and direct Sprint to submit an application in order to allow for a detailed review and analysis of both the legal assertions that Sprint has made and the factual assertions about whether Sprint had adequately notified of, and not forced its customers onto, the technology transition. Sprint cannot have the sole discretion to decide that its services are entirely deregulated and no longer require a CPCN to operate in California, particularly if Sprint is still intending to operate telecommunications facilities or attach to utility poles.

B. Sprint's Choice to Relinquish its CPCN is Intertwined with the Proposed Merger of Sprint and T-Mobile and The Commission Should Review Potential Impacts.

Sprint and T-Mobile jointly filed two applications before the Commission for the proposed merger, Application (A.) 18-07-011 for the wireline transfer of control and A.18-07-012 for a "notification" to the Commission and request for review of the wireless transaction. The Commission consolidated both Applications and, on March 11, 2020 issued a Proposed Decision approving the merger and setting certain conditions for the new company. Sprint filed AL 918 two days before opening comments on the Proposed Decision were due to be filed, concurrent with the Motion of Joint Applicants to Withdraw Wireline Application (Motion to Withdraw) in the proposed merger as moot.[7]

The Motion to Withdraw directly references AL 918, using the AL as justification to withdraw A.18-07-011 despite a pending Proposed Decision and a submitted evidentiary record. The Commission usually denies such attempts to withdraw applications when a Commission decision is pending, especially when the withdrawal is predicated on avoiding unwanted outcomes.[8] AL 918, the Motion to Withdraw, and A.18-07-011 are, therefore, all clearly closely intertwined.

Sprint's sudden abdication of its CPCN will likely significantly impact the pending merger proceeding and create a host of new legal issues directly related to Sprint's contention that IP enabled services are unregulated services. The interaction of AL 918 and the Motion to Withdraw will likely inject chaos and uncertainty into the final stage of review of the proposed merger. As such, the relief Sprint seeks in AL 918 is inappropriate for a Tier 1 Advice Letter and unjust for the numerous Intervenors who dedicated significant resources to the review of the proposed merger. The relief sought, frankly, disrespects the Commission's authority to review this merger, as it was filed over a year after Sprint sought the Commission's approval of its transaction with T-Mobile. The Commission should reject AL

[7] Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011 et al filed Mar. 30, 2020, at 4.

[8] Decision (D.)04-06-016 at 6. "The Commission has sole authority to close a proceeding." And at p. 7. "…that an application may not be withdrawn for the purpose of avoiding an adverse outcome."

918 and direct Sprint to submit an application to alleviate these significant overlapping concerns.

C. The Commission Should Ensure the Customers Sprint Claims to have Transitioned W ere Properly Notified and Transitioned to IP Enabled Services.

The Commission should ensure that Sprint has adequately notified and transitioned its customers from TDM service to exclusively IP enabled service, especially considering the concurrent filing of the Motion to Withdraw, false assertions that IP services are unregulated, and the pending merger. The Commission must also confirm that Sprint's customers were properly informed of the impact of a transition on their rights to consumer protections and will not be migrated without their consent and proper notice.

III. Conclusion

For the reasons outlined above, the Commission should reject Advice Letter 918 and require Sprint to submit a formal application if it wishes to relinquish its CPCN.

Please submit questions concerning this protest to Ana Maria Johnson (anamaria.johnson@cpuc.ca.gov) and Cameron Reed (cameron.reed@cpuc.ca.gov).

Respectfully submitted,

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APPENDIX C

The Utility Reform Network's Protest to Sprint Communications Company, L.P. Advice Letter 918

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April 1, 2020

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Re: Protest of The Utility Reform Network of Sprint Communications Company L.P. (U-5112-C) Tier 1 Advice Letter 918

I. INTRODUCTION

Pursuant to General Rules Section 7.4 of the California Public Utilities Commission's General Order 96-B, The Utility Reform Network ("TURN") and The Greenlining Institute ("Greenlining") protest Sprint Communications Company L.P.'s ("Sprint") Advice Letter 918, dated March 30, 2020. This Advice Letter purports to "notify" the Commission of its intent to relinquish its Certificate of Public Convenience and Necessity (U-5112-C) ("CPCN") granted in a series of decisions between 1988 and 2007.[1] The Advice Letter requests that the Commission deem the relinquishment effective on the same day as the service of the Advice Letter dated March 30, 2020.[2]

TURN and Greenlining protest this Advice Letter pursuant to Section 7.4. Under Section 7.4.1 TURN and Greenlining have 20 days from the date that the Advice Letter was served to protest despite the effective date pending disposition. However, in light of the unique circumstances surrounding Sprint's requested relief, TURN and Greenlining file this protest on an expedited basis and request that the Commission act as quickly as possible to reject the Advice Letter without prejudice to a subsequent filing of a formal application. Action by the Commission to reject this Advice Letter will provide regulatory certainty regarding the Commission's jurisdiction over VoIP services and its current merger review of the proposed transaction between Sprint and T-Mobile.[3]

TURN and Greenlining protest this Advice Letter on grounds set forth in General Rule Section 7.4.2(5) and (6), and urges the Commission to find that:

(5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process

and

[1] Advice Letter 918 at p. 1.
[2] G.O. 96-B General Rule Section 7.3.3 (Effective Pending Disposition)
[3] A.18-07-011/A.18-07-012 *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*.

