

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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

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 18-07-012

MOTION OF JOINT APPLICANTS TO WITHDRAW WIRELINE APPLICATION

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Application 18-07-012

MOTION OF JOINT APPLICANTS TO WITHDRAW WIRELINE APPLICATION

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure (“Rules”), Sprint Communications Company L.P. (U-5112-C) (“Sprint Wireline”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Joint Applicants”) respectfully move to withdraw the Joint Application for Approval of Transfer of Control of Sprint Communications Company L.P. (U-5112-C) Pursuant to Pub. Utils. Code § 854(a), Application 18-07-011 (the “Wireline Application”), which was filed with the California Public Utilities Commission (“Commission”) on July 13, 2018.

Based on the nature of Sprint Wireline’s services at the time of filing the Wireline Application, Joint Applicants sought the Commission’s approval for the transfer of Sprint Wireline to T-Mobile pursuant to Public Utilities Code § 854(a). The Application was predicated on Sprint Wireline’s status at the time as a certificated public utility under California law—specifically, a Competitive Local Exchange Carrier (“CLEC”) and Non-dominant Interexchange Carrier (“NDIEC”) holding a Certificate of Public Convenience and Necessity

(“CPCN”) from the Commission to provide various CLEC and NDIEC services.¹ As described below, now—more than 20 months after the Wireline Application was filed—the nature of Sprint Wireline’s services has changed, and approval for the wireline transaction under California Public Utilities Code § 854(a) is no longer required. Accordingly, Joint Applicants respectfully move to withdraw the Wireline Application as moot.

At the outset of this proceeding, Joint Applicants advised the Commission of Sprint Wireline’s “existing plans to discontinue TDM [i.e., Time-Division Multiplexing] services and transition customers to Internet Protocol (“IP”) services.”² Joint Applicants further advised:

In 2016, Sprint Wireline informed its enterprise and wholesale customers that it was transitioning its services from a TDM network to Voice over Internet Protocol (“VoIP”) services and that existing contracts would need to be modified accordingly for those customers who wanted to continue service. Sprint Wireline is in the process of either disconnecting or transferring those final customers and expects all customers to be transferred within the next year if not earlier. Once those customers are no longer on Sprint Wireline’s TDM network, Sprint Wireline will only be providing unregulated VoIP services, Internet Access and IP-based private network services to business and enterprise customers.³

During the pendency of this proceeding, Sprint Wireline has continued that transition, including for its wireline voice services. For example, attached is a follow-up communication sent to enterprise and business customers, who were previously provided 30 days’ notice of the technology shift, informing them to complete the transition of their services promptly. *See* Exhibit A. Concurrently with this filing, on March 30, 2020, Sprint Wireline filed a Tier 1 Advice Letter advising the Commission that “follow[ing] a years-long” transition of its wireline services to newer IP-format services, it had recently “completed” its transition to VoIP of all

¹ *See* Wireline Application at 2 (describing Sprint Wireline as a “certificated competitive local exchange carrier (“CLEC”) and non-dominant interexchange carrier (“NDIEC”)”).

² *Id.* at 15.

³ *Id.* at 15 n.36.

voice services provided to California customers.⁴ Sprint Wireline noted that it had registered as a VoIP service provider in accordance with the Commission’s rules and that the Commission “does not require VoIP service providers to hold a CPCN, and routinely grants requests for relinquishment of CPCNs where service providers have transitioned from regulated telecommunications services to VoIP services.”⁵ Sprint Wireline further noted that “VoIP is an ‘information service’ that is not subject to public utility or common carrier regulation.”⁶ And it advised the Commission that the remaining wireline data services that Sprint Wireline provides to customers in California—which include broadband services and other IP-based services with enhanced information-processing, storage and/or retrieval capabilities—are exclusively “information services” and/or “jurisdictionally interstate services.”⁷ On that basis, Sprint Wireline advised that it was “relinquishing” its CPCN, effective as of March 30, 2020.⁸

Following these developments, the transfer of Sprint Wireline—a provider of information services and/or interstate services that is no longer providing services as a certificated public utility—does not require Commission approval. Under Public Utilities Code § 854, approval is required only for transfers of “any *public utility* organized and doing business in this state.”⁹ For

⁴ Letter, Sprint Communications Company L.P., at 1 (filed March 30, 2020) (“Advice Letter”).

⁵ *Id.* at 1 & n.2 (citing Mitel Cloud Services, Inc. (U-5238-C) Advice Letter at 1 (filed Aug. 1, 2019 and approved Sept. 2, 2019) (“Mitel’s business model has continued to evolve and develop since [its] CPCNs were originally granted. Today, the Company serves its customers through VoIP and a variety of over-the-top nomadic interconnected services as well as private business communication and collaboration solutions. Therefore, the CPCNs granted by the Commission are no longer necessary.”); Momentum Telecom, Inc. (U-7108-C) Advice Letter at 1 & n.1 (filed and approved May 4, 2018) (noting that “Momentum is not providing service to any customers under its CPCN but rather provides service under its VoIP registration”)).

