

Decision **PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 4/9/13)****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 Starburst II, Inc. for Approval of an Indirect Transfer of Control of Sprint Communications Company, L.P. to Starburst II, Inc.

Application 12-11-022
(Filed November 27, 2012)

DECISION AUTHORIZING TRANSFER OF CONTROL**1. Summary**

Applicants Sprint Communications Company, L.P. (Sprint Communications) and Starburst II, Inc. (Starburst II) are granted approval to consummate a transaction under which Starburst II will become the direct parent of Sprint Nextel Corporation (Sprint Nextel) and indirect parent of its wholly-owned subsidiary, Sprint Communications, and by which Softbank Corp. (SoftBank), through its newly formed affiliate Starburst II, will invest \$20.1 billion in Sprint Nextel and indirectly acquire approximately 70 percent of the shares of Sprint Nextel. The transaction is at the parent holding company level only. Accordingly, Sprint Communications will not be directly affected by the transaction described herein and will continue to be a wholly-owned subsidiary of Sprint Nextel.

1.1. Parties to the Transaction

Sprint Communications is a Delaware limited partnership with its principal business office at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint Communications is authorized to provide wireline competitive local

exchange carrier and non-dominant interexchange carrier services in California pursuant to Commission Decisions (D.) 07-07-027, D.97-08-045 and D.88-11-045.¹ Sprint Communications is a wholly-owned subsidiary of Sprint Nextel.

Sprint Nextel is a publicly-traded Kansas corporation with a principal business office at 6200 Sprint Parkway, Overland Park, Kansas 66251.² Sprint Nextel has no majority owner, although two institutional investors hold a greater than 10 percent ownership interest in Sprint Nextel.³ Sprint Nextel is a

¹ D.97-08-045 authorized Sprint Communications to operate as a CLEC in certain specified areas in California. Prior to D.97-08-045, Sprint Communications acquired authority to provide different services in California through a series of decisions by this Commission. Sprint Communications' original predecessor-in-interest, GTE Sprint Communications Corporation, received a certificate of public convenience and necessity authorizing provision of interLATA telecommunications services in California in D.84-01-037. This authority was transferred to U.S. Sprint Communications Company in D.86-06-028 and thence to U.S. Sprint Communications Company L.P. (now renamed as "Sprint Communications Company L.P.," i.e., Sprint Communications), in D.88-11-064. Sprint Communications received authority to provide intraLATA digital high speed private line services in D.89-02-027 and intraLATA toll services in D.93-04-063 (effective upon issuance of D.94-09-065, the Implementation Rate Design decision). In D.07-08-027, Sprint Communications obtained authority from this Commission to provide limited facilities-based competitive local exchange services within the service territories of SureWest Telephone (formerly known as Roseville Telephone Company) and Citizens Telephone Company d/b/a Frontier Communications of California.

² Various Sprint Nextel subsidiaries also hold Federal Communications Commission (FCC) licenses and authorizations. Applicants have filed appropriate applications with the FCC for approval of the indirect transfer of those licenses and authorizations.

³ Recent Schedule 13-G filings with the Securities and Exchange Commission demonstrate that: (1) Capital Research Global Investors, a U.S. investment advisor company, is the beneficial owner of approximately 10.7 percent of Sprint Nextel's common stock; and (2) Dodge & Cox, a U.S. investment advisor company, is the beneficial owner on behalf of itself and its clients of 10.3 percent of Sprint Nextel's common stock. See Capital Research Global Investors, Schedule 13-G (April 9, 2012); Dodge & Cox, Schedule 13-G (June 7, 2012).

global communications company that, through its subsidiaries,⁴ offers a comprehensive range of wireless and wireline voice and data products and services designed to meet the needs of residential consumers, businesses, government subscribers, and resellers throughout the country and around the globe. Through its subsidiaries, Sprint Nextel offers wireless and wireline voice and data services in California and throughout the United States. In addition, Sprint Nextel is one of the country's largest carriers of Internet traffic and provides Internet connectivity in California.

Separately, Sprint Telephony PCS, L.P. (U 3064 C), Sprint Spectrum L.P. as agent for Wireless Co., L.P. (U 3062 C) dba Sprint PCS, Nextel of California, Inc. (U 3066 C), Nextel Boost of California LLC (U 4332 C), and Virgin Mobile USA, L.P. (U 4327 C) (collectively, the Sprint wireless entities) provided 30-days advance notice of the proposed transaction to the Commission by letter,⁵ pursuant to Commission Decision 95-10-032,⁶ that they are parties to the transaction, and that, as a result of the transaction, there will be an indirect transfer of control of the Sprint wireless entities to SoftBank.

