

**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)

A.18-07-011
(Filed July 13, 2018)

And Related Matter.

A.18-07-012

**RESPONSE OF THE JOINT CONSUMERS TO JOINT MOTION OF JOINT
APPLICANTS AND THE CALIFORNIA EMERGING TECHNOLOGY FUND TO
REFLECT MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA
EMERGING TECHNOLOGY FUND AND T-MOBILE USA, INC.**

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April 23, 2019

In accordance with Rule 11.1 of the Commission’s Rules of Practice and Procedure, The Greenlining Institute and The Utility Reform Network (collectively, Joint Consumers) submit this response to the *Joint Motion Of Joint Applicants And The California Emerging Technology Fund To Reflect Memorandum Of Understanding Between The California Emerging Technology Fund And T-Mobile USA, Inc.*, filed on April 8, 2019 (“Motion”). The Motion does not clearly request specific relief or action by the Commission. While the Joint Parties state that they are submitting the Motion, “to ensure that their current positions are properly reflected on the record,” it does not appear that the Joint Parties are requesting that the Commission approve the attached MOU or even approve the Motion itself.¹ Consequently, Joint Consumers do not understand what, if anything, they are being asked to comment on. Joint Consumers respectfully request that the Commission deny the Motion and require the Joint Applicants to submit their settlement in compliance with the requirements of Rule 12 of the Commission’s Rules of Practice and Procedure.

I. The Commission Should Reject T-Mobile’s Attempt to Preclude a Robust Discussion of the Settlement.

Rule 12.1, subdivision (a) of the Commission’s Rules of Practice and Procedure states that “Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding.” Settling parties must convene a settlement conference before signing a settlement, providing at least seven days’

¹ The Motion does not even appear to acknowledge the Commission’s authority over the Wireless transaction itself, instead stating that this agreement only takes effect if, among other events, the Commission “completes its review of the Wireless Notification” instead of approving the wireless transaction by finding that the transaction is in the public interest.

notice in advance to all parties.² Parties have 30 days after a motion for adoption of settlement to contest all or part of that settlement.³ These procedural steps are critical to ensure that partial settlements do not put other parties to the proceeding at a disadvantage or create an unworkable record for further litigation and decision making in the proceeding. Yet this Motion attempts to avoid these Rule 12 procedural safeguards.

Joint Consumers acknowledge that parties to a proceeding can change their positions during a proceeding and, as Applicants and CETF note, the Commission has, in the past, granted motions similar to the one at issue.⁴ However, in this instance, the Joint Parties have not properly presented the Commission with a settlement pursuant to Rule 12 to approve nor have they requested revisions to or withdrawal of their testimony. Further, while the Motion states that “the previously stated concerns of CETF in pleadings and testimony have been resolved” and the parties argue that they now believe the transaction is in the public interest,⁵ it is far from clear whether this agreement addresses or settles all issues or even all aspects of the issues it does cover.

The timing of this Motion further disadvantages parties because, until the Motion is approved, Joint Consumers must assume that the MOU has no impact on the terms of the transaction and that both parties’ testimony and the Application stand as originally submitted,

² Rule 12.1(b).

³ Rule 12.2.

⁴ Joint Parties note that in A.15-03-005, the Commission attached the MOU submitted by applicants and CETF to the Final Decision in the proceeding and clearly memorialized the terms of the MOU in Conclusions of Law and Ordering Paragraphs making those terms generally applicable and enforceable as part of the Final Decision. (See, D.15-12-005) *The Motion here does not request this action from the Commission, although the attached MOU, at paragraph 12, appears to contemplate such treatment of this MOU.* Without a Rule 12 Settlement process and with such conflict in the documents, it is impossible to understand how this agreement is to be interpreted and implemented. At a minimum, the Commission must make these same findings and orders.

