

**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

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.

Application 18-07-012

**MOTION OF JOINT APPLICANTS TO SHORTEN
THE REVIEW AND COMMENT PERIODS FOR PROPOSED DECISION**

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**MOTION OF JOINT APPLICANTS TO SHORTEN
THE REVIEW AND COMMENT PERIODS FOR PROPOSED DECISION**

Pursuant to Rules 11.1 and 14.6(a) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively “Sprint”), and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Joint Applicants”) hereby file this motion to shorten the review and comment periods for the proposed decision to be issued in this case, from 30 days to 13 days and for the comment period to be shortened from 20 days to 10 days, with no reply comments. Simultaneously with this motion, Joint Applicants are also filing a motion to request reconsideration of the *Presiding Officer’s Ruling Revising Schedule* (“Presiding Officer’s Ruling”) and seek a determination that the final decision will be voted on at the March 26, 2020 Commission meeting.

I. BACKGROUND

On February 24, 2020, the Presiding Officer’s Ruling was issued revising the schedule for this proceeding to provide for a proposed decision to be issued “[o]n or before” March 13,

2020 with a final decision to be considered at the Commission's April 16, 2020 Business Meeting.

As the Commission is aware from Joint Applicants' February 11 e-mail¹ and meetings with each of the Commissioner offices,² Joint Applicants have announced their intention to close the merger on April 1, and have requested that the Commission act expeditiously to ensure that its proceedings in these matters conclude before that date.³

For this reason, Joint Applicants are simultaneously filing a separate motion that seeks reconsideration of the Presiding Officer's Ruling and requests that the Proposed Decision in this matter be considered at the *March 26, 2020* Commission Business Meeting, rather than the April 16, 2020 meeting ("Reconsideration Motion"). This scheduling change will require a corresponding change in the review and comment period for the Proposed Decision (the topic that is addressed by this motion). Specifically, this motion respectfully requests that the public review period for the Proposed Decision be reduced from 30 days to 13 days,⁴ and that the public comment period be reduced from 20 days to 10 days with no reply comments.⁵ The reduced period would still afford the parties a reasonable opportunity to review and comment on the

¹ See Email from Suzanne Toller to Commissioner Rechtschaffen and ALJ Bemserderfer (February 11, 2020), copying services list for A.18-07-011/A.18-07-012.

² See Notice of Ex Parte Communication of Joint Applicants (February 24, 2020).

³ See *T-Mobile and Sprint Announce Amendments to Business Combination Agreement*, (February 20, 2020) ("[W]e are now turning our attention toward our goal of closing this transaction and creating the New T-Mobile as early as April 1, 2020..."), <https://investor.t-mobile.com/news-and-events/t-mobile-us-press-releases/press-release-details/2020/T-Mobile-and-Sprint-Announce-Amendment-to-Business-Combination-Agreement/default.aspx>.

⁴ See Pub. Util. Code § 311, providing a 30 day review period for proposed decisions.

⁵ Rule 14.3 provides for a 20-day comment period on proposed decisions, with 5 days for reply comments.

proposed decision in advance of the Commission’s consideration of the Proposed Decision at its March 26, 2020 meeting.⁶

II. ANALYSIS

Cal. Pub. Util. Code § 311(d) provides that:

The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, *except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation* or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. (Emphasis added)

Rule 14.6(a) of the Commission’s Rules of Practice and Procedure (“Rules”) provides that the Commission can reduce or waive the period for public review and comment in an unforeseen emergency situation, which is defined, in part, as a matter that requires a Commission decision more quickly than would be permitted under regular timing requirements.⁷ Examples include, but are not limited to:

(6) Requests for relief based on extraordinary conditions in which time is of the essence.... [and]... (8) Unusual matters that cannot be

⁶ To the extent that the CPUC issues the Proposed Decision before March 13, 2020, Joint Applicants would support the review and comment period being extended a corresponding number of days, provided that comments are submitted no later than March 23, three days before the Commission’s March 26, 2020 business meeting.

⁷ Rule 14.6(a) states that “[U]nforeseen emergency situation’ means a matter that requires action or a decision by the Commission more quickly *than would be permitted if advance publication were made on the regular meeting agenda.*” (Emphasis added). In practice, the Commission relies on this rule to also shorten comment periods for matters that appear on the Commission’s regular agenda with the requisite 10-days’ notice. In practice, the Commission relies on this rule to also shorten comment periods even for matters that appear on the Commission’s regular agenda with the requisite 10-days’ notice. *See, e.g.*, D.17-05-004 (shortened comment period for decision issued 28 days before voting meeting); Resolution E-4805 (shortened comment period for resolution issued 20 days before voting meeting).

disposed of by normal procedures if the duties of the Commission are to be fulfilled.⁸

In this case, as described below, the circumstances in which the parties find themselves are extraordinary, and time is clearly of the essence where the merger is set to deliver enormous benefits to consumers in California and nationwide by closing on April 1.