Starburst II is a newly-formed Delaware corporation that will hold all shares of Sprint Nextel at closing. Starburst II will be renamed Sprint Corporation. Starburst II's principal offices are located at 38 Glen Avenue, Newton, Massachusetts 02459. At this time, Starburst II does not

⁴ Sprint Nextel is primarily a holding company. Most of its operations are conducted by its subsidiaries, including, but not limited to, Sprint Communications.

⁵ A copy of the letter to the Commission's Communications Division is attached to this decision as Attachment A.

⁶ *Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications*, I.93-12-007 [D.95-10-032] (1995) 62 CPUC2d 3, 1995 Cal. PUC LEXIS 888

provide telecommunications services or hold any telecommunications licenses. Upon consummation of the proposed transaction, approximately 70 percent of Starburst II's common stock will be held, through a holding company, by SoftBank.

SoftBank is a publicly-traded holding company, organized and existing under the laws of Japan and headquartered in Tokyo, at 1-9-1 Higashi-Shimbashi, Minato-ku, Tokyo 105- 7303 Japan. SoftBank's founder and Chief Executive Officer, Mr. Masayoshi Son, a citizen of Japan, holds 22.49 percent of SoftBank's issued and outstanding shares.⁷ No other individual or entity holds 10 percent or more of SoftBank's equity. SoftBank has been listed on the Tokyo Stock Exchange since 1998.⁸ SoftBank's various subsidiaries and affiliates are engaged in a number of information technology and Internet-related businesses in Japan, including mobile communications, broadband infrastructure, fixed-line telecommunications, e-commerce, and web portals. The company also invests in dynamic, innovative Internet-based companies throughout the world.

⁷ Mr. Masayoshi Son's 22.49 percent interest includes both the 21.09 percent of SoftBank shares that he owns directly and an additional 1.40 percent that he owns indirectly.

⁸ Based on SoftBank's most recent share register, no single person or entity other than Mr. Son currently owns more than 10 percent of SoftBank's shares. A recent public securities filing in Japan analogous to the Form 13D of the U.S. Securities and Exchange Commission, however, indicates that each of four entities affiliated with The Capital Group Companies, Inc. (Capital Group) beneficially own interests in SoftBank that are below 10 percent but that aggregate to 10.04 percent of SoftBank's stock. Capital Group is an investment management company headquartered in Los Angeles, California. The above-described informational filing states that these Capital Group affiliates hold SoftBank stock as follows: Capital Research and Management Company (8.34 percent); Capital Guardian Trust Company (1.39 percent); Capital International Limited (0.16 percent); and Capital International Inc. (0.14 percent).

SoftBank's wholly-owned subsidiary, SOFTBANK MOBILE Corp. (SoftBankMobile) is currently the third largest wireless carrier in Japan, with approximately 30.5 million wireless subscribers, giving it approximately 22 percent of the Japanese wireless market as of September 30, 2012. SoftBank Mobile generated wireless revenues of nearly \$27.6 billion in fiscal year 2011, which ended on March 31, 2012.

SoftBank also provides wireline broadband and telecommunications services in Japan through two wholly-owned subsidiaries, SOFTBANK BB Corp. (SoftBank BB) and SOFTBANK TELECOM Corp. (SoftBank Telecom). SoftBank BB provides residential wireline broadband service to approximately 4.2 million customers in Japan, and SoftBank Telecom provides a direct connection voice service to approximately 1.7 million primarily corporate subscribers in Japan.

SoftBank holds no authorizations from the Commission and has no customers in the state of California. SoftBank's only telecommunications interest in the United States is JAPAN TELECOM AMERICA, INC. (JTA), which is a wholly-owned subsidiary of SoftBank Telecom. Although JTA holds an international Section 214 authorization from the FCC, JTA provides only limited private line services to its sole customer, SoftBank Telecom, and has no U.S. customers.

No transfer of Sprint Communication's Certificate of Public Convenience and Necessity, assets, or customers will occur with this transaction. The applicants state that the transaction will not cause any immediate change in the direct ownership or legal structure of Sprint Communications. They represent that the transaction will not affect the daily management or operations of Sprint Communications, and after the transaction is consummated, Sprint Communications will continue to provide service at current rates, terms, and

conditions. Applicants further assert that the transaction will not eliminate existing or potential competitors, and will enhance Sprint Communication's ability to compete, to the ultimate benefit of consumers.

2. Protests to the Application

The application was protested on December 20, 2012 by the National Asian American Coalition, Latino Business Chamber of Greater L.A., and Ecumenical Center for Black Church Studies (collectively, NAAC) and on December 21, 2012 by The Center for Accessible Technology, Division of Ratepayer Advocates, The Greenlining Institute, The National Consumer Law Center, and The Utility Reform Network (collectively, Consumer Groups).