⁵ Motion at p. 4.

making brief writing and subsequent work in this proceeding on these issues seem incomplete at best and possibly even futile. And yet, even if the Motion is granted quickly, because the Motion makes no attempt to submit revised testimony or provide an explanation of how the terms of the settlement change specific elements of either parties' testimony or the Application itself, it will still be impossible to analyze the impact of the settlement on this proceeding and whether it is in the public interest.

The issues covered in the settlement, including pricing,⁶ continuation of LifeLine service and low-income adoption,⁷ infrastructure investment,⁸ and emergency preparedness⁹ are key issues for Joint Consumers and Public Advocates. A Rule 12 settlement process requires that parties to a settlement demonstrate, and that the ALJ find, that terms of a settlement are “reasonable in light of the whole record, consistent with law, and in the public interest.”¹⁰ Despite the burden of demonstrating that a settlement meets this standard falling squarely on the parties to the settlement, the Motion makes no such arguments nor attempts to make this showing. T-Mobile and CETF's failure to follow the procedure set out in Article 12 deprives Joint Consumers of the opportunity to meaningfully respond to the settlement or to adequately address these issues in their briefing. The Motion should therefore be rejected even before the substantive merits of the settlement itself are considered. .

⁶ Motion at p. 4.

⁷ *Id.* at pp. 4-5.

⁸ *Id.* at p. 6.

⁹ *Id.* at p. 7

¹⁰ Rule 12.1(d)

II. The Commission Should Reject T-Mobile's Attempts to Avoid Compliance with Article 12 of the Commission's Rules of Practice and Procedure.

Similar to a shift in burden that this Motion represents, this proceeding has been marked by a shift in the burden of production, placing the initial responsibility for setting out issues in this proceeding on protestants and allowing Applicants to delay in revealing their arguments until right before, and in one instance during, hearings. For example, in this proceeding, Applicants included roughly 4000 pages of documents as part of its rebuttal testimony, leading the Commission to rule that “the sheer volume of Applicants’ rebuttal testimony worked a disadvantage to Cal Advocates that requires a remedy.”¹¹ Similarly, near the conclusion of the evidentiary hearings, T-Mobile attempted to introduce a previously undisclosed witness to testify about the combined company’s intentions regarding the LifeLine program.¹²

CETF and T-Mobile executed the MOU on March 22 (CETF) and March 23 (T-Mobile), but did not file the Motion until over two weeks later, making responses to the Motion due three days before opening briefs are due. The Joint Parties should not be allowed to benefit by their failure to comply with the Rule 12 processes which then allows them to design their own timeline that benefits only themselves, avoid the need to hold a settlement conference with seven days’ prior notice to all parties required by Rule 12.1(b), avoid the 30-day comment period required by Rule 12.2, and, as a result, significantly disadvantage other parties to the proceeding.¹³ The Commission should reject this attempt to willfully disregard both the letter and spirit of the Commission’s Rules.

¹¹ Administrative Law Judge’s Ruling Denying In Part And Granting In Part The Motion Of The Public Advocates Office To Amend And Supplement Testimony And For Additional Hearings; And Revising The Schedule Of This Proceeding at p. 3 (Feb. 26, 2019).

¹² TR. Vol. 7, p. 1241:7-1247:22.

¹³ “Parties may file comments contesting all or part of the settlement within 30 days of the date that the motion for adoption of settlement was served.”

III. **The Commission Should Allow Non-Settling Parties to Investigate the Full Scope of any Agreement Between T-Mobile and CETF.**

In light of the vague and confusing procedural posture of the Motion, Joint Consumers are also concerned that this settlement may not fully capture all elements of the agreement between Joint Applicants and CETF. Indeed, as discussed above, the Motion does not appear to request that the Commission review or approve the MOU itself. Therefore, the parties to the agreement may believe their “voluntary commitments” do not need to be fully submitted with this Motion.

