



THE UTILITY REFORM NETWORK

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*Re: Protest of The Utility Reform Network of Sprint Communications Company L.P. (U-5112-C) Tier 1 Advice Letter 918*

## I. INTRODUCTION

Pursuant to General Rules Section 7.4 of the California Public Utilities Commission's General Order 96-B, The Utility Reform Network ("TURN") and The Greenlining Institute ("Greenlining") protest Sprint Communications Company L.P.'s ("Sprint") Advice Letter 918, dated March 30, 2020. This Advice Letter purports to "notify" the Commission of its intent to relinquish its Certificate of Public Convenience and Necessity (U-5112-C) ("CPCN") granted in a series of decisions between 1988 and 2007.<sup>1</sup> The Advice Letter requests that the Commission deem the relinquishment effective on the same day as the service of the Advice Letter dated March 30, 2020.<sup>2</sup>

TURN and Greenlining protest this Advice Letter pursuant to Section 7.4. Under Section 7.4.1 TURN and Greenlining have 20 days from the date that the Advice Letter was served to protest despite the effective date pending disposition. However, in light of the unique circumstances surrounding Sprint's requested relief, TURN and Greenlining file this protest on an expedited basis and request that the Commission act as quickly as possible to reject the Advice Letter without prejudice to a subsequent filing of a formal application. Action by the Commission to reject this Advice Letter will provide regulatory certainty regarding the Commission's jurisdiction over VoIP services and its current merger review of the proposed transaction between Sprint and T-Mobile.<sup>3</sup>

TURN and Greenlining protest this Advice Letter on grounds set forth in General Rule Section 7.4.2(5) and (6), and urges the Commission to find that:

(5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process

and

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<sup>1</sup> Advice Letter 918 at p. 1.

<sup>2</sup> G.O. 96-B General Rule Section 7.3.3 (Effective Pending Disposition)

<sup>3</sup> A.18-07-011/A.18-07-012 *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); 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.*

(6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

Sprint's Advice Letter provides notice of its intent to relinquish its CPCN and claims that it has completed its "years long" transition from providing traditional wireline services to now exclusively providing services based on Internet Protocol ("IP") formats.<sup>4</sup> Sprint argues that it no longer requires its CPCN to conduct business in California and can, instead, rely on a VoIP Registration which it filed contemporaneously with this Advice Letter.<sup>5</sup> The requested relief and arguments made in support of the relief raise extremely complicated issues of both fact and law, do not properly reflect the current status of federal and state law, and fail to address the impact of this request on the Commission's pending merger review of the transaction between Sprint and T-Mobile. As such, the requested relief is not appropriate for ministerial review pursuant to General Order 96-B and should be rejected without prejudice. If Sprint wishes to withdraw its CPCN, it should be required to file an application.<sup>6</sup>

## II. DISCUSSION

### A. Sprint's Claims Regarding Commission Jurisdiction over IP Enabled Services Must be Subject to Further Review

Sprint's Advice Letter and requested relief comes at a precipitous time. First, the Legislature has allowed Public Utilities Code §710 to sunset.<sup>7</sup> This action follows on the heels of the adoption of SB822, *the California Internet Consumer Protection and Net Neutrality Act of 2018*<sup>8</sup> and the federal Appellate Court's ruling in the *Mozilla v. FCC* net neutrality appeal, wherein the federal court rejected the FCC's sweeping attempt to preempt state broadband and net neutrality policies.<sup>9</sup> These events have a direct impact on the analysis and support that Sprint cites for its requested relief and for its claims that the Commission has no regulatory authority over its services merely because they are IP-enabled.

The Advice Letter process, especially Tier 1 and Tier 2 advice letters that allow for industry division disposition, is reserved for ministerial acts.<sup>10</sup> Due to changes in state statutes and policies regarding the regulation of IP-enabled and VoIP services, it is legal error for Sprint to unilaterally declare that its services are completely deregulated and that it no longer requires a CPCN to operate at all in

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<sup>4</sup> Advice Letter at p. 1.

<sup>5</sup> Advice Letter at p. 1.