2.1. NAAC's Protest

NAAC's Protest contends that Applicants have not "adequately addressed public interest benefits related to" the proposed acquisition.⁹ The Protest indicates that NAAC expects:

. . . to examine: (1) the extent to which Sprint has considered the public interest provisions in §§ 854(a) – (c) of the California Public Utilities Code; (2) how the utility plans to offer to "increase its network investment, accelerate its broadband deployment, and improve its coverage"; (3) the specific devices and services that Sprint plans to offer as a new "wide range" as a result of the acquisition; (4) the extent to which the CPUC has jurisdiction over the wireless component of this acquisition; (5) the extent to which the infusion of capital will increase Sprint's competitiveness in California; and (6) the planned public benefit to California's nine million people living in poverty and 26 million people of color.¹⁰

According to NAAC, "The primary issue is whether SoftBank's CEO . . . is prepared to personally visit this Commission, key minority groups, and key

⁹ NAAC Protest at 3 (fn. omitted).

¹⁰ *Id.*

general consumer groups . . . to assure that SoftBank intends to adhere to the highest public interest standards.”¹¹ NAAC speculates that “The instant application . . . may harm the interests of California’s ratepayers.”¹²

2.2. Consumer Groups’ Protest

The Protest by Consumer Groups states that they “. . . have concerns about the potential impacts that [the proposed transaction] could have on California ratepayers.”¹³ Consumer Groups further state that they:

. . . are reviewing various factors, including the proposed transaction’s potential impact on competition, quality of service (particularly with regard to availability of affordable service for vulnerable customers), management, employees, and state and local economies, as well as the Commission’s ability to regulate public utilities. Consumer Parties are undertaking this review to evaluate whether they believe that the proposed transaction is in the public interest and provide those conclusions to the Commission . . .

Consumer Parties urge the Commission to further investigate and conduct additional research into this proposed transaction to ensure that the purported benefits are realized and potential risks to Sprint customers are mitigated.¹⁴

Consumer Groups appear to accept that Public Utilities Code Sections (Pub. Util. Code §§) 854(b) and (c) do not apply to the Application, but nonetheless urge the Commission to “utilize the criteria” in those sections in reviewing the proposed transaction.¹⁵ They also urge the Commission to include in this proceeding consideration of the transfer of Sprint wireless entities

¹¹ *Id.*

¹² *Id.* at 6.

¹³ Consumer Groups Protest at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 5-6.

to Softbank Corp. (SoftBank), claiming that “. . . the Commission cannot engage in a meaningful review of the proposed transfer of Sprint’s wireline entities without also reviewing the transfer of Sprint’s wireless entities.”¹⁶

2.3. Discussion

Protestants do not appear to oppose the Commission’s granting the Application. Although they call for further inquiry, Protestants do not demonstrate any cause or need for such inquiry. Protestants do not identify any harm, either general or specific, that will befall ratepayers in California or the public interest if the Application is approved under Pub. Util. Code § 854(a). Protestants do not point to any specific instance in which either Sprint or SoftBank has failed to meet its public interest obligations. Although Protestants suggest a need for discovery and a prehearing conference in this proceeding, they do not actually ask the Commission to reject or deny the Application. Finally, Protestants do not suggest, let alone argue, that SoftBank, the third largest provider of wireless communications services in Japan, somehow lacks the requisite financial and managerial resources to operate Sprint Communications in California.

The primary standard by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be “adverse to the public interest.”¹⁷ As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a certificate of public convenience and necessity (CPCN) in California, the Commission applies the same requirements that govern a new

¹⁶ *Id.* at 7-8.

¹⁷ See D.03-12-033, *mimeo* at 6; D.01-06-007, *mimeo* at 15.

applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

The applicants have provided information that reflects that the proposed change in ultimate ownership of Sprint Communications will not adversely impact its operations or financial status. Applicants have provided information that demonstrates that the acquiring company, Starburst II, Inc. (Starburst II) has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about Starburst II's management team reflects its significant experience in a variety of industries, including the telecommunications industry. The applicants also state that to the best of their knowledge, no legal complaints have been decided against Starburst II or any affiliates, or are pending in any court in California or any other state, involving an alleged violation of Section 17000 *et seq.* of the California Business and Profession Code, any misrepresentation to customers, or any similar violations. Applicants also state that to the best of their knowledge, no Applicant, any affiliate, officer, director, partner, nor owner of more than 10 percent of Starburst II, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order. In addition, applicants have represented that there will be no change in Sprint Communication's management, operations, and service offerings and thus the transaction will not affect Sprint Communication's operations. Thus, the transaction satisfies the Commission's technical requirements.