⁶ *Id.* at 1-2 & n.3 (citing *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 717 (8th Cir. 2018), *cert. denied sub nom. Lipschultz v. Charter Advanced Servs. (MN), LLC*, 140 S. Ct. 6 (2019)).

⁷ *Id.* at 2 & nn. 4, 5 (citing authorities).

⁸ *Id.* at 1, 3.

⁹ Pub. Util. Code § 854(a) (emphasis added).

the reasons stated in Sprint Wireline’s Advice Letter, however, Sprint Wireline is no longer providing services that require a CPCN,¹⁰ nor is it providing services as a public utility.¹¹

Federal law also forecloses any preapproval requirement. *First*, it is well established that VoIP is an *information service* and that federal law preempts state PUCs from subjecting VoIP to public utility or common carrier regulation, such as the preapproval requirement for transfers of public utilities under Section 854.¹² Similarly, Sprint Wireline’s broadband services and other IP-based services with enhanced information-processing, storage and/or retrieval capabilities are information services.¹³

Second, Sprint Wireline provides its wireline data services to predominantly national and global customers.¹⁴ Given the nature of the customers and their use of the services, Sprint Wireline therefore treats the services as jurisdictionally *interstate* pursuant to the 10% interstate

¹⁰ As discussed in the Advice Letter, the Commission does not require CPCNs for VoIP services. *See* Advice Letter at 1 & n.2. *See also Re MLN TopCo Ltd.*, D.19-12-008 (dismissing a Section 854 application for transfer of control on the grounds that Mitel had filed an advice letter to withdraw its CPCN and “either by the time this decision becomes final or shortly thereafter, Mitel will no longer hold a CPCN license for local exchange and interexchange telecommunications services in California.”). Furthermore, the Commission has acknowledged that CPCNs are not required to provide *interstate* services. *See, e.g., Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund*, R.12-10-012, at 17 (Cal. P.U.C. Oct. 25, 2012) (“[S]ince they provide only interstate telecommunications services,” service providers “do not need state-issued CPCNs.”); *Westcom Long Distance, Inc. v. Pac. Bell*, D.94-04-082, 54 CPUC 2d 244 (Cal. P.U.C. Apr. 20, 1994), *decision modified on denial of reh’g*, D. 94-10-061, 57 CPUC 2d 120 (Cal. P.U.C. Oct. 26, 1994) (dismissing complaint that a company needed a CPCN, in part, on basis that at least 10% of the traffic at issue was interstate).

¹¹ *See, e.g., Re American Satellite Co. d/b/a Contel ASC*, D. 91-05-038, 40 CPUC 2d 390 (Cal. P.U.C. May 22, 1991) (“Applicant should be authorized to abandon its CPC&N, and to discontinue operations as a California public utility”); *Alisal Water Corp.*, D. 94-01-046, 53 CPUC 2d 154 (Cal. P.U.C. Jan. 19, 1994) (“Because Acacia Mutual is not a public utility, Alisal was not required to obtain a certificate of public convenience and necessity ... or to obtain an order of the Commission under either § 852 or 854.”).

¹² *See, e.g., Charter Advanced Servs.*, 903 F.3d at 717-20; *see also Restoring Internet Freedom*, 33 FCC Rcd. 311, 349, 431 ¶¶ 61, 202 (2018), *vacated in part on other grounds, Mozilla Corp. v. FCC*, 940 F.3d 1, 74 (D.C. Cir. 2019).

¹³ *See* 47 U.S.C. § 153(24); *Charter Advanced Servs.*, 903 F.3d at 719-20; *Restoring Internet Freedom*, 33 FCC Rcd. at 345 ¶ 55.

¹⁴ Advice Letter at 2 & n.5.

traffic rule and other federal precedent.¹⁵ Federal law precludes state commission authority over such interstate services.¹⁶

In sum, Joint Applicants no longer require Commission approval for the Wireline Application and thus seek to withdraw the Application as moot.

