

**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

**JOINT APPLICANTS' POST-HEARING OPENING BRIEF REQUESTING  
IMMEDIATE APPROVAL OF THE TRANSFER OF SPRINT COMMUNICATIONS  
COMPANY L.P. TO T-MOBILE USA, INC.**

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## **SUMMARY OF JOINT APPLICANTS' RECOMMENDATION**

Per Commission Rule of Practice and Procedure 13.11, the Joint Applicants respectfully recommend that the Commission approve the Application for Transfer of Control of Sprint Communications Company L.P. to T-Mobile USA pursuant to California Public Utilities Code § 854(a) without further delay and that it sever this Application, A.18-07-011, from 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 (A.18-07-012).

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**JOINT APPLICANTS’ POST-HEARING OPENING BRIEF REQUESTING  
IMMEDIATE APPROVAL OF THE TRANSFER OF SPRINT COMMUNICATIONS  
COMPANY L.P. TO T-MOBILE USA, INC.**

Pursuant to the Amended Assigned Commissioner’s Scoping Memo and Ruling, dated October 4, 2018 (“Amended Scoping Memo”), as further amended by ALJ Bemserderfer’s March 25, 2019 Ruling resetting the briefing schedule, Sprint Communications Company L.P. (U-5112-C) (“Sprint Wireline”), and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, the “Joint Applicants”) respectfully submit this Post-Hearing Opening Brief requesting immediate approval of the transfer of control of Sprint Wireline to T-Mobile USA pursuant to California Public Utilities Code § 854(a).<sup>1</sup>

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<sup>1</sup> See Joint Application for Approval of Transfer of Control of Sprint Communications Company L.P., Application No. A-18-07-011, filed July 13, 2018 (“Wireline Approval Application”), as supplemented by the Joint Applicants’ Consolidated Reply to ORA’s and the Joint Consumers’ Protests to Application for Approval of Wireline Transfer of Control, filed Aug. 27, 2018 (“Reply to Wireline Protests”), Prehearing Conference Statement, Consolidated Applications Nos. 18-07-011 & 18-07-012, filed Sept. 12, 2018 (“Prehearing Conference Statement”), and subsequent written and live testimony. See *infra* at 5-9. As explained below, separately from the Wireline Approval Application, Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C), and T-Mobile USA, Inc. filed a Joint Application for Review of Wireless Transfer Notification, Application No. A-18-07-012, filed July 13, 2018 (the “Wireless Notification”). A Post-Hearing Opening Brief on the Wireless Notification – which, for the

The Wireline Approval Application readily satisfies the Commission’s well-established standard for approving similar wireline transfers under California Public Utilities Code § 854(a); *i.e.*, whether the transfer is “adverse to the public interest.”<sup>2</sup> The undisputed facts established in the Wireline Approval Application, the parties’ written testimony, and the testimony presented at the hearings, demonstrate that the Application involves a straightforward transfer of a competitive local exchange carrier (“CLEC”) and non-dominant interexchange carrier (“NDIEC”) to a fully qualified acquiring company that does not currently provide wireline services of any kind in California or elsewhere in the United States. The wireline transaction will be a seamless experience for Sprint Wireline’s customers (all of which are enterprise or wholesale customers) and will have no adverse impact on competition in California or elsewhere. To the contrary, approving the wireline transaction will affirmatively advance the public interest, because Sprint Wireline will benefit from the substantial telecommunications experience and greater financial resources of T-Mobile USA – better enabling Sprint Wireline to compete against other providers of CLEC and NDIEC wireline services in California. T-Mobile and Sprint established these facts in the Wireline Approval Application and testimony presented to the Commission, no party has disputed them, and the record contains no evidence to the contrary.

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reasons explained below, should be considered separately – is being filed concurrently with this brief on the Wireline Approval Application.

<sup>2</sup> See Joint Application of Wild Goose Storage Inc., EnCana Corp., Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle/Riverstone Global Energy and Power Fund II, L.P. and Nisaka Gas Storage US, LLC for Review under Public Utilities Code Section 854 of the Transfer of Control of Wild Goose Storage Inc. from EnCana Corporation to Nisaka Gas Storage, US, LLC and for Approval of Financing under Public Utilities Code Section 851, D.07-03-047, at \*4 (citation omitted), 2007 Cal. PUC LEXIS 309 (Mar. 15, 2007) (“*Wild Goose Storage*”).

Because nothing in the undisputed record before the Commission provides *any* reason – much less a “compelling reason”<sup>3</sup> – why the Wireline Approval Application should not be granted, the Joint Applicants request that the Commission approve their Application without further delay. The parties believe that there remain no material issues in either the Wireless Notification or Wireline Application proceedings, but the record is now clear that none of the issues raised on the former affect the merits of a prompt grant of authority in the latter. To that end, and because there is no further purpose served by the consolidation of the two separate filings initiating these proceedings, the Joint Applicants also ask the Commission to sever its consideration of the Wireline Approval Application from the Commission’s review of the Wireless Notification. As the Joint Applicants have noted since the consolidation, the Wireline Approval Application and the Wireless Notification present fundamentally distinct factual and legal issues (including fundamentally different jurisdictional issues) – as discovery and the hearings to date have underscored – and therefore the resolution of each should be, and can be, independent of the other.