Such incomplete submissions have already occurred in this proceeding. Applicants’ rebuttal testimony by Marie R. Sylla Dixon included an attachment consisting of an MOU between T-Mobile and the National Diversity Coalition (“NDC”). While NDC was never a party to the proceeding, NDC and its members heavily participated during each Public Participation Hearing held in this docket. The T-Mobile/NDC MOU, signed the very day T-Mobile submitted its testimony, included agreements regarding workforce and supplier diversity and philanthropy.¹⁴ At the evidentiary hearing, parties had the opportunity to cross-examine Ms. Sylla Dixon regarding the MOU.¹⁵ However, it now appears that the MOU did not reflect the entire agreement between T-Mobile and the National Diversity Coalition. Subsequently, in a footnote in one of its more recent discovery responses,¹⁶ T-Mobile noted that, “[i]n the course of negotiating the MOU with NDC, T-Mobile agreed to forgive NDC’s obligation to repay intervenor compensation (plus interest) to T-Mobile per D.18-11-044; **that forgiveness was not**

¹⁴ Rebuttal Testimony of Marie R. Sylla Dixon, Attachment B, pp. 4-8.

¹⁵ Tr. Vol 6, p. 877-955.

¹⁶ T-Mobile USA’s Response to the Communications Division’s Data Request Dated April 2, 2019 (DRs 32 And 33) p. 3, note 1, included here as Attachment A.

memorialized in the MOU.¹⁷ Joint Consumers believe that this omission from the NDC MOU, compounded by the fact that T-Mobile chose to attach this incomplete MOU to one of its witnesses' testimony with the continued omission, significantly mischaracterizes the agreement between T-Mobile and NDC and places their testimony at the PPHs in a different context. In light of this recent example of how T-Mobile may negotiate and submit these agreements, Joint Consumers urge the Commission to reject the Motion and require CETF and Applicants to file a Rule 12 Settlement that brings with it the substantive and procedural due process protections and ability of the Commission to fully investigate all elements of the MOU that may impact this critical merger review process.

Regardless of what may be missing from the MOU attached to the Motion, in light of the procedural confusion caused by this Motion, Joint Consumers will not attempt to address each of the substantive points of this settlement. Yet it does not appear that the settlement contains sufficient commitments or the level of detail necessary to ensure that, 1.) the transaction at issue here should be found to be in the public interest pursuant to P.U. Code Section 854, 2.) whether the commitments will broadly benefit California consumers, 3.) whether this agreement incrementally improves the transaction beyond already-existing claims by the companies and mitigates the harms from the transaction, and 4.) how the Commission should treat this document so that it will be enforceable.¹⁸ Just as a few examples of where Joint Consumers believe that

¹⁷ Emphasis added. In D.18-11-044, the Commission ordered the National Diversity Coalition (then known as National Asian American Coalition and the Latino Business Chamber of Greater Los Angeles) to return its intervenor compensation award in the amount of \$42,505.15 from the AT&T-T-Mobile merger proceeding (I.11-06-009) to AT&T and T-Mobile. D.18-11-044, Ordering Paragraph 2.

¹⁸ See footnote 4 above, while the MOU appears to contemplate inclusion of its terms into the Final Decision in this proceeding, the Motion makes no such request or claim.

this agreement, if filed as a settlement would fail the Rule 12.1 test and not be found to be in the public interest itself consists of:

- Limited commitments on Emergency Preparedness and Response consisting of the deployment of temporary equipment during emergencies, the “continued” support for victims of wildfire,¹⁹ and 5G coverage at 10 County fairgrounds in, as yet unnamed rural counties.
- Meetings with Regional Consortia to do vague things like “provide overview”, “obtain input,” “obtain recommendations” and “obtain feedback and input” while leaving the final decision regarding rural county fairgrounds and future planning for capital investments solely to T-Mobile.
- Payments of \$35 million over five years directly to CETF to “sustain its core mission” including implementation of \$22 million in specific projects leaving \$13 million of support to directly go to CETF with no specific earmarks.
- Reliance on an as-yet unapproved LifeLine pilot program to meet the goals expressed under this settlement, and therefore, this Settlement brings no value to the LifeLine program because Boost Mobile had proposed this pilot and the same goals (350K person cap) outside the context of this merger. Joint Consumers also note that the Boost pilot will not offer free service, and yet the MOU, at paragraph II.A. suggests that the LifeLine commitments will be “under rates (i.e. free), terms, and conditions no less favorable to eligible consumers...”
- No LifeLine commitment for any other New T-Mobile brand beyond the current LifeLine provider Assurance Wireless.

