

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Applications of T-Mobile US, Inc.,

and

Sprint Corporation

For Consent to Transfer and Control of
Licenses and Authorizations

WT Docket No. 18-197

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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August 27, 2018

The California Public Utilities Commission (CPUC) submits these comments in response to the application filed by T-Mobile US, Inc. and Sprint Corporation (collectively, Applicants) on June 18, 2018. In their application to the Federal Communications Commission (FCC), Applicants seek approval for a transfer of control of Sprint Corporation (“Sprint”) to T-Mobile US, Inc. (“T-Mobile”). In filing these comments, the CPUC seeks to become a party, with all associated rights.

Moreover, the CPUC informs the Federal Communications Commission that the Applicants, on July 13, 2018, also filed applications with the CPUC for review of the proposed transaction.

I. BACKGROUND

Article 6 of the California Public Utilities (P.U.) Code, §§ 851-857, requires the CPUC to review transfers of utility property. However, pursuant to P.U. Code § 853(b), the CPUC may exempt a public utility or class of public utilities from the requirements of Article 6. In 1995, the Commission examined its ongoing authority over wireless carriers in light of the 1993 Omnibus Budget Reconciliation Act (1993 Act), which amended § 332 of the 1934 Communications Act to pre-empt, in part, state authority over certain activities of Commercial Mobile Radio Service (CMRS or wireless) providers.

Specifically, the 1993 Act pre-empted state authority over wireless rates and entry, but preserved state authority over the terms and conditions of wireless service.¹ In a 1995 decision addressing the change in state jurisdiction over CMRS providers, the CPUC concluded that “[t]he transfer of ownership interests in a CMRS entity is not tantamount to [market] entry, and

¹ See 47 U.S.C. 332(c)(3).

[CPUC] jurisdiction over such transfers is not preempted”² However, although the CPUC determined that its jurisdiction over transfers of ownership was “not preempted,” the CPUC decided as a matter of public policy to “forbear from exercising such authority,” except where such review or further analysis is “necessary in the public interest.”³

A. CPUC Review of the Proposed Transaction Is Merited.

The CPUC has previously chosen to exercise its authority to review mergers of wireless telecommunications providers. In response to the proposed acquisition of T-Mobile by AT&T Inc. (“AT&T), the CPUC “concluded that further review and analysis of the AT&T/T-Mobile merger is in the public interest,” and opened its own investigation into the proposed transaction.⁴

Central to the CPUC’s decision to exercise its authority to review the proposed AT&T/T-Mobile transaction was the concentration of the wireless market. The CPUC notes that “[s]ince 2002, the wireless telecommunications industry has consolidated from seven major wireless carriers to four in 2010. If AT&T’s proposed merger were approved, only three major wireless carriers with substantial market share would remain ...”⁵

The proposed acquisition of control of Sprint by T-Mobile presents the same scenario – reducing the number of wireless carriers with substantial market share from four to three. Thus, this proposed transaction merits the CPUC’s exercise of its authority to review mergers.

B. The CPUC’s Review of the Proposed Transaction.

The CPUC’s review of the T-Mobile and Sprint’s application for approval of the proposed transaction in California has just begun. Neither the scope of the CPUC’s review nor

² Decision (D.) 95-10-032, Conclusion of Law (CoL) 9.

³ D.95-10-032, CoL 15, 18: Ordering Paragraph (OP) 3.

⁴ Order Instituting Investigation (OII) 11-06-009, issued June 15, 2011, p. 6.

⁵ OII 11-06-009, p. 8.

the procedural steps that the CPUC may take have been decided. Thus, any description of the CPUC's review is preliminary.

In its investigation of the proposed AT&T/T-Mobile transaction, the CPUC found it reasonable to gather facts and take comment, considering the anticipated decreased competition in the wireless market in California that would result from the proposed merger. In particular, the CPUC sought to assess the effects of the anticipated market consolidation on California customers and the California economy.

The CPUC review of the proposed transaction will also focus on the effects of the anticipated market consolidation on California customers and the California economy. The CPUC may investigate the impact of the proposed transaction on low-income customers, including impacts on the California LifeLine Program. The CPUC may investigate the Applicants' plans to offer 5G service in California. The CPUC may investigate the Applicants' plans to offer coverage in California's rural areas. The CPUC may investigate the Applicants' plans regarding the terms and conditions offered to customers.

The CPUC will conduct its own data gathering regarding this transaction, focusing on California-specific data.

II. THE FCC'S REVIEW OF THE PROPOSED TRANSACTION AND INTERACTION WITH THE CPUC

Through this filing, the CPUC notifies the FCC of its plan to review the proposed transaction. The CPUC is mindful that the FCC's review of the merger is on a separate procedural track and will incorporate a much broader review of issues than those included in the CPUC's review.

The CPUC plans to share its data with the FCC, which may be helpful to the FCC's review of the proposed transaction in terms of demonstrating the impact of the proposed

transaction on a specific state. During the review of the AT&T/T-Mobile proposed transaction, the CPUC shared its data with the FCC.

The CPUC will also greatly benefit by access to data made available by the FCC.

III. CONCLUSION

The CPUC looks forward to cooperating with the FCC in the review of the proposed transaction.

Respectfully submitted,

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