

**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

**REPLY OF  
JOINT APPLICANTS TO INTERVENORS' RESPONSES TO MOTION BY JOINT  
APPLICANTS TO ADVISE COMMISSION OF DOJ PROPOSED FINAL JUDGMENT**

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Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, and the email rulings of Administrative Law Judge Bemederfer on August 2 and 13, 2019, Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C) (collectively, "Sprint Wireless"), and T-Mobile USA, Inc. ("T-Mobile USA") (collectively, the "Joint Applicants") respectfully submit this reply to the Intervenors' oppositions to the Joint Applicants' Motion.<sup>1</sup>

There is no merit to Intervenors' contentions that it was somehow improper for Joint Applicants to notify the Commission of the commitments set forth in the DOJ's Proposed Final Judgment ("DOJ Commitments") or that it would be improper for the Commission to consider

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<sup>1</sup> *Opposition of the Public Advocates Office and the Communications Workers of America District 9 (Joint Consumers) to Motion by Joint Applicants to Advise Commission of Department of Justice DOJ Commitments (July 31, 2019) ("Cal PA/CWA Response") and the Opposition of The Utility Reform Network and the Greenlining Institute to the Motion of the Joint Applicants to Advise the Commission of DOJ Proposed Final Judgement (Aug. 5, 2019) ("TURN/Greenlining Response")* (collectively, "Intervenors' Responses"). We use the same defined terms used in Joint Applicants' Motion to Advise the Commission of the DOJ Proposed Final Judgment (July 26, 2019).

those additional commitments. Joint Applicants' presentation of the DOJ Commitments (1) was timely, (2) ensured that the Commission was aware of recent events pertaining to the national merger that might be helpful to its review process, and (3) comports with Commission precedent (including Commission decisions in recent telecommunications merger proceedings).

Moreover, Joint Applicants' action neither requires nor justifies any further process or delay. This matter has been pending before the Commission for over a year, during which time Joint Applicants have responded to hundreds of data requests (from Intervenors and Commission staff), produced tens of thousands of pages of documents, and participated in three days of public participation hearings and five days of full-fledged evidentiary hearings. The current and voluminous record before the Commission already demonstrates the extensive benefits that the proposed merger will provide in California, and the DOJ Commitments only enhance those benefits to consumers and competition. In short, the record before the Commission already contains sufficient information to conclude this proceeding. To the extent parties seek to comment on the substance of the DOJ Commitments, they may submit comments directly to the DOJ in connection with the ongoing review of the Proposed Final Judgment under the Tunney Act being conducted in the United States District Court for the District of Columbia ("D.C. District Court").<sup>2</sup>

Moreover, as Joint Applicants have previously explained – and Intervenors do not contest – the DOJ Commitments have no bearing on the Wireline Approval Application.<sup>3</sup> Intervenors present no argument (nor could they) justifying any further process or delay with respect to that

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<sup>2</sup> See United States' Explanation of Consent Decree Procedures, *United States v. Deutsche Telekom AG*, No. 4 (D.D.C.) (July 26, 2019), at <https://www.justice.gov/opa/press-release/file/1187716/download>.

<sup>3</sup> A.18-07-011, *In the Matter of the Joint Application of Sprint Communications Company L.P. (U5112) 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)* (July 13, 2018) (the "Wireline Approval Application").

Application. Accordingly, in light of the extensive record before the Commission, the Commission should expeditiously issue decisions approving the Wireline Approval Application, and conclude its review of the wireless transfers at issue in the Wireless Notification.<sup>4</sup>

**I. JOINT APPLICANTS' MOTION IS PROCEDURALLY PROPER AND CONSISTENT WITH COMMISSION PRECEDENT.**

Intervenors' attacks on the timeliness and procedural form of Joint Applicants' Motion lack merit.<sup>5</sup>

First, Joint Applicants' presentation of the DOJ Commitments to the Commission was clearly timely because those commitments were shared with the Commission on the same day they were filed with the D.C. District Court.

