

**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-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) of

Application No. 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 No. 18-07-012

**JOINT APPLICANTS' RESPONSE TO MOTION OF CALIFORNIA EMERGING
TECHNOLOGY FUND TO BECOME A PARTY**

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December 17, 2018

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**JOINT APPLICANTS' RESPONSE TO MOTION OF CALIFORNIA EMERGING
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Pursuant to Rule 11.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, (“Rules”), Sprint Communications Company L.P. (U-5112-C) (“Sprint Wireline”), Sprint Spectrum L.P. (U-3062-C) and Virgin Mobile USA, L.P. (U-4327-C) (collectively referred to as “Sprint Wireless”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively referred to as the “Joint Applicants”), respectfully submit this response to the California Emerging Technology Fund (“CETF”) motion for party status filed on December 12, 2018.

Joint Applicants do not necessarily object to CETF becoming a party to the proceeding; however, Joint Applicants have serious concerns about the timing of CETF’s request. The Commission generally reviews motions for party status based on a standard of whether party intervention would “expand the scope of this proceeding, delay this proceeding,

or prejudice any party to this proceeding.”¹ Joint Applicants are concerned that CETF’s late participation in the proceeding may cause delay and prejudice to the Joint Applicants.

This proposed merger was publicly announced almost eight (8) months ago and the proceeding before the Commission is well underway. Applications were filed at this Commission in July 2018, and responses and protests were submitted in August 2018. The assigned Administrative Law Judge held a prehearing conference in September 2018, and both a scoping memo and amended scoping memo were issued, September 28 and October 4, 2018 respectively. Moreover, since September 2018, the Sprint entities and T-Mobile have been actively engaging in discovery with the parties; for example, each has responded to hundreds of data requests from the Public Advocates Office, including the production of tens of thousands of pages of documents.

In addition, the Joint Applicants note that the issues CETF states that they intend to raise as a party (e.g., low-income consumers’ reliance on wireless services) are topics that are already being fully explored by the current parties as evidenced by the initial protests to the Wireless Application,² the recent Technical Workshop, and the discovery to date. Indeed, CETF’s “intent to participate by filing California data in this proceeding on the reliance on smartphones by low-income populations for access to the Internet” is another example of a matter that has already been explicitly identified by the Joint Consumers who have participated in this proceeding since the

¹ See, e.g., *In Re Pacific Gas and Electric Co.*, D.05-06-007; see also D.16-03-005 (denying party status to Safety and Enforcement Division, in party, because “The motion does not state why SED did not appear earlier in this case, most notably at the August PHC or shortly after a scoping memo issued in the case.”); D.98-12-004 (denying party status to UCAN, a late entrant to the proceeding, on grounds that it sought to unduly broaden the issues which had previously been narrowed at the PHC).

² See e.g., Joint Consumers’ Protest to Wireless Application at pp. 12 – 15.

outset.³ Thus, it is unclear how CETF's late participation will add significantly new information to this process.

Joint Applicants are also concerned that with its late entrance into the case, CETF may seek to impose new demands on the Joint Applicants (for discovery or otherwise) in a concentrated timeframe, thereby prejudicing Joint Applicants as they prepare their rebuttal testimony, participate in the Public Participation Hearings, and prepare for evidentiary hearings all within the next two months.⁴

Joint Applicants are also concerned that CETF may seek to impose delay in the schedule as it seeks to "catch-up" with those parties that have been working diligently in this proceeding for the last five months. Any delay would be prejudicial to Joint Applicants since even under the current schedule there is concern that the Commission's decision may be issued after federal regulators have acted. Given that the FCC resumed its 180-day shot clock on December 4, 2018, it is on a path to reach a decision in the merger by April 8, 2019⁵ and the schedule for this docket provides that this Commission will issue a Proposed Decision in the Second Quarter of 2019. Delay would also harm California consumers for whom the benefits of the merger would be deferred.

³ Id. at p. 14 ("While 14% of white consumers are "smartphone dependent," i.e. rely on only their smartphone as their means of Internet access, for communities of color that number is much higher: 24% of African-Americans and 36% of Latino consumers are smartphone dependent.") (footnotes omitted).

⁴ The schedule in the docket requires a number of procedural steps in a concentrated period right after the Christmas and New Year holidays -- with intervenors testimony due on January 7, Public Participation Hearings scheduled for the week of January 14th, Joint Applicants' testimony due January 29, and evidentiary hearings scheduled to commence on February 6.

⁵ *Commission Announces Receipt of Supplemental Analysis from T-Mobile; Establishes Comment Deadline*, WT Docket No. 18-197, Public Notice, DA 18-1155 (November 13, 2018), available at <https://docs.fcc.gov/public/attachments/DA-18-1155A1.pdf>.