## I. BACKGROUND

### A. The Parties and the Merger Transaction

Sprint Wireline is a wholly owned indirect subsidiary of Sprint Corporation (“Sprint”) that is authorized to provide wireline CLEC and NDIEC services in California pursuant to Commission Decisions (“D.”) 07-07-027, 97-08-045, and 88-11-045.<sup>4</sup> Sprint Wireline provides services to a limited number of enterprise and carrier customers, but does not provide service to

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<sup>3</sup> See, e.g., Application of SJW Corp. for Approval of Reincorporation, D.16-05-037, 2016 Cal. PUC LEXIS 296, at \*8 (May 26, 2016); see also note 68, *infra* (citing similar Commission precedent).

<sup>4</sup> See Wireline Approval Application at 6; Hearing Ex. Jt Appl.-9, Rebuttal Testimony of Peter N. Sywenki (“Sywenki Rebuttal Testimony”) at 9:4-8.



residential end-user consumers.<sup>5</sup> It also does not provide special access or backhaul services to any wireless providers in California.<sup>6</sup> Nor is Sprint Wireline owned by or affiliated with a California incumbent local exchange carrier.<sup>7</sup>

T-Mobile USA is a Delaware corporation wholly owned by T-Mobile US, Inc. (“T-Mobile”).<sup>8</sup> T-Mobile is currently the third-largest wireless carrier in the United States, serving approximately 79.7 million customers.<sup>9</sup> In 2017, T-Mobile’s revenues were approximately \$40.6 billion, and it held approximately \$70.56 billion in assets and \$28.32 billion in debt.<sup>10</sup> Neither T-Mobile nor T-Mobile USA offers wireline services in California, and neither is certificated to provide those services by this Commission.<sup>11</sup> Moreover, T-Mobile does not have any subsidiaries in California that provide CLEC or NDIEC services.<sup>12</sup>

On April 29, 2018, T-Mobile and Sprint entered into a definitive agreement to merge to form New T-Mobile.<sup>13</sup> Sprint owns two subsidiaries in California that offer wireless services and one – relevant here – that offers wireline service, Sprint Wireline.<sup>14</sup> Sprint and its

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<sup>5</sup> Wireline Approval Application at 6; Sywenki Rebuttal Testimony at 9:4-9.

<sup>6</sup> Sywenki Rebuttal Testimony at 12:10-14:17; Reply to Wireline Protests at 9-10.

<sup>7</sup> Wireline Approval Application at 6.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> Hearing Ex. Jt Appl.-2/2C, Rebuttal Testimony of G. Michael Sievert (“Sievert Rebuttal Testimony”) at 5:4-5; T-Mobile US, Inc., Annual Report (Form 10-K), at 40 (Feb. 7, 2019), <https://bit.ly/2V8WNz8>.

<sup>10</sup> Wireline Approval Application at 5; T-Mobile US, Inc., Annual Report (Form 10-K), at 24 (Feb. 7, 2018), <https://bit.ly/2IDJIwz>.

<sup>11</sup> Sievert Rebuttal Testimony at 5:12-13; Sywenki Rebuttal Testimony at 11:11-12; Wireline Approval Application at 5.

<sup>12</sup> Wireline Approval Application at 5.

<sup>13</sup> Sievert Rebuttal Testimony at 10:4-9.

<sup>14</sup> Wireline Approval Application at 6; Wireless Notification at 7.

subsidiaries will merge into a T-Mobile USA subsidiary, making its wireless subsidiaries and Sprint Wireline indirect subsidiaries of T-Mobile USA.<sup>15</sup> The merger thus has two distinct components: (1) the transfer of Sprint’s wireless businesses, and (2) the transfer of Sprint’s wireline business.<sup>16</sup> The wireless transfer is the principal driver of the transaction.<sup>17</sup> The wireline portion of the transaction – the subject of the Wireline Approval Application – is not a material driver of the merger and does not raise any material issues of fact or law. As noted, T-Mobile USA and its subsidiaries do not currently provide *any* wireline services in California.<sup>18</sup> For its part, Sprint Wireline’s operations in California are modest, consisting of non-dominant CLEC and NDIEC services provided to enterprise or wholesale customers.<sup>19</sup> Sprint Wireline’s gross annual intrastate revenues in California are well below \$500 million.<sup>20</sup> Moreover, the services Sprint Wireline offers will not be affected by the merger.<sup>21</sup>

## **B. Procedural History**

On July 13, 2018, the Joint Applicants separately filed their Wireline Approval Application and Wireless Notification with the Commission. The Wireline Approval Application sought the Commission’s approval, pursuant to Public Utilities Code § 854(a), for

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<sup>15</sup> Sievert Rebuttal Testimony at 10:4-9; Wireline Approval Application at 9-11.

<sup>16</sup> *See* Sievert Rebuttal Testimony at 4:15-26.

<sup>17</sup> *See id.* at 10:22-11:13. The wireless transfer is addressed in the concurrently filed Joint Applicants’ Post-Hearing Opening Brief in Support of the Wireless Notification. The present Opening Brief addresses the transfer of Sprint Wireline.

<sup>18</sup> Sievert Rebuttal Testimony at 5:12-16; Sywenki Rebuttal Testimony at 11:11-12; Wireline Approval Application at 5.

<sup>19</sup> Wireline Approval Application at 6; Sywenki Rebuttal Testimony at 9:8-9.