The circumstances of the pending merger docket are extraordinary. This merger has now been pending before this Commission for almost 20 months. In that time, the merger has been approved by three federal agencies, the Federal Communications Commission, the Department of Justice, and the Committee on Foreign Investment in the United States.⁹ Each of the eighteen other state public utility commissions that has reviewed aspects of the merger completed its proceedings (with the last one completing its review over nine months ago, in May 2019).¹⁰

⁸ Rule 14.6(a).

⁹ See *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); *United States et al. v. Deutsche Telekom AG, T-Mobile US, Inc., SoftBank Group Corp., Sprint Corp., and DISH Network Corp.*, Stipulation and Order, No. 1:19-cv-02232 (D.D.C.) (filed July 26, 2019); *T-Mobile and Sprint Receive Approval from Both the Committee on Foreign Investment in the U.S. and Team Telecom on Merger Transaction*, T-Mobile News (December 17, 2018), <https://www.t-mobile.com/news/cfius-and-team-telecom-approval-merger>.

¹⁰ See Alaska – *In the Matter of the Application Filed by T-Mobile USA, Inc. to Acquire a Controlling Interest in Sprint Communications Co. L.P.’s Certificate of Public Convenience and Necessity No. 750*, Order No. 2 Granting Application, Case U-18-091 (Oct. 30, 2018); Colorado – *In the Matter of the Joint Application of Sprint Communications Co. L.P. and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control*, Comm’n Decision Approving Joint Transfer, Proceeding No. 18-A-0469T (Sept. 5, 2018); Washington D.C. – *Joint Application of Sprint Communications Co. L.P. and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc.*, Order, No. 19708 (Oct. 11, 2018); Delaware – *Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control of Sprint Communications Co. L.P.*, Memorandum, Docket No. 18-0984 (effective Aug. 20, 2018); Georgia – *Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control of Sprint Communications Co. L.P.*, Letter Order, Docket No. 6659 (Sept. 6, 2018); Hawaii – *In the Matter of the Joint Application of T-Mobile USA, Inc. and Sprint Communications Company L.P. for Waiver of Regulatory Requirements or, in the Alternative, Approval of the Proposed Indirect Transfer of Control of Sprint Communications Company L.P.*, Decision and Order No. 36341, Docket No. 2018-0157 (May 30, 2019); Louisiana – *Section 301.M Notice of Change in Ownership involving Subsidiaries of T-Mobile*

Joint Applicants have also successfully litigated to judgment an antitrust lawsuit challenging the merger in federal court. On February 11, 2020, the Honorable Victor Marrero in the Southern District of New York issued a comprehensive 170-page decision after a two-week trial in December 2019, rejecting claims filed by a group of state attorneys general, including the California Attorney General, asserting that the merger would be anticompetitive. That decision recognized that the merger will result in greater competition and generate enormous consumer benefits—including lower prices and higher-quality services—by, among other things, creating a substantially better nationwide 5G network than either Sprint or T-Mobile could deploy alone. This Commission is now the only state agency that still has open proceedings relating to the merger.

USA, Inc. and Sprint Corp., Acknowledgment Letter, Docket No. S-34950 (Aug. 6, 2018); Maryland – *Notification of Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc.*, Acknowledgment Letter, ML No. 221371, S-1792 (Sept. 26, 2018); Minnesota – *In the Matter of the Joint Petition for Approval of the Indirect Transfer of Control of Sprint Communications Co., L.P. to T-Mobile USA, Inc.*, Order, Docket No. P466,PT6227/PA-18-484 (Sept. 5, 2018); Mississippi – *In the Matter of the Joint Application of T-Mobile USA, Inc. and Sprint Communications Co. L.P. for Approval of Indirect Transfer of Control*, Order Approving, Docket No. 18-UA-124 (Jan. 10, 2019); Nevada – *Notice Regarding Transfer of Control of Sprint Communications Co. L.P. per NRS 704.329 (under 10 percent intrastate), and Waiver Request*, Closing Letter, Docket No. 18-07009 (effective Aug. 30, 2018); New Jersey – *In the Matter of Sprint Communications Co. L.P.’s Notification of Indirect Transfer of Control of Sprint Communications Co. L.P. to T-Mobile USA, Inc.*, Order, Docket No. TM18070730 (Dec. 18, 2018); New York – *Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. Concerning an Indirect Transfer of Control*, Order Approving Transfer of Indirect Control Subject to Conditions, Case 18-C-0396 (Feb. 7, 2019); Pennsylvania – *Application of Sprint Communications Company L.P. for Approval of a General Rule Indirect Transfer of Control from Softbank Group Corp. to T-Mobile US, Inc.*, Order, Docket No. A.2018-3003259 (May 23, 2019); Texas – *Application of Sprint Communications Co. L.P. to Amend a Certificate of Operating Authority*, Notice of Approval, Docket No. 48536 (Sept. 26, 2018); Utah – *Application of Sprint Communications Co., L.P. for Informal Adjudication of Indirect Transfer of Control*, Acknowledgment Letter, Docket No. 18-094-02 (Aug. 23, 2018); Virginia - *Joint Petition of Sprint Communications Co. of Virginia, Inc., Sprint Communications Co. L.P., Softbank Group Corp., Deutsche Telekom AG, and T-Mobile USA, Inc. for Approval of an Indirect Transfer of Control*, Order Granting Approval, Case No. PUR-2018-00110 (Dec. 6, 2018); West Virginia – *Joint Petition of T-Mobile USA, Inc. and Sprint Corp. for Approval of Transfer Control of Authorized Telecommunications Providers*, Recommended Decision, Case No. 18-1087-T-PC (effective Oct. 15, 2018).