¹⁵ See, e.g., *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, & to Consider & Resolve Questions raised in the Ltd. Rehearing of Decision 08-09-042*, D. 16-12-025, at 159, n.409 (Dec. 1, 2016) (corrected by D. 17-03-014) (“If a special access line has over 10% interstate traffic, it is considered an interstate facility, and therefore falls under federal jurisdiction. At present, most special access lines in California are so classified.”); *MTS and WATS Market Structure, Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, Recommended Decision and Order, 4 FCC Rcd. 1352, n.14 (1989) (“Under the ‘contamination doctrine,’ all special access lines carrying interstate traffic are subject to federal regulatory authority, and the costs of such lines are directly assigned to the interstate jurisdiction. The terminology reflects the fact that, under this approach, any interstate traffic is deemed to ‘contaminate’ the service, even when the facilities involved are physically intrastate, and thus bring the service under federal regulation.”); *MTS and WATS Market Structure, Amendment of Part 36 of the Communications Rules and Establishment of a Joint Board*, 4 FCC Rcd. 5660, 5660-61 ¶ 1 (1989) (“*Ten Percent Order*”) (adopting the Joint Board’s recommendation that the FCC assign special access lines with more than 10% interstate traffic to the interstate jurisdiction for separations purposes); *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, 9173 ¶ 778 (1997); *Federal-State Joint Board on Universal Service et al.*, 32 FCC Rcd. 2140, 2141–42, 2145 ¶¶ 4, 11-13 (FCC Wireline Comp. Bur. 2017) (“[I]t is apparent from the Commission’s ... *Ten Percent Order* that it intended to address the extent to which states maintain regulatory authority, not merely to allocate costs.”).

¹⁶ See, e.g., *Pacific Bell v. Pac West Telecomm., Inc.*, 325 F.3d 1114, 1125 (9th Cir. 2003) (“[T]he FCC has defined ISP traffic as ‘interstate’ for jurisdictional purposes, thereby placing it under the purview of federal regulators rather than state public utility commissions. Under this scheme the CPUC lacks authority under the Act to promulgate general ‘generic’ regulations over ISP traffic.”); *California v. FCC*, 75 F.3d 1350, 1356 n.5 (9th Cir. 1996) (“[S]tate utilities [commissions], such as the CPUC, have authority over *intrastate* common carrier communications by wire or radio,” while “[t]he FCC has authority over *interstate* common carrier communications by wire or radio.”) (emphasis added) (citing 47 U.S.C. § 152(a)-(b)); *Ivy Broad. Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (“[Q]uestions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed *solely by federal law* and ... the states are precluded from acting in this area.”) (emphasis added).

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Application 18-07-012

**[PROPOSED ORDER] GRANTING MOTION OF JOINT APPLICANTS TO
WITHDRAW WIRELINE APPLICATION**

On March 30, 2020, Sprint Communications Company L.P. (U-5112-C) (“Sprint Wireline”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively, the “Joint Applicants”) filed their Motion to Withdraw Wireline Application (“Motion”). No opposition to this Motion has been submitted, and the time for submission of such opposition has expired. No hearing on the Motion is necessary.

The Commission has considered Joint Applicants’ Motion and, good cause having been shown, grants Joint Applicants’ Motion as moot. Accordingly, it is hereby ORDERED that:

1. Joint Applicants’ Motion to Withdraw Application is granted.

Dated _____, 2020, at San Francisco, California.

Karl J. Bemesderfer
Administrative Law Judge

Exhibit A



Account Name> <Account #> (H1)
<Billing Name> <Billing Account #> (H4)
Attention: <Contact Name>
<Address Line 1>
<Address Line 2>
<City, State, Zip>

Dear Customer [or customer name]:

You must take action now to prevent an out of service condition. This notification is a reminder of Sprint decommissioning Time-Division Multiplexing (TDM) access services (includes but not limited to non-Ethernet, dedicated TDM-based circuits – T1s, DS3s, etc., Sprint-provided and Customer-provided TDM access, TDM-based collocation). You are receiving this letter because you have TDM access services with Sprint and if you fail to take action, your TDM-based service will be shut down on or shortly after **June 30, 2018**. Please immediately alert individuals within your company who are responsible for the management of your telecommunications services or phone system (IT, Network department or vendor).

Currently, Sprint provides both TDM and Ethernet access options for our business customers. This letter is a written reminder that beginning **June 30, 2018**, Sprint will no longer support TDM access services, and all remaining TDM access services will be taken out of service at that time. Your Sprint support team representative will be happy to work with you to provide access alternatives. Prior to June 30, 2018, Sprint will continue to support any existing TDM access circuits that you have as you take the necessary steps to migrate off the service. This notification does not apply to any other products/services that you have with Sprint.

Please do not delay, take action right away to prevent a possible out of service situation.

Thank you for being a loyal customer and for your continued trust and confidence in Sprint to provide a network that supports your current and future business goals. If you have questions about this letter or want more information about Sprint's access alternatives, please contact us via the information provided below.

Sincerely,

Your Sprint support team:

Account Manager: [Rep Name], [Rep Email], [Rep Phone]

Sales Manager: [Manager Name], [Manager Email], [Manager Phone]