<sup>20</sup> Wireline Approval Application at 13.

<sup>21</sup> *Id.* at 15; Reply to Wireline Protests at 8-9; Sywenki Rebuttal Testimony at 4:9-23, 9:4-10:7; Sievert Rebuttal Testimony at 4:17-19.

the transfer of Sprint Corporation’s California *wireline* business (Sprint Wireline) to T-Mobile USA.<sup>22</sup> By contrast, the Wireless Notification notified the Commission of the Joint Applicants’ intent to transfer Sprint Corporation’s California *wireless* businesses (Sprint Spectrum L.P. and Virgin Mobile USA, L.P. – collectively, the “Sprint Wireless CA Entities”) to T-Mobile USA.<sup>23</sup> As the Joint Applicants explained, this bifurcated approach – requesting the Commission’s approval for the wireline transaction, while notifying the Commission of the wireless transaction – is consistent with the Commission’s longstanding precedent and federal law.<sup>24</sup>

As discussed more fully below,<sup>25</sup> the Wireline Approval Application – which was supported by a sworn Verification and numerous exhibits – demonstrated that the transfer of Sprint Wireline to T-Mobile USA is in the public interest and fully satisfies the Commission’s well-established standard for wireline transfers under Public Utilities Code § 854(a).<sup>26</sup>

Two Protests were filed in response: one by intervenors The Greenlining Institute and The Utility Reform Network (“Greenlining/TURN”), and the other by the Office of Ratepayer

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<sup>22</sup> See Wireline Approval Application at 1-19. Because Sprint Wireline’s California intrastate revenues were well below \$500,000,000 in 2018, the transfer to T-Mobile USA is subject only to Public Utilities Code § 854(a). See *id.* at 13.

<sup>23</sup> See Wireless Notification at 1, 35 (“The sole issue raised by this Joint Application is whether the Commission requires any further information in order to complete its review of the notification of transfer of control of the Sprint Wireless CA Entities to T-Mobile USA in the context of the Transaction.”).

<sup>24</sup> See Investigation on the Commission’s Own Motion Into Mobile Telephone Service and Wireless Communications, D.95-10-032, 1995 Cal. PUC LEXIS 888, at \*25, \*30-31, \*45-46 (Ordering Clause 3(c)) (Oct. 18, 1995) (“1995 Decision”) (requiring only prior notice to Commission staff, rather than prior approval, of a wireless transfer of control); 47 U.S.C. §§ 253(a), 332(c)(3)(A); see also Wireless Notification at 1 n.1; Opening Brief in Support of Wireless Notification at 15-17. Although the Commission subsequently consolidated its review of both filings, see Administrative Law Judge’s Ruling Consolidating Applications, dated September 11, 2018, the Joint Applicants have consistently pointed out that the Wireline Approval Application and Wireless Notification raise distinct factual and legal issues and therefore should be considered separately, see, e.g., Wireline Approval Application at 19-20; Reply to Wireline Protests at 11-12; see also Prehearing Conference Statement at 8.

<sup>25</sup> See Section II.B, *infra*.

<sup>26</sup> See generally Wireline Approval Application & Ex. A – I.

Advocates currently known as the California Public Advocates Office (“Cal PA”).<sup>27</sup> But rather than substantively engaging with any of the facts established in the Wireline Approval Application or the relevant legal principles discussed in that Application, the Protests focused virtually exclusively on the separate *wireless* transaction. For example, Greenlining/TURN’s wireline Protest (which was a verbatim copy of its Protest to the Wireless Notification) focused almost exclusively on wireless issues and devoted less than a single page to addressing the Wireline Approval Application.<sup>28</sup> Both the Cal PA Protest and the Greenlining/TURN Protest argued only that the Wireline Approval Application “fails to provide sufficient information”<sup>29</sup> – a claim that, as discussed below, is refuted by the record. This wireless-centric focus has also been a hallmark of the voluminous discovery requests served on the Joint Applicants in the now-consolidated proceedings.

Given the unrefuted record establishing that the transfer of Sprint Wireline is in the public interest, the written and live testimony introduced to date only further confirm that the Application meets and exceeds the standard for approval under Public Utilities Code § 854(a).<sup>30</sup> As Cal PA has recently acknowledged, “[t]he testimony and hearings in this proceeding *focused on the wireless application [sic]* (A. 19-07-12),” rather than the Wireline Approval

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<sup>27</sup> See Protest of the Joint Consumers to Joint Application for Approval of Transfer of Control of Sprint Communications Company L.P. (U-5112-C) Pursuant to Public Utilities Code Section 854(a) (filed July 7, 2018) (“Greenlining/TURN Wireline Protest”); Protest of the Office of Ratepayer Advocates, Application 18-07-011 (filed Aug. 16, 2018) (“Cal PA Wireline Protest”).

<sup>28</sup> See Greenlining/TURN Wireline Protest at 9-10. The Protest filed by Cal PA (formerly, the Office of Ratepayer Advocates) similarly focuses primarily on the wireless transfers, see Cal PA Wireline Protest at 5, and Cal PA’s more recent testimony concedes that there are no concerns about the wireline-specific topics addressed in the Commission’s Amended Scoping Memo, see note 32, *infra* (citing Cal PA Executive Summary of Testimony at 6).