Second, it is entirely proper for the Joint Applicants to notify the Commission of these further commitments via a motion and for the Commission to consider those commitments as part of its review.<sup>6</sup> In support of their objection to Joint Applicants' Motion, Cal PA and CWA cite to Pub. Util. Code § 1701.1 – claiming that the code section precludes the Commission's consideration of the DOJ Commitments because those Commitments are not part of the evidentiary record.<sup>7</sup> But § 1701.1 focuses on Commission *ex parte* communications, which are not at issue in the Joint Applicants' Motion.<sup>8</sup> Moreover, Intervenors ignore the Commission's

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<sup>4</sup> A.18-07-012, *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* (July 13, 2018) (“Wireless Notification”).

<sup>5</sup> See Cal PA/CWA Response at 1-3; *see also* TURN/Greenlining Response at 1.

<sup>6</sup> See, e.g., Cal. Pub. Util. Code §§ 1757 and 1757.1 (a court reviewing a Commission decision is not limited to the “evidentiary record” but rather may review the “entire record” certified by the Commission).

<sup>7</sup> See Cal PA/CWA Response at 3; *see also* TURN/Greenlining Response at 2.

<sup>8</sup> Additionally, contrary to Intervenors' assertion, Joint Applicants have not asked the Commission to take official notice of the Proposed Final Judgment. In any event, Intervenors' objection is unfounded because the Commission could lawfully take notice of the existence of that document. *See* Commission Rule 13.9

established practice of considering post-hearing commitments in recent merger cases involving large telecommunications providers – a practice certain Intervenors actively supported in prior proceedings. For example, in the Charter/Time Warner Cable/Bright House Networks (A.15-07-009) proceeding, applicants introduced additional commitments via briefs and *ex parte* letter, and the Commission relied on these conditions in its final decision.<sup>9</sup>

**II. THERE IS NO REASON FOR FURTHER DELAY, AND THE COMMISSION SHOULD GRANT THE WIRELINE APPROVAL APPLICATION AND EXPEDITIOUSLY CONCLUDE ITS REVIEW OF THE WIRELESS NOTIFICATION.**

The Commission should also reject Cal PA’s and CWA’s assertions that the Commission should further delay the conclusion of this proceeding based on the announcement of the DOJ Commitments. To begin with, as noted above, the DOJ Commitments have no bearing on the Wireline Approval Application, and that application should be granted without further delay. As to the transfers of the Sprint Wireless providers at issue in the Wireless Notification, the voluminous record before the Commission overwhelmingly demonstrates that the proposed merger will be good for consumers, good for competition, and good for the future of California,

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(incorporating standard under Cal. Evidence Code § 450 et seq.); Cal. Evid. Code § 452 (providing that “[j]udicial notice may be taken of ... (d) [r]ecords of ... (2) any court ... of the United States”); *see also In re Regulations Relating to Passenger Carriers*, D.16-01-014 at 17 (taking official notice of pleadings in various federal court cases). The Proposed Final Judgment is a record filed with a “court ... of the United States” and thus different from a party’s pleading with a federal agency (rather than a court), which were at issue in the DISH filings referenced by Intervenors. *See Joint Applicants’ Response to DISH Network Corporation for the Commission to Take Official Notice* at 3 & n.5 (Jan. 31, 2019) (explaining different standards applicable to pleadings with courts and agencies and different factual context surrounding the DISH filings).

<sup>9</sup> In the Charter case, the applicants presented commitments in its reply brief (Appendix A), and even served *ex parte* letters after the close of briefing to clarify **and expand upon** the discounted voice service that they had committed New Charter would offer in California. A.15-07-009, Joint Application of Charter Communications, Inc. et al., *Notice of Written Ex Parte Communication of Charter Communications, Inc. and Charter Fiberlink CA-COO, LLC* (Mar. 23, 2016). The final decision recognized various commitments offered after public participation hearings, including the expanded discount voice commitment. *See* D.16-05-007, at 70-73 (Ordering Paragraph 2). Cal PA supported the Commission’s adoption of these commitments in the final decision. *See, e.g., Joint Application for Rehearing of Decision 16-05-007* (May 26, 2016).

