

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

And Related Matter.

A.18-07-012

**MOTION OF THE PUBLIC ADVOCATES OFFICE
TO STRIKE PORTIONS OF JOINT APPLICANTS’
OPENING BRIEF AND CONFIDENTIAL ATTACHMENT
TO JOINT APPLICANTS’ EX PARTE**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, the Public Advocates Office requests that certain portions of Sprint Communications Company L.P., Sprint Spectrum L.P, Virgin Mobile USA, L. P. and T-Mobile USA, Inc (Joint Applicants’) April 26, 2019, Opening Brief and ex parte materials from an April 23, 2019, ex parte meeting, be stricken and not referred to going forward. The Joint Applicants included a reference in their Opening Brief to a commitment to build a call center in the Central Valley in California, which was never mentioned in their application, testimony, or at evidentiary hearings.

In addition, Joint Applicants delivered a slide presentation at an ex parte meeting on April 23, 2019, with Commissioner Martha Guzman Aceves and her advisor Michael Minkus, which contains a reference to the alleged call center.¹

¹ On April 26, 2019, Joint Applicants served a copy of the “Confidential Attachment to Joint Applicants Notice of Ex Parte and Motion to File Under Seal.”

Allowing the Joint Applicants to include references to this alleged call center in their Opening Brief prejudices the Public Advocates Office because there was no notice or opportunity to question the factual details of the commitment or the veracity of the claim. For example, the Public Advocates Office had no opportunity to conduct cross examination about the construction of the alleged call center, or to propound data requests to inquire about the truth of the claim. When did Joint Applicants decide to make the commitment to build this call center? When will the call center be built? How many people will it employ? For the Commission to evaluate whether this Application is in the public interest, it should investigate this alleged commitment to build new call center to have a firm understanding of its nature and truthfulness, which it cannot do because the claim was not made prior to now. The Commission cannot base its decision on information that is not part of the evidentiary record.

II. DISCUSSION

Pursuant to Public Utilities Code Section 1701.1, the Commission must base its decision on the evidence in the record. Materials provided at ex parte meetings must also be in the evidentiary record of the proceeding.²

In their Opening Brief, Joint Applicants make a commitment to build a call center in California's Central Valley.³ They make claims about the purported benefits of the call center, including claims about the number of employees and the quality of the jobs they will be offering.

However, any mention of building a call center in California is completely missing from the evidentiary record.⁴ There is no mention of it in the Joint Applicants' Application, testimony, or at the evidentiary hearings. If Joint Applicants had committed

² Public Utilities Code Section 1701.1(e)(8): The commission shall render its decisions based on the law and on the evidence in the record. Ex parte communications shall not be a part of the evidentiary record of the proceedings.

³ Joint Applicants' Opening Brief at 86-87.

⁴ See, e.g., Rebuttal Testimony of Michael Sievert at 36-38. Speaking generally about *nationwide* job losses as a result of the proposed merger, Mr. Sievert makes a short reference to call centers without any specificity as to where they will be built, and there is no mention of a call center in the Central Valley in California. Mr. Sievert states that California Sprint employees allegedly will not lose their jobs, but fails to mention anything about hiring former Sprint employees at a call center in California, which now appears as a new "fact" in their Opening Brief.

to a call center earlier, the Public Advocates Office would have had several questions about it (much like the Public Advocates Office had many questions about Joint Applicants' commitment to offer In-Home Broadband). The Public Advocates Office would have inquired about the timeline for when Joint Applicants developed this new call center commitment; when it will be built; how many employees it will employ; and the projected location of the site. The Public Advocates Office did not have the opportunity to ask any of these questions.

In fact, the Public Advocates Office *did* request information about whether Joint Applicants had any plans that would impact its call centers in California. On September 14, 2018, the Public Advocates Office asked the following question:

Q 1-80: Please describe and provide anticipated transaction-related and restructuring impacts on Your call centers or customer care centers in California.

Response: Subject to and without waiving its objections, T-Mobile responds that T-Mobile does not currently have any customer call or customer service centers in California. **Accordingly, the transaction will have no impact on such centers.** (Emphasis added.)

This answer demonstrates that Joint Applicants did not inform the Public Advocates Office at any prior time of their plans for a new call center, and they cannot argue that the Public Advocates Office did not ask about their plans for call centers.

In addition, at an *ex parte* meeting with Commissioner Guzman Aceves, Joint Applicants provided a confidential document that referred to the alleged California call center. If Joint Applicants represented to the Commissioner that the proposed call center is in the record, this is a misrepresentation of the record. It is inappropriate during *ex parte* meetings for the Joint Applicants to make reference to “facts” that are not in record, and for a decision-maker to make decisions in reliance on those non-record “facts.”

The only citation in Joint Applicants' Opening Brief for the proposed California call center is to a T-Mobile press release dated April 3, 2019, approximately *2 months*

after the conclusion of hearings.⁵ Their Opening Brief did not cite to anything in the record for the proposed call center, and the April 3 press release is not in the record. Clearly, the idea to announce plans to build a call center in California were conceived *after* the close of hearings. Evidently, the call center was *not even contemplated* when evidence was being introduced into the record in this proceeding.

This alleged commitment is not immaterial to Joint Applicants' view of the case, and they intend for the Commission to rely on it. The call center is highlighted by several references to it in the Introduction of their Opening Brief, and discussed more in depth in the body of the Opening Brief.⁶

It is well established that the Commission may only base its decision on what is in the evidentiary record. Considering evidence that is not in the record deprives the parties of their due process rights to discover more about the evidence and to test the veracity of the claim.

III. CONCLUSION

Therefore, the Public Advocates Office respectfully requests that all references to a proposed call center that will allegedly be built in the Central Valley in California be stricken from Joint Applicants' Opening Brief and ex parte materials, and that Joint Applicants be directed to cease from mentioning it in filings at the Commission or in ex parte communications with the Commission. Joint Applicants should be required to re-file their Opening Brief with references to the call center removed.

⁵ Joint Applicants' Opening Brief at 86.

⁶ Joint Applicants' Opening Brief at 3, 6, 8 and 86-87.

Respectfully submitted,

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