<sup>29</sup> See Cal PA Wireline Protest at 5-6; Greenlining/TURN Wireline Protest at 9-10.

<sup>30</sup> See Section II.B, *infra*.

Application.<sup>31</sup> No evidence was presented by TURN/Greenlining, Cal PA, or any other party (collectively, “Intervenors”) to challenge the Joint Applicants’ public-interest showing.

Intervenors’ written testimony filed on January 7, 2019, focused *exclusively* on *wireless* issues – which are irrelevant to approval of the Wireline Approval Application.<sup>32</sup> And the recent evidentiary hearings (held on February 5-8, 2018) were similarly skewed, as Cal PA’s counsel confirmed.<sup>33</sup> In short, and as discussed more fully in Section II.B, below, nothing in the

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<sup>31</sup> Reply of the Public Advocates Office to Response by Joint Applicants to Motion to Amend and Supplement Testimony and For Additional Hearings (filed Feb. 21, 2019) (“Cal PA Suppl. Testimony Reply”) at 1 n.1 (emphasis added).

<sup>32</sup> The Intervenors’ opening testimony did not even mention Sprint Wireline or the CLEC or NDIEC services Sprint Wireline offers in California. That testimony instead focused *entirely* on wireless issues. See Hearing Ex. Pub. Adv-001, Public Advocates Office Executive Summary of Testimony for the Proposed Transfer of Control of Sprint to T-Mobile (“Cal PA Executive Summary of Testimony”) at 6 (indicating “N/A” for the following wireline-related questions: “How would the merger affect the market for special access services, including backhaul services?” and “How would the merger affect the ability of independent competitive wireless carriers to obtain backhaul services.”); Hearing Ex. Pub. Adv-005C (Reed Testimony) (100% wireless; 0% wireline); Hearing Ex. Pub. Adv-002C, (Selwyn Testimony) (100% wireless; 0% wireline); Hearing Ex. Pub. Adv-004C (Odell Testimony) (100% wireless; 0% wireline); Hearing Ex. Pub. Adv-007C (Donnelly Testimony) (100% wireless; 0% wireline); Hearing Ex. CETF-001, (McPeak Testimony) (100% wireless; 0% wireline); Hearing Ex. CWA-1 (Goldman, Afflerbach, and Dehaven Testimony) (100% wireless; 0% wireline); Hearing Ex. GLI-001 (Goodman Testimony) (100% wireless; 0% wireline). Cal PA also submitted testimony from Adam Clark, which included a general discussion of financial and investment-related issues concerning T-Mobile USA and Sprint Corporation. Mr. Clark’s testimony did not specifically address Sprint Wireline or any of Sprint Wireline’s services. And, to the extent the testimony discussed investment, it focused on investment in 5G *wireless* services. See Hearing Ex. Pub. Adv-003C (Clark Testimony) at 28-32, 35-36.

<sup>33</sup> See Hearing Tr. at 249:20-28 (Sievert Cross) (Cal PA counsel: “[W]hen I ask questions about Sprint and T-Mobile, *I’m going to be generally referring to ... the wireless service* that the joint applicants provide, *not the wireline service* .... I understand there’s two applications but *I’m generally going to be asking about the wireless service*, unless I specifically say wireline.”) (emphasis added); *id.* at 280:14-22 (Sievert Cross) (Cal PA counsel: “I had asked you earlier to *focus on wireless questions instead of wireline*.... Again, let me caution you. *I’m just talking about wireless.*”) (emphasis added).

On the rare occasions that wireline backhaul services came up during the evidentiary hearings, it was in the context of providing backhaul in order to provide *wireless* services. See, e.g., Hearing Tr. at 317:5-25 (Sievert Cross); *id.* at 442:14-18 (Ray Cross); *id.* at 512:9 – 515:11 (Ray Cross); *id.* at 548:8-13 (Ray Cross); *id.* at 988:21-27, 989:14-23 (Sywenki Cross). But the testimony established that Sprint does not provide wireline backhaul services to any wireless providers in California. See, e.g., Hearing Tr. at 986:14 – 987:3, 987:21-26, 989:7-13 (Sywenki Cross) (no knowledge of T-Mobile purchasing any of the wireline services offered by Sprint Wireline); see also Reply to Wireline Protests at 9-10 (confirming that

testimony or discovery to date has provided any basis for questioning the record established in the Wireline Approval Application that the transfer of Sprint Wireline to T-Mobile USA will serve the public interest.

**II. THE COMMISSION SHOULD SEVER THE PROCEEDINGS AND IMMEDIATELY APPROVE THE WIRELINE APPROVAL APPLICATION.**

**A. The Wireline Approval Application Should Be Severed Because it is Distinct from the Wireless Notification and Raises Different Factual and Legal Issues**

The Commission should sever its consideration of the Wireline Approval Application from its review of the Wireless Notification. As discovery and the ensuing hearings have reinforced, no efficiencies are to be gained from the continued consideration of both filings in a single consolidated proceeding. As explained below, the Wireline Approval Application and Wireless Notification address distinct factual and legal issues, and require very different action (*i.e.*, approval vs. concluding review) by the Commission. These important differences, coupled with the state of the record in the proceedings, warrant separate consideration and separate resolutions.<sup>34</sup>

**1. The Wireline Approval Application**

The Wireline Approval Application presents a straightforward issue that the Commission has routinely handled in an expedited fashion based on a documentary record, *i.e.*, without a hearing: whether to approve, pursuant to Public Utilities Code § 854(a), a parent-level transfer of control of a provider of wireline services to new management. Specifically, the Wireline Approval Application requests the Commission’s approval for the transfer of Sprint Wireline

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“Sprint Wireline does not even provide backhaul services to T-Mobile, or any other wireless providers, here in California”).