The Commission should allow non-settling parties the opportunity to investigate the full scope of any agreement between T-Mobile and CETF. Additionally, the Commission should provide non-settling parties with a meaningful opportunity to address the substantive points of the settlement.

¹⁹ Joint Consumers note that these very carriers are objecting to the Commission’s attempt to further memorialize these victim relief measures as part of a different docket in R.18-03-001.

IV. Conclusion

The Commission should reject T-Mobile's attempts to preclude discussion of what is, at heart, a settlement, and to avoid compliance with Article 12 of the Commission's Rules of Practice and Procedure. Additionally, all non-settling parties should have the opportunity to fully investigate the full nature of, and substantive claims made, in the settlement. Joint Consumers respectfully request that the Commission deny the Motion and require the Joint Applicants to submit their settlement in compliance with the requirements of Rule 12 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

Dated: April 23, 2019

/s/ Paul Goodman
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/s/ Christine Mailloux
Christine Mailloux
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The Utility Reform Network

ATTACHMENT A

**T-MOBILE USA'S RESPONSE TO THE COMMUNICATIONS DIVISION'S DATA
REQUEST DATED APRIL 2, 2019 (DRs 32 and 33)**

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Sprint)	Application No. 18-07-011
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)	Application No. 18-07-012
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)	

**T-MOBILE USA’S RESPONSE TO THE COMMUNICATIONS DIVISION’S DATA
REQUEST DATED APRIL 2, 2019
(DRs 32 and 33)**

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Dated: April 17, 2019

**T-Mobile USA's Response to the Communications Division's Data Request dated
April 2, 2019 (DRs 32 and 33)**

General Objections

These General Objections are hereby designated as a part of, and incorporated by reference into, any response or information, written or oral, provided by T-Mobile USA ("T-Mobile") to the Communications Division ("CD") Data Request dated April 2, 2019.

1. In providing its responses to the Data Requests, T-Mobile does not waive any applicable objections or privileges. Review of the Data Requests is ongoing and T-Mobile reserves the right to assert such further objections and privileges as it may subsequently determine are applicable to the Data Requests.
2. The information transmitted by T-Mobile in response to the Data Requests is submitted pursuant to California Public Utilities Code Section 583, CPUC General Order No. 66-D, and the California Public Records Act, and shall be treated as confidential information.
3. T-Mobile's responses are based on information presently known to T-Mobile, without prejudice to T-Mobile's right to amend or supplement its responses as additional information, if any, is located, and as additional information may be imparted to T-Mobile by CD regarding the scope and meaning of the Data Requests.
4. T-Mobile objects to the Data Requests to the extent they seek information and/or any documents protected by the privilege for attorney-client communications, the doctrine protecting attorney work product, or any other applicable privilege, immunity or restriction. In responding to CD's Data Requests, T-Mobile does not waive, and it is not producing information and documents that it believes are protected by, such privileges and doctrines. The inadvertent production of any such information and documents shall not constitute a waiver of T-Mobile's rights and privileges with regard to such information and documents.
5. In responding to the Data Requests, T-Mobile does not concede the relevancy, materiality, or admissibility of any information or documents sought by the Data Requests or of any response thereto made by T-Mobile.
6. T-Mobile objects to the Data Requests to the extent they seek information and/or any documents that relate to issues which exceed the scope of the Commission's jurisdiction to review the Wireless Application or the scope of its jurisdiction over wireless services.