<sup>6</sup> General Order 96-B, General Rules Section 5.2 (matters appropriate for a formal proceeding include "utility...seeks relief that the Commission can grant only after holding an evidentiary hearing, or by decision rendered in a formal proceeding." See also, General Rules Section 5.3 (Whenever the reviewing Industry Division determines that the relief requested or the issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding, the Industry Division will reject the advice letter without prejudice."))

<sup>7</sup> Public Utilities Code §710(h) "This Section shall remain in place until January 1, 2020 and as of that date is repealed..... ; AB1366 (2019, Daly and Obernolte) on Committee Hold pursuant to Section 29.10.

<sup>8</sup> SB822 (Chapter 976, September 30, 2018), Civil Code §3100, et seq.

<sup>9</sup> *Mozilla Corp. v. FCC*, 940 F.3d 1, 121-145 (D.C. Cir. 2019) The extent of the Commission's authority in light of the Court's detailed analysis is exactly the issue to be addressed outside of this Advice Letter process.

<sup>10</sup> General Order 96-B, General Rules Section 7.6.1 (citing Commission Decision 02-02-049).

California or the impact of a VoIP Registration on the Commission's jurisdiction over these services. The Commission must determine the impact on Sprint's customers, even if they are mostly business customers, to ensure that these entities have access to appropriate consumer protections, complaint handling, service quality and other safeguards, and to set forth any conditions under which Sprint would be allowed to withdraw its CPCN.

TURN and Greenlining are not, at this time, categorically opposing Sprint's request to withdraw its CPCN or its business decision to serve these customers using IP-enabled technology. But it is inappropriate to allow Sprint to unilaterally withdraw its CPCN before the Commission has had an opportunity to conduct a legal analysis of the Commission's authority in the absence of Section 710 and within the guidelines of the Legislature's statutory directives and developments of federal law.<sup>11</sup>

### **B. Sprint's Decision to Withdraw its CPCN May Result in a Cascade of Impacts on the Commission's Merger Review**

Sprint's Advice Letter also comes at a critical juncture in the Commission's review of the pending Applications related to the merger transaction between Sprint and T-Mobile. In July 2018, Sprint and T-Mobile filed two applications before the Commission regarding their proposed merger. One Application was a request for approval of the transfer of control pursuant to Section 854 (A.18-07-011, Wireline Merger), while the other was fashioned as a "notification" to the Commission and request for review of the wireless transaction (A.18-007-012, Wireless Merger). The Commission consolidated the two applications and has conducted a detailed and resource-intensive review of this transaction over the course of the past 18 months. A Proposed Decision approving both applications, with conditions, is currently pending for comment and a Commission vote.

Sprint's decision to withdraw of its wireline CPCN at this time, two days before opening comments are due on the Proposed Decision, could have significant impacts on the Commission's review of this transaction between two behemoth wireless companies that will impact millions of California consumers. Indeed, at the same time as Sprint submitted this Advice Letter, Joint Applicants filed a Motion in the merger review proceeding to withdraw the wireline application, arguing that because one of the Joint Applicants no longer has a CPCN and only offer IP-enabled services, "approval for the wireline transaction under California Public Utilities Code §854 is no longer required."<sup>12</sup> The fact that Sprint's Motion to withdraw the Wireline Merger application in the merger review docket, filed immediately upon submission of this Advice Letter, could up-end the merger review and undo the massive amount of work and resources that all stakeholders have dedicated to the review, should be sufficient grounds to determine that Sprint's request is inappropriate for advice letter relief.

Beyond just filing the Motion to withdraw, TURN and Greenlining note that Joint Applicants have maintained their position that the Commission only has jurisdiction to fully review the wireline transaction,<sup>13</sup> and even without the Motion, allowing Sprint to unilaterally withdraw its CPCN could

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<sup>11</sup> Indeed, all of Sprint's citations supporting its assertion that the Commission has no regulatory authority over its IP-enabled services pre-date both the sunset of §710 and the federal Appellate Court's Ruling in *Mozilla*.

<sup>12</sup> Motion of Joint Applicants to Withdraw Wireline Application, A.18-07-011/A.18-07-012, March 30, 2020 at p. 2.