<sup>34</sup> Now that the parties have introduced all of their testimony – and now that evidentiary hearings have closed – the Commission should also conclude its review of the Wireless Notification at this time. *See generally* Opening Brief in Support of Wireless Notification.

(i.e., Sprint Communications Company L.P.) to T-Mobile USA. As detailed in the Wireline Approval Application, the Commission has *already authorized* Sprint Wireline – a wholly owned subsidiary of Sprint Corporation – to provide CLEC and NDIEC services to business and wholesale customers in California.<sup>35</sup> Inasmuch as control of Sprint Wireline will be transferred to T-Mobile USA – a wholly owned subsidiary of T-Mobile US, Inc., *the third largest wireless carrier in the United States* – there can be no question that the acquiring entity has the financial resources, experience, technological expertise, managerial competence, and overall ability to serve as an effective steward of Sprint Wireline and provide advanced telecommunications services to its customers as well as, if not better than, Sprint Wireline has to date.<sup>36</sup>

Indeed, Sprint Wireline will continue to provide the *same services* that it currently provides to its customers in California, including following through on its plans to upgrade customers from legacy Time-Division Multiplexing services to newer Internet Protocol (“IP”) services – a transition that would occur regardless of the transfer contemplated by the Wireline Approval Application.<sup>37</sup> As the Wireline Approval Application explains, “[t]his Transaction does not anticipate any change in the operations of Sprint Wireline.”<sup>38</sup> Unsurprisingly, no serious argument has been raised against the transfer of control of Sprint Wireline to T-Mobile USA.

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<sup>35</sup> See Wireline Approval Application at 2, 6 (citing D.07-07-027, D.97-08-045, and D.88-11-045).

<sup>36</sup> *Id.* at 2, 4-5.

<sup>37</sup> *Id.* at 15 & n.36.

<sup>38</sup> *Id.* at 12.

## 2. The Wireless Notification

The Wireless Notification, by contrast, involves completely different factual and legal issues. Consistent with the settled law discussed above, the Wireless Notification does *not* seek the Commission's approval for any action under Public Utilities Code § 854(a), but instead affords the Commission advance notice of the Joint Applicants' intent to transfer control of the Sprint Wireless CA Entities to T-Mobile USA.<sup>39</sup>

In short, the Wireline Approval Application and the Wireless Notification raise different factual and legal issues (including different jurisdictional issues), and the Commission's review of them differs fundamentally – the former is subject to Commission approval, while the latter is subject to Commission review. Although the Commission should conclude its review of each promptly, given the differences presented, the Commission should bifurcate its consideration of the two filings.

### **B. The Commission Should Approve the Wireline Approval Application Without Further Delay**

The Joint Applicants respectfully urge the Commission to approve the Wireline Approval Application immediately. The Commission now has before it overwhelming evidence that supports approval of the Wireline Approval Application and nothing – literally nothing – to the contrary in the Protests filed to date, any of the testimony submitted by the Intervenors, or any of the testimony elicited during cross-examination at the evidentiary hearings.

The Wireline Approval Application readily satisfies the standard set forth in Public Utilities Code § 854(a), which governs the transfer of control of Sprint Wireline.<sup>40</sup> The “primary

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<sup>39</sup> Wireless Notification at 1-2, 10-12.

<sup>40</sup> See Pub. Util. Code § 854(a) (“No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission.”). It is



question” for the Commission to determine in a wireline transfer of control proceeding under Section 854(a) is whether the transaction will be “adverse to the public interest.”<sup>41</sup> In other words, the transfer should be approved unless there is compelling evidence that doing so will be adverse to the public interest.<sup>42</sup> As prior Commission precedent dictates, far from being adverse to the public interest, the wireline transfer here is wholly consistent with the public interest and should be approved.

The Commission’s decision in the proceeding involving SoftBank’s 2013 acquisition of Sprint directly supports approval of the wireline transaction here.<sup>43</sup> The SoftBank transaction involved a parent-level transfer of control of a CLEC and NDIEC service provider—indeed, the *same entity* at issue here (Sprint Communications Company L.P.) – to a fully qualified acquiring company.<sup>44</sup> The Commission approved that transfer *within six months* of the joint applicants’ request, over objections from several of the same intervenors that have appeared here, and

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undisputed that § 854(a) is the relevant provision of the Public Utilities Code that applies to the Wireline Approval Application. *See* Wireline Approval Application at 13-14; Reply to Wireline Protests at 2, 6-7; *see also* Cal PA Wireline Protest at 2.

<sup>41</sup> *See Wild Goose Storage, supra*, D.07-03-047, at \*4 (citation omitted), 2007 Cal. PUC LEXIS 309.

<sup>42</sup> *See* note 2, *supra*.