Data Request 32.

Please describe all instances where an employee, agent, or representative of T-Mobile, including third party consultants contracting with T-Mobile, offered money or anything else of value to a person in exchange for that person giving a statement regarding the proposed transaction at any of the Commission's public participation hearings (PPHs) related to A.18-07-011 and/or A.18-07-012, unless the person giving the statement was an employee of T-Mobile or Sprint.

Response to Data Request 32.

T-Mobile objects to this Data Request on the grounds it is vague and ambiguous with respect to the phrase "anything of value." T-Mobile further objects to this Data Request on the grounds it seeks information that is neither germane to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence as it has no reasonable bearing on whether the Wireline Approval Application is adverse to the public interest or any review of the Wireless Application.

Subject to and without waiving its objections, T-Mobile responds that it did not offer money or anything of value to any person or entity in exchange for their agreement to support the transaction at the PPHs in these proceedings.

To the contrary, T-Mobile – either directly or through various third-party consultants – actively engaged with various individuals and civic, religious, business, first responder, and community organizations to explain the many benefits of the merger and to inquire whether, given the significant benefits to their members and to California residents generally, they would be willing and able to publicly support the merger – e.g., appear at the PPHs and Technical Workshops, write letters, and the like. Out of respect for the considerable time and effort expended by those who were able to participate in the PPHs (or Technical Workshops), T-Mobile covered some associated costs (e.g., parking, travel, meals) and/or otherwise made food and beverages available to attendees. Covering costs and providing food is a matter of common courtesy and is consistent with standard practice to reduce the burden on unaffiliated persons or entities who agree to take valuable time out of their day (or days) to participate in these types of public proceedings.

In addition, in the normal course of business, T-Mobile has supported and does support (through membership, sponsorship, etc.) a number of organizations that have expressed their enthusiasm for the transaction to the Commission upon learning more about the benefits of the merger to California in general and their constituencies in particular. These include the NAACP (California), the National Action Network, the National Diversity Council, the California Asian Chamber of Commerce, the California Hispanic Chamber of Commerce, the Hispanic Heritage Foundation, Women Veterans Alliance, AMVET's Department of California and the American G.I. Forum of California. T-Mobile is extremely proud to support these organizations in their important missions. T-Mobile's support of these organizations is part of its longstanding efforts to build relationships with important community, veterans and business organizations throughout California and the country and was not provided in exchange for these organizations' support of the transaction.

Data Request 33.

Please describe all instances where an employee, agent, or representative of T-Mobile, including third party consultants contracting with T-Mobile, offered money or anything else of value to a person in exchange for that person's expression of support of the proposed transaction at issue in A.18-07-011 and/or A.18-07-012. Please exclude any persons who filed or contributed to written or oral testimony filed in the above referenced proceedings. Please also exclude counsel and consultants contracting with T-Mobile in the above referenced proceeding.

Response to Data Request 33.

T-Mobile objects to this Data Request on the grounds it is vague and ambiguous with respect to the phrases “anything of value” and “expression of support.” T-Mobile further objects to this Data Request on the grounds it is overbroad and seeks information that is neither germane to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence as it has no reasonable bearing on whether the Wireline Approval Application is adverse to the public interest or any review of the Wireless Application

Subject to and without waiving its objections, and with the understanding that this Data Request is not intended to include the Memorandums of Understanding (“MOU”) with both the National Diversity Council (“NDC”)¹ and the California Emerging Technology Fund (“CETF”); each of which have been publicly disclosed during the course of these proceedings, T-Mobile responds that it did not offer money or anything of value to any person or entity in exchange for their agreement to express support of the transaction to the Commission in these proceedings.

See also Response to Data Request 32 above.

¹ In the course of negotiating the MOU with NDC, T-Mobile agreed to forgive NDC's obligation to repay intervenor compensation (plus interest) to T-Mobile per D. 18-11-044; that forgiveness was not memorialized in the MOU.