

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

And Related Matters.

Application 18-07-012

**OPPOSITION OF THE JOINT CONSUMERS
TO MOTION BY JOINT APPLICANTS TO ADVISE COMMISSION
OF FEDERAL COMMUNICATIONS COMMISSION COMMITMENTS**

I. INTRODUCTION

The Public Advocates Office, The Greenlining Institute (Greenlining), The Utility Reform Network (TURN), and the Communications Workers of America District 9 (CWA) (jointly, “Joint Consumers”) oppose the motion of Joint Applicants Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C), and T-Mobile USA, Inc. (collectively, “Joint Applicants”) to advise the Commission of commitments the Joint Applicants have made in filings submitted to the Federal Communications Commission (FCC).¹ These “commitments” were made long after the close of evidentiary hearings in this proceedings, and thus are not part of the record and should not be considered by the Commission.

¹ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of the Licenses and Authorization*, WT Docket No. 18-197 (filed June 18, 2018).

The Commission should also deny this Motion on the further grounds that the requested relief (that the Commission be “advised”) is vague and ambiguous and does not state a recognizable action under the Commission’s Rules of Practice and Procedure, and appears to be no more than an inappropriate attempt to have the Commission consider materials outside the record.

II. DISCUSSION

Pursuant to Public Utilities Code Section 1701.1, the Commission must base its decision on the evidence in the record. Joint Applicants’ latest filings made at the FCC (that are the subject of this Motion) are not part of the record, but Joint Applicants nevertheless want the Commission to base its decision on the new information contained in those new filings, which violates Section 1701.1.

If the Commission takes notice of the Joint Applicants’ filings as they request, parties will be deprived of their due process rights to challenge and test information that is considered in this proceeding. It will become impossible to make a decision on what is actually part of the evidentiary record if we take “advisement” of every federal development.

There have been many other developments at the federal level, and it is not consistent with due process or fair practice to continually update the Commission with every development. For example, the United States Department of Justice reportedly wants the Joint Applicants “to lay the groundwork for a new wireless carrier”²; in other words, to create a new fourth carrier. Joint Applicants have not indicated that they have the ability or the will to do so. As a result, the Washington Post reports that the proposed merger is on a “death watch.”³

Any meaningful changes by Joint Applicants (such as divesting Boost Mobile, which serves the prepaid market) may also have a significant bearing on the public

² Washington Post, May 30, 2019; https://www.washingtonpost.com/business/t-mobiles-sprint-deal-should-beon-death-watch/2019/05/30/c6c306f0-82f7-11e9-b585-e36b16a531aa_story.html?noredirect=on&utm_term=.efa5f8aabdc9

³ Ibid.

interest impact of the merger for Californians, depending on the outcome and details of any arrangement. If the Commission considers every update and new commitment the Joint Applicants make, it changes the public interest analysis we must do here and parties should be allowed to comment on those changes.

Also, Joint Applicants' motion specifically mentions that it has "committed" to divest itself of Boost Mobile⁴ if the proposed merger is approved, which allegedly will increase the public interest benefits of the proposed merger. However, Boost Mobile is a Sprint prepaid brand that specifically offers its products and services to low-income customers. Divesting Boost Mobile shows that Joint Applicants are not committed to serving low-income customers. This is a substantive change in position and requires allowing the other parties to conduct discovery as to how Joint Applicants will continue to serve low-income customers in California if Boost Mobile is divested. If the Commission agrees to let itself "be advised" of these developments and grants this Motion, Joint Consumers request an opportunity to "advise" the Commission of the impact of these conditions on the public interest of the merger.

Finally, Joint Applicants' request to "advise" the Commission of their FCC filings is essentially the same as DISH Network's January 29, 2019, Motion to Take Official Notice of Supplemental Authority, which requested that DISH's FCC filings be considered in this proceeding. In response to DISH's Motion, Joint Applicants argued that it "would cause prejudice to the Joint Applicants by enabling DISH to belatedly introduce arguments long after the relevant deadlines have passed, to which the Joint Applicants could have responded had the arguments been timely made."⁵ On February 5, 2019, the ALJ denied DISH's request, stating "...introducing what amounts to a legal pleading at this [point] is simply prejudicial to the applicants and so that motion is denied."⁶ The arguments regarding prejudice and timeliness are equally applicable now.

⁴ Joint Applicants' Motion at p. 2.

⁵ Joint Applicants' "Joint Response to Motion of Dish Network Corporation for the Commission to Take Official Notice".

⁶ Hearing Transcript, 237:19-25.

The Joint Applicants' request to "advise" the Commission about its latest FCC filings is essentially not different from DISH's request to take notice of its FCC filings, which the ALJ deemed was "simply prejudicial," and should therefore be denied.

III. CONCLUSION

For the reasons set forth above, the Joint Consumers respectfully request that the Commission deny Joint Applicants' Motion.

Respectfully submitted,

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