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Via Electronic Mail

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**Re: Protest of the Public Advocates Office to Sprint Communications Company L.P.
(U-5112-C) Advice Letter 918**

I. Introduction

Pursuant to Rule 7.4 of the California Public Utilities Commission's (Commission) General Order (G.O.) 96-B, the Public Advocates Office at the California Public Utilities Commission ("Public Advocates Office") hereby protests Sprint Communications Company L.P. (U-5112-C) (Sprint) Advice Letter (AL) 918, dated March 30, 2020. AL 918 purports to notify the Commission of Sprint's intention to abandon its Certificate of Public Convenience and Necessity (CPCN) and cease providing service as a public utility.¹ AL 918 states that Sprint will no longer provide service using Time-Division Multiplexing (TDM) and will now offer Internet Protocol (IP) services, including Voice over Internet Protocol (VOIP) service.² The AL argues that Sprint does not need a CPCN to continue providing its services in California and will instead use a VoIP Registration number, which Sprint filed for on the same day it served AL 918.³

The Public Advocates Office protests Advice Letter 918 on the grounds that: (1) The relief requested in the advice letter requires consideration in a formal application and is otherwise inappropriate for the advice letter process; and (2) The relief requested in the advice letter is unjust, unreasonable, and/or discriminatory.

¹ AL 918 at 1.

² AL 918 at 1.

³ AL 918 at 1.

Sprint's requested relief and the supporting arguments raise complex and nuanced issues. For example, AL 918 fails to address the status of Sprint's California customers and how the technology transition was noticed, the fact that Sprint's legal interpretation ignores the current status of state law regarding VoIP service, and the implications raised by the abdication of Sprint's CPCN on the Commission's review of (Applications 18-07-011 and 18-07-012, which seek approval for the proposed merger between Sprint and T-Mobile (collectively, Joint Applicants)).⁴ As such, the relief requested by AL 918 is inappropriate for the advice letter process. The Commission should reject AL 918 and direct Sprint to file an application if it wishes to relinquish its CPCN.

II. Discussion

A. Sprint's Representation of the Commission's Jurisdiction of IP Enabled Services and VoIP is Flawed and Must Be Reviewed in Detail.

Contrary to Sprint's assertions, it is not well established that VoIP is an "information service" not subject to public utility regulation.⁵ The California legislature allowed the law that previously prohibited the Commission from regulating IP-enabled services, Public Utilities Code § 710, to sunset on January 1, 2020, several months prior to Sprint filing AL 918.⁶ The facilities-based IP services, such as those offered by Sprint wireline, require a more detailed analysis and trial of fact rather than a Tier 1 Advice Letter. Furthermore, Public Utilities (PU) Code § 2896 gives the Commission express authority over "telephone corporations." PU Code §§ 233 and 234, define "telephone line" and "telephone corporation," and, when read together with § 2896, imply that any corporation using any facilities to transmit communication by telephone for compensation in California is a telephone corporation regardless of the technology used to facilitate communication. Therefore, the status of regulatory authority over information services in California does not impact the authority of the Commission to regulate Sprint as a telephone corporation, a status which Sprint will still hold as long as it sells voice services in California.

⁴ On April 1, 2020, Commissioner Rechtschaffen, the assigned Commissioner over A.18-07-011 et al, ruled that the Joint Applicants "shall not begin merger of their California operations until *after* the CPUC issues a final decision on the pending applications." Assigned Commissioner's Ruling, A.18-07-011 et al, filed Apr. 1, 2020 (emphasis original).

⁵ See AL at 2.

⁶ In addition, The California Legislature passed Senate Bill (SB) 822, *the California Internet Consumer Protection and Net Neutrality Act of 2018*. SB 822 was codified in California Civil Code Title 15 Internet Neutrality §3101 before Sprint filed AL 918. The law imposes common carriage obligations on certain IP enabled services, although the Attorney General's office is not currently enforcing the law due to federal court proceedings on net neutrality. The Legislature's passing of SB 822 further demonstrates the recent shift in regulation of IP enabled services.

The Commission should reject AL 918 and direct Sprint to submit an application in order to allow for a detailed review and analysis of both the legal assertions that Sprint has made and the factual assertions about whether Sprint had adequately notified of, and not forced its customers onto, the technology transition. Sprint cannot have the sole discretion to decide that its services are entirely deregulated and no longer require a CPCN to operate in California, particularly if Sprint is still intending to operate telecommunications facilities or attach to utility poles.

B. Sprint's Choice to Relinquish its CPCN is Intertwined with the Proposed Merger of Sprint and T-Mobile and The Commission Should Review Potential Impacts.

Sprint and T-Mobile jointly filed two applications before the Commission for the proposed merger, Application (A.) 18-07-011 for the wireline transfer of control and A.18-07-012 for a "notification" to the Commission and request for review of the wireless transaction. The Commission consolidated both Applications and, on March 11, 2020 issued a Proposed Decision approving the merger and setting certain conditions for the new company. Sprint filed AL 918 two days before opening comments on the Proposed Decision were due to be filed, concurrent with the Motion of Joint Applicants to Withdraw Wireline Application (Motion to Withdraw) in the proposed merger as moot.⁷

The Motion to Withdraw directly references AL 918, using the AL as justification to withdraw A.18-07-011 despite a pending Proposed Decision and a submitted evidentiary record. The Commission usually denies such attempts to withdraw applications when a Commission decision is pending, especially when the withdrawal is predicated on avoiding unwanted outcomes.⁸ AL 918, the Motion to Withdraw, and A.18-07-011 are, therefore, all clearly closely intertwined.

Sprint's sudden abdication of its CPCN will likely significantly impact the pending merger proceeding and create a host of new legal issues directly related to Sprint's contention that IP enabled services are unregulated services. The interaction of AL 918 and the Motion to Withdraw will likely inject chaos and uncertainty into the final stage of review of the proposed merger. As such, the relief Sprint seeks in AL 918 is inappropriate for a Tier 1 Advice Letter and unjust for the numerous Intervenors who dedicated significant resources to the review of the proposed merger. The relief sought, frankly, disrespects the Commission's authority to review this merger, as it was filed over a year after Sprint sought the Commission's approval of its transaction with T-Mobile. The Commission should reject AL

⁷ Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011 et al filed Mar. 30, 2020, at 4.

⁸ Decision (D.)04-06-016 at 6. "The Commission has sole authority to close a proceeding." And at p. 7. "...that an application may not be withdrawn for the purpose of avoiding an adverse outcome."

918 and direct Sprint to submit an application to alleviate these significant overlapping concerns.

C. The Commission Should Ensure the Customers Sprint Claims to have Transitioned Were Properly Notified and Transitioned to IP Enabled Services.

The Commission should ensure that Sprint has adequately notified and transitioned its customers from TDM service to exclusively IP enabled service, especially considering the concurrent filing of the Motion to Withdraw, false assertions that IP services are unregulated, and the pending merger. The Commission must also confirm that Sprint's customers were properly informed of the impact of a transition on their rights to consumer protections and will not be migrated without their consent and proper notice.

III. Conclusion

For the reasons outlined above, the Commission should reject Advice Letter 918 and require Sprint to submit a formal application if it wishes to relinquish its CPCN.

Please submit questions concerning this protest to Ana Maria Johnson (anamaria.johnson@cpuc.ca.gov) and Cameron Reed (cameron.reed@cpuc.ca.gov).

Respectfully submitted,

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Service List for A.18-07-011