<sup>13</sup> See, Joint Applicants' Opening Brief, April 26, 2019 at p. 14-15; See also T-Mobile March 31, 2020 Letter to the CPUC reiterating its "abiding view that the Commission lacks jurisdiction over this [wireless] transaction."

impact the resulting decision in the merger review. Additionally, in reviewing this Advice Letter, the Commission must consider that T-Mobile and the California Emerging Technologies Fund agreed that their Memorandum of Understanding, entered into as part of the merger review and relied upon by the Proposed Decision to find that the merger benefits customers, is explicitly tied to the approval of the Wireline Application.<sup>14</sup> If the Wireline Application is withdrawn, directly as a result of the relinquishment of Sprint's CPCN, the status of these MOU conditions would be clearly called into question and must be further analyzed for its impact on the record of the merger review.<sup>15</sup>

Here again, the requested relief is not appropriate for ministerial approval in light of the significant impact it may have on this sweeping merger review by the Commission. Indeed, in D.19-12-008, the Commission fined a CPCN-holding CLEC for failing to gain appropriate approval for its merger under Section 854(a) prior to withdrawing its CPCN.<sup>16</sup> The Commission should require Sprint to withdraw this Advice Letter and file an application to withdraw its CPCN to allow the Commission to conduct an analysis of the impact of this withdrawal on the merger review and enforcement of its final decision in this proceeding.

### C. Sprint's Factual Claims Should Be Verified

Finally, in light of the discussion above and the timing of these events, TURN and Greenlining urge the Commission to further verify Sprint's factual claims that it has completed its "years long" transition of its customers onto exclusively IP-enabled services. It should further confirm that Sprint's customers have received full and adequate notice of the impact of this transition on the customers' legal and regulatory rights to consumer protections, appropriate complaint handling, remedies, and relief and to ensure that the customers were given a choice to switch and not forcibly migrated without proper consent and notice.<sup>17</sup> TURN and Greenlining note that Sprint did not file an Advice Letter to withdraw specific services and, as such, could be in violation of General Order 96-B if it withdrew specific services while customers were currently subscribed and subsequently forced off of the services. The Advice Letter claims that no customers will experience service interruptions or disconnections and that all customers received at least 30-days notice; but these assurances ring hollow if the transition of these customers happened over years.

## II. CONCLUSION

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<sup>14</sup> Memorandum of Understanding between T-Mobile USA and the California Emerging Technologies Fund, March 23, 2019, p. 1, ("All the terms of this MOU are expressly contingent upon the CPUC's approval of the Wireline Application, the CPUC's completion of its review of the Wireless Notification, and the consummation of the Transaction.")

<sup>15</sup> Just hours after Sprint submitted its Advice Letter and hours before TURN and Greenlining submits this Protest, T-Mobile issued a letter to the CPUC announcing that it has chosen to close the merger on April 1<sup>st</sup>, 2020, without the Commission's final decision. While TURN and Greenlining has not fully analyzed the potential impacts of T-Mobile's unilateral announcement, the letter claims that the merged company will "honor the nearly 50 voluntary California specific conditions it has made in connection with the deal." This presumably refers in part to those commitments in the CETF MOU. Yet, the letter does not clarify or discuss the impact of this Advice Letter or the related request to withdraw the wireline application in the absence of a CPCN on the enforceability of the CETF MOU.

<sup>16</sup> D.19-12-008 at p. 9, ("We find that the violation [of Section 854(a)] poses regulatory and economic harms and, therefore, the severity of the violation is high.")

<sup>17</sup> This should be determined even if the customers had contracts with Sprint for these services and not merely tariffs.

*Communications Division*

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TURN and Greenlining protest this Advice Letter and urge the Commission to reject the Advice Letter without prejudice and to require Sprint to file a formal application for its requested relief. Sprint's should not be allowed to unilaterally notify the Commission of its intent to relinquish its CPCN because such an act raises significant issues of fact and law and is not appropriate for a ministerial review. Please submit questions concerning this protest to Christine A. Mailloux at [cmailloux@turn.org](mailto:cmailloux@turn.org) or Paul Goodman at [paulg@greenlining.org](mailto:paulg@greenlining.org)

Respectfully,

/s/

Christine Mailloux

The Utility Reform Network