<sup>43</sup> Joint Application of Sprint Communications Company, L.P. (U-5112-C), and Starburst II, Inc. for Approval of an Indirect Transfer of Control of Sprint Communications Company, L.P. to Starburst II, Inc., Decision Authorizing Transfer of Control, D.13-05-018 (May 23, 2013) (“SoftBank/Sprint Decision”), 2013 Cal. PUC LEXIS 277 (May 23, 2013).

<sup>44</sup> *See id.* at \*1-2. Similar to the separate wireline and wireless transactions here, the SoftBank transaction also involved a separate wireless transaction not subject to Commission approval under § 854(a). Various Sprint wireless providers “provided 30-days[?] advance notice of the proposed transaction to the Commission by letter, pursuant to Commission Decision 95-10-032 [*i.e.*, the 1995 Decision], that they are parties to the transaction, and that, as a result of the transaction, there will be an indirect transfer of control of the Sprint wireless entities to SoftBank.” *Id.* at \*4-5 (footnotes omitted).

without a hearing, concluding that the transfer was “consistent with the public interest.”<sup>45</sup>

Particularly pertinent here, the Commission observed that:

- “There will be no immediate changes to Sprint Communication[s’] direct management or the service that Sprint Communications provides as a result of the transfer.”<sup>46</sup>
- “Sprint Communications will continue to operate in the same manner after the transaction is completed as it operates today.”<sup>47</sup>
- “[T]here will be no interruption or disruption of service to consumers. The transaction will thus be seamless for Sprint Communication[s’] customers.”<sup>48</sup>
- “[T]he transaction will not eliminate existing or potential competitors”<sup>49</sup> but will instead “enable Sprint Communications to become a stronger competitor and allow it to compete with other, larger telecommunications providers in California.”<sup>50</sup> This “increased competition will benefit consumers and the telecommunications marketplace.”<sup>51</sup>

The Commission also rejected the protesting parties’ requests for hearings and further time-consuming investigation:

Although they call for further inquiry, Protestants do not demonstrate any cause or need for such inquiry. Protestants do not identify any harm, either general or specific, that will befall ratepayers in California or the public interest if the Application is approved under Pub. Util. Code § 854(a). Protestants do not point to any specific instance in which either Sprint or SoftBank has failed to meet its public interest obligations.... [Further], Protestants do not suggest, let alone argue, that SoftBank, the third largest provider of wireless communications services in Japan,

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<sup>45</sup> *Id.* at \*15-16.

<sup>46</sup> *Id.* at \*16.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at \*8.

<sup>50</sup> *Id.* at \*16.

<sup>51</sup> *Id.*

somehow lacks the requisite financial and managerial resources to operate Sprint Communications in California.<sup>52</sup>

The same logic requires prompt approval of the Wireline Approval Application, which involves the straightforward transfer of the *same* non-dominant CLEC and NDIEC (with limited California revenues) to an unquestionably qualified acquiring company.<sup>53</sup> As the Joint Applicants have explained, the transfer of control will be a seamless experience for customers (all of which are enterprise or wholesale customers), will have no adverse impact on competition in California, and will maintain the Commission's jurisdiction over Sprint Wireline.<sup>54</sup>

As explained above, Sprint Wireline will continue to provide the same services that it currently provides to customers in California, subject to Sprint Wireline's existing plans to discontinue its Time-Division Multiplexing services and instead allow its customers to enjoy newer IP services.<sup>55</sup> All existing Sprint Wireline contracts will be honored, including honoring commitments to migrate customers to newer IP services.<sup>56</sup> In short, the transfer of control will have no adverse effect whatsoever on Sprint Wireline's customers.<sup>57</sup>

Nor will the wireline transfer harm competition. Neither T-Mobile USA nor any of its California subsidiaries provide CLEC or NDIEC services that would compete with Sprint

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<sup>52</sup> *Id.* at \*12-13 (emphasis added); *see also id.* at \*21 (finding that “[n]o hearings are necessary”).

<sup>53</sup> Wireline Approval Application at 3-4; Sywenki Rebuttal Testimony at 9:4-10:13.

<sup>54</sup> Wireline Approval Application at 6-7, 11-12, 14-16; Reply to Wireline Protests at 8-9; Sywenki Rebuttal Testimony at 9:16-14:17.

<sup>55</sup> *See* Wireline Approval Application at 15; Reply to Wireline Protests at 8-9; Sywenki Rebuttal Testimony at 4:3-22, 9:16-10:7.

<sup>56</sup> Wireline Approval Application at 15; Reply to Wireline Protests at 9; Sievert Rebuttal Testimony at 4:17-19.

<sup>57</sup> Wireline Approval Application at 14-16; Reply to Wireline Protests at 9-10; Sywenki Rebuttal Testimony at 9:16-11:9.

Wireline’s modest CLEC and NDIEC operations in California.<sup>58</sup> In addition, Sprint Wireline does not provide special access or backhaul services to T-Mobile or any other wireless providers in this State<sup>59</sup> – a fact that Cal PA apparently now concedes.<sup>60</sup> Thus, the transfer of control will have no detrimental impact on the provision of such services or competition in those markets.<sup>61</sup> In any event, any suggestion that the wireline transfer of control would adversely affect competition is refuted by the Commission’s own determination that the incumbent carriers (rather than CLECs or NDIECs) still dominate the market for backhaul, long-haul, and enterprise wireline services.<sup>62</sup>

Further, because the Wireline Approval Application involves a parent-level transaction with no change in the day-to-day operations of Sprint Wireline – as was the case in the Commission-approved SoftBank/Sprint transaction<sup>63</sup> – the Commission will retain exactly the

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<sup>58</sup> Wireline Approval Application at 5; Reply to Wireline Protests at 9; Sievert Rebuttal Testimony at 5:12-16; Sywenki Rebuttal Testimony at 11:11-15.