(6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

Sprint's Advice Letter provides notice of its intent to relinquish its CPCN and claims that it has completed its "years long" transition from providing traditional wireline services to now exclusively providing services based on Internet Protocol ("IP") formats.[4] Sprint argues that it no longer requires its CPCN to conduct business in California and can, instead, rely on a VoIP Registration which it filed contemporaneously with this Advice Letter.[5] The requested relief and arguments made in support of the relief raise extremely complicated issues of both fact and law, do not properly reflect the current status of federal and state law, and fail to address the impact of this request on the Commission's pending merger review of the transaction between Sprint and T-Mobile. As such, the requested relief is not appropriate for ministerial review pursuant to General Order 96-B and should be rejected without prejudice. If Sprint wishes to withdraw its CPCN, it should be required to file an application.[6]

II. DISCUSSION

A. **Sprint's Claims Regarding Commission Jurisdiction over IP Enabled Services Must be Subject to Further Review**

Sprint's Advice Letter and requested relief comes at a precipitous time. First, the Legislature has allowed Public Utilities Code §710 to sunset.[7] This action follows on the heels of the adoption of SB822, *the California Internet Consumer Protection and Net Neutrality Act of 2018*[8] and the federal Appellate Court's ruling in the *Mozilla v. FCC* net neutrality appeal, wherein the federal court rejected the FCC's sweeping attempt to preempt state broadband and net neutrality policies.[9] These events have a direct impact on the analysis and support that Sprint cites for its requested relief and for its claims that the Commission has no regulatory authority over its services merely because they are IP-enabled.

The Advice Letter process, especially Tier 1 and Tier 2 advice letters that allow for industry division disposition, is reserved for ministerial acts.[10] Due to changes in state statutes and policies regarding the regulation of IP-enabled and VoIP services, it is legal error for Sprint to unilaterally declare that its services are completely deregulated and that it no longer requires a CPCN to operate at all in

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[4] Advice Letter at p. 1.
[5] Advice Letter at p. 1.
[6] 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 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.")
[7] Public Utilities Code §710(h) "This Section shall remain in place until January 1, 2020 and as of that date is repealed…… ; AB1366 (2019, Daly and Obernolte) on Committee Hold pursuant to Section 29.10.
[8] SB822 (Chapter 976, September 30, 2018), Civil Code §3100, et seq.
[9] *Mozilla Corp. v. FCC*, 940 F.3d 1, 121-145 (D.C. Cir. 2019) The extent of the Commission's authority in light of the Court's detailed analysis is exactly the issue to be addressed outside of this Advice Letter process.
[10] General Order 96-B, General Rules Section 7.6.1 (citing Commission Decision 02-02-049).

California or the impact of a VoIP Registration on the Commission's jurisdiction over these services. The Commission must determine the impact on Sprint's customers, even if they are mostly business customers, to ensure that these entities have access to appropriate consumer protections, complaint handling, service quality and other safeguards, and to set forth any conditions under which Sprint would be allowed to withdraw its CPCN.

TURN and Greenlining are not, at this time, categorically opposing Sprint's request to withdraw its CPCN or its business decision to serve these customers using IP-enabled technology. But it is inappropriate to allow Sprint to unilaterally withdraw its CPCN before the Commission has had an opportunity to conduct a legal analysis of the Commission's authority in the absence of Section 710 and within the guidelines of the Legislature's statutory directives and developments of federal law.[11]

B. **Sprint's Decision to Withdraw its CPCN May Result in a Cascade of Impacts on the Commission's Merger Review**

Sprint's Advice Letter also comes at a critical juncture in the Commission's review of the pending Applications related to the merger transaction between Sprint and T-Mobile. In July 2018, Sprint and T-Mobile filed two applications before the Commission regarding their proposed merger. One Application was a request for approval of the transfer of control pursuant to Section 854 (A.18-07-011, Wireline Merger), while the other was fashioned as a "notification" to the Commission and request for review of the wireless transaction (A.18-007-012, Wireless Merger). The Commission consolidated the two applications and has conducted a detailed and resource-intensive review of this transaction over the course of the past 18 months. A Proposed Decision approving both applications, with conditions, is currently pending for comment and a Commission vote.