and a proposed decision concluding the proceeding is warranted based on that record alone. The additional commitments only create new or added benefits to consumers and competition.<sup>10</sup> They do not affect the ability of the Joint Applicants to meet or exceed the numerous commitments<sup>11</sup> already presented to this Commission regarding the New T-Mobile business and 5G network or to achieve the benefits to competition and consumers that have been extensively detailed in the record.<sup>12</sup> The enforceable voluntary commitments made to the Commission, National Diversity Coalition, and the California Emerging Technology Fund by the Joint Applicants are similarly unaffected. In short, while it is clear that the Commission can consider the DOJ Commitments consistent with prior Commission precedent, the Commission could conclude its review of the Wireless Notification even without considering those additional benefits.

Intervenors' assertions that due process requires further delay to permit them to evaluate and comment on the DOJ Commitments are also meritless.<sup>13</sup> The Proposed Final Judgment includes a detailed recitation of those commitments, and the D.C. District Court – which is responsible for conducting a review under the Tunney Act – will decide whether the Proposed

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<sup>10</sup> The Proposed Final Judgment's requirements for an expanded divestiture of prepaid assets to DISH, an entity with significant spectrum holdings and which has now made extensive 5G broadband build-out commitments to the FCC, will ensure the creation of substantial additional 5G capacity and wireless competition beyond the already extensive benefits detailed in the Wireless Notification and subsequent filings.

<sup>11</sup> As described in Appendix 1 to *Joint Applicants' Post-Hearing Reply Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032* (May 10, 2019), the Joint Applicants have made nearly 50 commitments which directly impact California in the course of this proceeding.

<sup>12</sup> The commitment to divest Sprint's 800 MHz spectrum to DISH does not impact New T-Mobile's network plan as such spectrum is not part of the merged company's plan following the transition of customers off that spectrum (within a timeframe fully consistent with the divestiture timeframe).

<sup>13</sup> See Cal PA/CWA Response at 2; see also TURN/Greenlining Response at 3.

Final Judgment is in the public interest.<sup>14</sup> Moreover, to the extent that Intervenors want to comment on the merits of the DOJ Commitments, they are welcome to do so in connection with that proceeding. Due process does not require any further process before this Commission and certainly does not justify further delay.<sup>15</sup>

The Wireless Notification was filed on July 13, 2018 and has now been under review for over a year. During the course of this proceeding, the Joint Applicants have submitted an unprecedented volume of documents and granular data on, among other topics, the Joint Applicants' business operations, product offerings, and business plan for New T-Mobile, 5G network plans and modeling, customer transition plans, agreements with other carriers, and economic modeling. There have also been comments, public participation hearings, evidentiary hearings, briefs, and several *ex parte* communications from Intervenors. The resulting record before the Commission is comprehensive and complete, and the case stands submitted<sup>16</sup> and ripe for a prompt conclusion of the Commission's proceedings in this matter.

### **III. CONCLUSION**

For the reasons discussed above, and in the Joint Applicants' Motion, Joint Applicants' request that the Joint Applicants' Motion be granted.

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<sup>14</sup> See 15 U.S.C. § 16(e).

<sup>15</sup> Notably, Intervenors provide no citation to support their assertions regarding due process. Moreover, as discussed above, Commission precedent supports the conclusion that the Commission may proceed forward, and even consider the DOJ Commitments, without further process.

<sup>16</sup> As made clear at evidentiary hearings in this proceeding, this case was deemed submitted as of the time of filing reply briefs, May 10, 2019. See Hearing Tr. 1248:9-11 ("...this matter having been submitted upon Reply Briefs..."). See also Cal. Pub. Util. Code § 311(d).

Respectfully submitted this 22nd day of August, 2019.

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<sup>17</sup> Pursuant to Rule 1.8(d), this document is signed on behalf of Joint Applicants.