<sup>59</sup> Wireline Approval Application at 3; Reply to Wireline Protests at 9-10; Sywenki Rebuttal Testimony at 12:9-14:17.

<sup>60</sup> See note 33, *supra* (citing Cal PA Executive Summary of Testimony at 6).

<sup>61</sup> Wireline Approval Application at 15; *see also id.* at 14-16; Reply to Wireline Protests at 9; Sywenki Rebuttal Testimony at 12:9-1:17.

<sup>62</sup> See Order Instituting Investigation into the State of Competition among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042, D.16-12-025, 2016 Cal. PUC LEXIS 683, at \*133 (Dec. 1, 2016) (“The two largest [incumbent local exchange carriers (“ILECs”)] provide approximately 4.2 million wireline business connections, more than the largest CLECs and cable companies combined.”); *id.* at \*159 n.262 (“special access” or Business Data Services (“BDS”) “are largely, but not completely, in the hands of the incumbent carriers”); *id.* at \*167 (“The FCC has found that (i) legacy carriers still exercise considerable market power in the special access market, with ILECs and their affiliates accounting for \$37 billion of the \$45 billion in national BDS revenue”); *id.* at \*171-72 (“[C]able and other providers of backhaul supply about 15-20 percent of [the backhaul] market, still leaving one legacy carrier supplying backhaul to a majority of cell towers statewide”).

<sup>63</sup> See, e.g., *SoftBank/Sprint Decision*, 2013 Cal. PUC LEXIS 277, at \*1 (“The transaction is at the parent holding company level only.”).

same regulatory authority over Sprint Wireline that it currently possesses.<sup>64</sup> As a service provider certificated by the Commission, Sprint Wireline will also continue to assess, collect, and remit surcharges on intrastate revenue associated with its surchargeable services as a CLEC, NDIEC, or provider of VoIP services.<sup>65</sup>

Nor can there be any serious question that the transferee (T-Mobile USA) is eminently qualified to be the parent company of Sprint Wireline. T-Mobile USA's telecommunications management experience – as well as its substantial additional financial resources – will, if anything, augment the capabilities of the wireline business.<sup>66</sup> As in the SoftBank/Sprint transaction, the Joint Applicants “have provided information that demonstrates that the acquiring company ... has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.”<sup>67</sup>

The Commission repeatedly has recognized that it is in the public interest to promote “a business climate that is hospitable to utilities” and that wireline transfers of control should be approved pursuant to Public Utilities Code § 854(a) unless the record reflects a “compelling reason to the contrary.”<sup>68</sup>

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<sup>64</sup> Wireline Approval Application at 3.

<sup>65</sup> *Id.* at 15; Reply to Wireline Protests at 9. It is also undisputed that the Wireline Approval Application presents no issues or concerns under the California Environmental Quality Act. See Wireline Approval Application at 17-18.

<sup>66</sup> Wireline Approval Application at 16 & Ex. F; Sievert Rebuttal Testimony at 1:12-21, 4:19-20; Sywenki Rebuttal Testimony at 4:9-22.

<sup>67</sup> *SoftBank/Sprint Decision*, 2013 Cal. PUC LEXIS 277, at \*14.

<sup>68</sup> Application of SJW Corp for Approval of Reincorporation, D.16-05-037, 2016 Cal. PUC LEXIS 296, at \*8 (emphasis added); see also Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc., et al. For Approval of the Sale of Assets, Transfer of Certificates and Customer Bases, and Issuance of Additional Certificates, D.09-10-056, 2009 Cal. PUC LEXIS 546, at \*21-22 (Oct. 29, 2009) (same); Application of PacifiCorp and MidAmerican Energy Holdings Company for Exemption under Section 853 (b) from the Approval Requirements of Section 854(a), D.06-02-033,

The fully-developed record shows that no such reason is present here. Indeed, to the extent any parties have *even addressed* wireline issues in this proceeding they have not established any basis to question that the wireline transfer is entirely consistent with the public interest

Were it not for the procedural consolidation of the Wireline Approval Application with the Wireless Notification, there likely would have been no evidentiary hearings on the Wireline Approval Application.<sup>69</sup> If there was ever any procedural benefit to consolidation, that purpose has now been served, and consolidation should not stand in the way of immediate approval of the Wireline Approval Application now. The Intervenors' written testimony and evidence submitted before and during the evidentiary hearings (including testimony from parties that protested the Wireline Approval Application) fails to identify *any* adverse effect on the public interest if Sprint Wireline is transferred to T-Mobile USA. And as to the sole wireline-specific issues identified in the Amended Scoping Memo, it is telling that Cal PA simply responded that those issues are "N/A," or not applicable.<sup>70</sup> Again, this is consistent with the Intervenors' wireless-centric focus.