As for financial qualifications, the applicants attached a copy of the consolidated financial statements of SoftBank, the corporate parent, of Starburst II, reflecting information through September 30, 2012, as Exhibit F to the application. The exhibit reflects that Softbank has more than sufficient cash or cash equivalents to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect Sprint Communication's financial status.

We find that Applicants have demonstrated that Starburst II has the financial and technical qualifications to acquire Sprint Communications.

We also find that the transaction is consistent with the public interest. There will be no immediate changes to Sprint Communication's direct management or the service that Sprint Communications provides as a result of the transfer. Applicants represent that Sprint Communications will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for Sprint Communication's customers. Finally, the applicants note that the transfer of control will enable Sprint Communications to become a stronger competitor and allow it to compete with other, larger telecommunications providers in California. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

3. California Environmental Quality Act (CEQA) Compliance

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the

environment. The proposed transaction does not constitute a “project” under CEQA, California Public Resources Code, Section 21000, *et seq.*

4. Request to File Under Seal

Pursuant to Rule 11.4, applicants filed a motion for leave to file Exhibit E to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage if disclosed. The motion is unopposed. We grant Applicants’ motion to treat Exhibit E to the application as confidential.

5. Categorization and Need for Hearings

In ALJ-Resolution 176-3306, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were necessary. Based on the record, the Commission concludes that public hearings are not necessary, and the preliminary determinations in ALJ-Resolution 176-3306 therefore will be altered to change the preliminary hearing determination from “necessary” to “not necessary.”

6. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments on the Proposed Decision were received from National Asian American Coalition, Latino Business Chamber of Greater Los Angeles, Ecumenical Center for Black Church Studies, The Greenlining Institute, National Consumer Law Center, The Utility Reform Network, and the Center for Accessible Technology on April 29, 2013. All comments reiterated points considered and rejected in the proposed decision and were accorded no additional weight.

On April 29, 2013 DISH Network Corporation (DISH), a provider of satellite communications services, filed a motion to become a party, a motion to shorten time, and comments on the proposed decision. DISH informed the Commission that it had recently made a competing offer to acquire the Sprint entities and asked that proceedings in this docket be held in abeyance pending Sprint's response to the offer. The motion stated that the Sprint Board of Directors was considering the DISH offer. We decline to delay this proceeding as requested by DISH. If we approve the present application, and Sprint then accepts the DISH offer, the indirect transfer of control approved in the proposed transaction will not take place. In other words, the DISH offer is not a reason to delay approval of the present application.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Karl J. Bemederfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Sprint Communications is a Delaware limited partnership.
2. Sprint Nextel is a publicly-traded Kansas corporation.
3. Starburst II is a newly-formed Delaware corporation. Upon closing of the transaction, Starburst II will be renamed Sprint Corporation.
4. SoftBank is a publicly-traded holding company, organized and existing under the laws of Japan.
5. Upon consummation of the transaction, (a) SoftBank will own approximately 70 percent of the ownership interests of Starburst II; (b) Starburst II will own 100 percent of the shares of Sprint Nextel; and (c) SoftBank will thereby indirectly own approximately 70 percent of the shares of Sprint Nextel.

6. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as a provider of competitive local exchanges services and non-dominant interexchange services.

7. No new construction is being proposed in the application.

8. No complaints alleging fraud or significant wrongdoing are pending against the applicants before this Commission, the Federal Communications Commission, or any other state commission.

9. The Applicants have filed a motion for leave to file under seal confidential materials in Exhibit E.

10. Timely protests to the Application were filed by the National Asian American Coalition, Latino Business Chamber of Greater L.A., the Ecumenical Center for Black Church Studies, The Center for Accessible Technology, Division of Ratepayer Advocates, The Greenlining Institute, The National Consumer Law Center, and The Utility Reform Network.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange, intraLATA toll, and interexchange services, as it does to an initial applicant for authority to provide such services.

2. Starburst II meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

3. The indirect transfer of control of Sprint Communications proposed in the application is not adverse to the public interest.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. No hearings are necessary.

6. Applicants' motion to file Exhibit E under seal should be granted for two years.
7. The application should be approved.
8. The decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854 (a), the indirect transfer of control of Sprint Communications Company, LP (U-5112-C) to Starburst II, Inc., in accordance with the documents and agreement submitted in conjunction with Application 12-11-022, is authorized.
2. Applicants' request to have the confidential material filed with the application in Exhibit E kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.
3. The motions of DISH Network Corporation to become a party and to shorten time are denied.
4. The hearing determination is changed to no hearings necessary.
5. Application 12-11-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A