Time is also of the essence. As noted above and discussed in many other contexts, the Joint Applicants have announced their intention to close the merger on April 1, 2020, which will allow New T-Mobile to immediately begin delivering the massive benefits that New T-Mobile will bring to California consumers—particularly under-connected, low-income and rural consumers. These benefits include, but are not limited to: (i) dramatically improved wireless service from New T-Mobile’s 5G network, with the combined companies’ complementary spectrum and resulting massive capacity;¹¹ (ii) enhanced in-home broadband competition throughout the state, including to areas that have no or limited broadband competition;¹² (iii) immediate access for Sprint customers to T-Mobile’s superior 4G and 5G networks;¹³ (iv) after a short transition period, access for new LifeLine customers to New T-Mobile’s superior 4G network, which covers more than twice the geographic area of California compared to Sprint;¹⁴ (v) right after closing, a new low-cost pricing plan, T-Mobile Connect, designed to appeal to value conscious customers;¹⁵ (vi) 5G wireless service at 10 rural county fairgrounds used for emergency response staging and evacuation;¹⁶ (vii) enhanced emergency preparedness and

¹¹ See *Joint Applicants’ Post-Hearing Opening Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032* (“Joint Applicants’ Opening Brief”) at Section IV (April 26, 2019).

¹² See Joint Applicants’ Opening Brief at V.D.

¹³ See Joint Applicants’ Opening Brief at V.C.

¹⁴ See *Joint Applicants’ Post-December 2019 Hearing Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032* at 19-20 (December 20, 2019); *Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.* (“CETF MOU”) at 6 (April 8, 2019). Pursuant to the CETF MOU, New T-Mobile has committed that new California Assurance LifeLine customers will be activated on the New T-Mobile Network *no later than 6 months after the close*. Thus, every day that the transaction does not close is another day customers in some portions of the state have no or limited choice for a wireless LifeLine provider.

¹⁵ See Hearing Tr. at 1549:19-28 (Sievert Cross) (discussing T-Mobile Connect offering).

¹⁶ See CETF MOU at 12.

network resiliency;¹⁷ and (viii) delivery of certain key economic benefits for the state including the construction of a New T-Mobile customer experience center in Kingsburg, which will bring approximately 1,000 career-track jobs to the Central Valley.¹⁸ Promptly closing the merger on April 1 will also benefit thousands of Sprint employees in California and across the country by ending the prolonged uncertainty they have faced about the company’s future.”

In addition, as Joint Applicants have explained to Commission staff, an April 1 close is critical to the parties, as accounting and financial reporting needs, and the imperative for accuracy of such reporting, significantly limit the available closing dates for the merger and because delaying beyond April 1 would result in substantial—and ever-increasing—financial harm and risks, and other harms to Joint Applicants.¹⁹

Because the ALJ did not issue his Proposed Decision by February 25, 2020, the Commission can complete its proceedings in these matters before the parties’ planned April 1 closing date only by shortening the review and comment period for the Proposed Decision. Therefore, it is critical that the Commission expedite its review of the Proposed Decision, finally conclude its nearly 20-month review in these matters, and ensure the Commission contributes to California consumers receiving the substantial benefits this merger will deliver.

¹⁷ See Joint Applicants’ Opening Brief at VII.C.

¹⁸ See *id.* at 8, 86-87.

¹⁹ A prompt decision on shortened time is particularly appropriate in this case because, as Joint Applicants have previously noted, the Commission has explicitly exempted wireless carriers from obtaining preapproval for transfers of control under Section 854 and otherwise lacks jurisdiction to require such preapproval. See Joint Applicants’ Opening Brief at III. Moreover, there is no real dispute that the wireline transfer application clearly satisfies the standard for wireline transfers of control under California Public Utilities Code § 854(a). *Joint Applicants’ Motion for Immediate Approval of the Transfer of Sprint Communications Company L.P. to T-Mobile USA Inc.* (filed May 10, 2019). There is simply no reason for further delay.

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**[PROPOSED] RULING GRANTING MOTION OF JOINT APPLICANTS TO SHORTEN
THE REVIEW AND COMMENT PERIODS FOR PROPOSED DECISION**

On March 3, 2020, Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively “Sprint”), and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Joint Applicants”) filed a motion to shorten comment period on proposed decision. No opposition to this Motion has been submitted and the time for submission of such opposition has expired. No hearing on the Motion is necessary.

Good cause having been shown, and no opposition to the Motion having been submitted,
IT IS HEREBY RULED that:

1. Joint Applicants’ motion to shorten the review and comment periods on the proposed decision is granted.

Administrative Law Judge Karl Bemesderfer

Dated _____, 2020 at San Francisco, California.