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2006 Cal. PUC LEXIS 49, at \*57 (Feb. 16, 2006) (same); *Supra* Telecommunications and Information Systems, Inc. (U-6100-C) and H.I.G. *Supra*, Inc. for Approval to Complete a Transfer of Control of an Authorized Telecommunications Carrier, D.05-06-012, 2005 Cal. PUC LEXIS 216, at \*9-10 (June 16, 2005); Joint Application of Lynch Telephone Corporation, Brighton Communications Corporation, Cal-Ore Telephone Co., et al., D. 05-05-014, 2005 Cal. PUC LEXIS 176, at \*7 (May 5, 2005) (same); Application of Comm. South Companies, Inc. (U-5943-C) and Arbros Communications, Inc. for Approval of Transfer of Control to Arcomm Holding Co., D.04-09-023, 2004 Cal. PUC LEXIS 607, at \*7 (Sept. 2, 2004) (same).

<sup>69</sup> *Cf. id.* at \*21 (finding that "[n]o hearings are necessary").

<sup>70</sup> *See* Cal PA Executive Summary of Testimony at 6 (indicating "N/A" for the following questions: "How would the merger affect the market for special access services, including backhaul services?" and "How would the merger affect the ability of independent competitive wireless carriers to obtain backhaul services."); *cf.* Amended Scoping Memo at 3 (identifying the same questions).

As Cal PA itself notes, “[t]he testimony and hearings in this proceeding *focused on the wireless application* (A. 18-07-012),” rather than the Wireline Approval Application.<sup>71</sup>

And to the extent Cal PA and other Intervenors have raised questions about the market for “special access” services – which neither Sprint Wireline nor T-Mobile provides<sup>72</sup> – Mr. Sywenki testified in his rebuttal testimony and on cross-examination that the transfer of Sprint Wireline will “actually improve the special access market in California and other places” because, with greater resources and well-qualified management, the company will “buy[] more [special access] services” from other providers, including providers that “aren’t the dominant incumbent telephone company.”<sup>73</sup> In short, as the Commission recognized in the SoftBank/Sprint transaction, this “increased competition will benefit consumers and the telecommunications marketplace.”<sup>74</sup> There is no evidence in the record to the contrary.

Nor do the initial written Protests provide any reason to withhold immediate approval of the Wireline Approval Application. As noted above, Greenlining/TURN devoted barely a *single page* of their 28-page Protest to addressing the Wireline Approval Application.<sup>75</sup> And their bare assertion that the Joint Applicants “have not provided sufficient information” in support of the

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<sup>71</sup> Cal PA Suppl. Testimony Reply at 1 n.1 (emphasis added).

<sup>72</sup> See Sywenki Rebuttal Testimony at 14:16-17 (“Because Sprint and T-Mobile do not currently offer special access, the Commission can affirmatively conclude that the merger presents no harm to the special access market.”); Sievert Rebuttal Testimony at 5:15-16 (“T-Mobile does not provide any wireline services or backhaul services in California (or elsewhere in the country).”).

<sup>73</sup> Hearing Tr. at 991:7 – 992:9 (Sywenki Cross).

<sup>74</sup> *SoftBank/Sprint Decision*, 2013 Cal. PUC LEXIS 277, at \*16.

<sup>75</sup> See Greenlining/TURN Wireline Protest at 9-10; see also *supra* at 7-8 (discussing overwhelming focus of Cal PA Wireline Protest on wireless issues, and Cal PA’s concession that wireline-specific topics addressed in the Commission’s Amended Scoping Memo are “N/A” or not applicable).

Wireline Approval Application<sup>76</sup> is flatly refuted by the extensive record discussed above, not to mention Greenlining/TURN's failure to respond to that extensive record.

Indeed, Greenlining/TURN's sole example of a potential adverse impact associated with the wireline transfer involved a reference to "middle mile" or "backhaul" services,<sup>77</sup> but the Joint Applicants have conclusively shown otherwise.<sup>78</sup> The testimony unequivocally confirms that Sprint Wireline does not even provide backhaul services to T-Mobile or any other wireless provider in California.<sup>79</sup> These facts were not contested by Greenlining/TURN during the evidentiary hearing. In short, neither Cal PA nor any other party has raised any plausible question about any of the factual or legal predicates showing that transferring Sprint Wireline to T-Mobile USA is in the public interest.

As discussed above, the Wireline Approval Application itself – as augmented by the Joint Applicants' Reply to the Protests, Prehearing Conference Statement, and testimony – provides more than enough information to establish that approving the Sprint Wireline transfer is consistent with the public interest. Indeed, for the same reasons that the Commission approved SoftBank's acquisition of control of Sprint Wireline, the Commission should authorize the wireline transfer here. Just as the Commission approved the SoftBank/Sprint transaction, the Commission should now approve the transfer of control of Sprint Wireline to T-Mobile USA without further delay.

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<sup>76</sup> Greenlining/TURN Wireline Protest at 9.

<sup>77</sup> *Id.*

<sup>78</sup> *See* Reply to Wireline Protest at 9 & n.20.

<sup>79</sup> Sywenki Rebuttal Testimony at 4:22-5:3, 12:10-13:4.



### III. CONCLUSION

For the foregoing reasons, the Joint Applicants respectfully request that the Commission sever the proceedings and immediately grant the Wireline Approval Application pursuant to Public Utilities Code § 854(a).

Respectfully submitted this 26th day of April, 2019.

/s/

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