Sprint's decision to withdraw of its wireline CPCN at this time, two days before opening comments are due on the Proposed Decision, could have significant impacts on the Commission's review of this transaction between two behemoth wireless companies that will impact millions of California consumers. Indeed, at the same time as Sprint submitted this Advice Letter, Joint Applicants filed a Motion in the merger review proceeding to withdraw the wireline application, arguing that because one of the Joint Applicants no longer has a CPCN and only offer IP-enabled services, "approval for the wireline transaction under California Public Utilities Code §854 is no longer required."[12] The fact that Sprint's Motion to withdraw the Wireline Merger application in the merger review docket, filed immediately upon submission of this Advice Letter, could up-end the merger review and undo the massive amount of work and resources that all stakeholders have dedicated to the review, should be sufficient grounds to determine that Sprint's request is inappropriate for advice letter relief.

Beyond just filing the Motion to withdraw, TURN and Greenlining note that Joint Applicants have maintained their position that the Commission only has jurisdiction to fully review the wireline transaction,[13] and even without the Motion, allowing Sprint to unilaterally withdraw its CPCN could

[11] Indeed, all of Sprint's citations supporting its assertion that the Commission has no regulatory authority over its IP-enabled services pre-date both the sunset of §710 and the federal Appellate Court's Ruling in *Mozilla*.
[12] Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011/A.18-07-012, March 30, 2020 at p. 2.
[13] See, Joint Applicants' Opening Brief, April 26, 2019 at p. 14-15; See also T-Mobile March 31, 2020 Letter to the CPUC reiterating its "abiding view that the Commission lacks jurisdiction over this [wireless] transaction."

impact the resulting decision in the merger review. Additionally, in reviewing this Advice Letter, the Commission must consider that T-Mobile and the California Emerging Technologies Fund agreed that their Memorandum of Understanding, entered into as part of the merger review and relied upon by the Proposed Decision to find that the merger benefits customers, is explicitly tied to the approval of the Wireline Application.[14] If the Wireline Application is withdrawn, directly as a result of the relinquishment of Sprint's CPCN, the status of these MOU conditions would be clearly called into question and must be further analyzed for its impact on the record of the merger review.[15]

Here again, the requested relief is not appropriate for ministerial approval in light of the significant impact it may have on this sweeping merger review by the Commission. Indeed, in D.19-12-008, the Commission fined a CPCN-holding CLEC for failing to gain appropriate approval for its merger under Section 854(a) prior to withdrawing its CPCN.[16] The Commission should require Sprint to withdraw this Advice Letter and file an application to withdraw its CPCN to allow the Commission to conduct an analysis of the impact of this withdrawal on the merger review and enforcement of its final decision in this proceeding.

C. Sprint's Factual Claims Should Be Verified

Finally, in light of the discussion above and the timing of these events, TURN and Greenlining urge the Commission to further verify Sprint's factual claims that it has completed its "years long" transition of its customers onto exclusively IP-enabled services. It should further confirm that Sprint's customers have received full and adequate notice of the impact of this transition on the customers' legal and regulatory rights to consumer protections, appropriate complaint handling, remedies, and relief and to ensure that the customers were given a choice to switch and not forcibly migrated without proper consent and notice.[17] TURN and Greenlining note that Sprint did not file an Advice Letter to withdraw specific services and, as such, could be in violation of General Order 96-B if it withdrew specific services while customers were currently subscribed and subsequently forced off of the services. The Advice Letter claims that no customers will experience service interruptions or disconnections and that all customers received at least 30-days notice; but these assurances ring hollow if the transition of these customers happened over years.

II. CONCLUSION

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[14] Memorandum of Understanding between T-Mobile USA and the California Emerging Technologies Fund, March 23, 2019, p. 1, ("All the terms of this MOU are expressly contingent upon the CPUC's approval of the Wireline Application, the CPUC's completion of its review of the Wireless Notification, and the consummation of the Transaction.")

[15] Just hours after Sprint submitted its Advice Letter and hours before TURN and Greenlining submits this Protest, T-Mobile issued a letter to the CPUC announcing that it has chosen to close the merger on April 1st, 2020, without the Commission's final decision. While TURN and Greenlining has not fully analyzed the potential impacts of T-Mobile's unilateral announcement, the letter claims that the merged company will "honor the nearly 50 voluntary California specific conditions it has made in connection with the deal." This presumably refers in part to those commitments in the CETF MOU. Yet, the letter does not clarify or discuss the impact of this Advice Letter or the related request to withdraw the wireline application in the absence of a CPCN on the enforceability of the CETF MOU.

[16] D.19-12-008 at p. 9, ("We find that the violation [of Section 854(a)] poses regulatory and economic harms and, therefore, the severity of the violation is high.")

[17] This should be determined even if the customers had contracts with Sprint for these services and not merely tariffs.

TURN and Greenlining protest this Advice Letter and urge the Commission to reject the Advice Letter without prejudice and to require Sprint to file a formal application for its requested relief. Sprint's should not be allowed to unilaterally notify the Commission of its intent to relinquish its CPCN because such an act raises significant issues of fact and law and is not appropriate for a ministerial review. Please submit questions concerning this protest to Christine A. Mailloux at cmailloux@turn.org or Paul Goodman at paulg@greenlining.org

Respectfully,

/s/
Christine Mailloux
The Utility Reform Network