



**Michelle Painter**  
Counsel

**12502 Sunrise Valley Drive**  
Reston, VA 20196  
O: 571-287-8097  
michelle.painter@sprint.com

February 22, 2019

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, 2nd Floor  
Harrisburg, PA 17120


Re: Application of Sprint Communications Company L.P. for Approval of a  
General Rule Indirect Change in Control from Softbank Group Corp. to  
T-Mobile US, Inc., Docket No. A-2018-3003259

Dear Secretary Chiavetta,

Please find enclosed for re-filing the PUBLIC responses to Staff Inquiries Set 4 in the above-referenced matter. Please also find enclosed an updated PUBLIC response to Set 2, #1. The public version of these responses was electronically filed originally on February 19, 2019 and hard copies of the confidential and public versions were also filed on February 19, 2019 via overnight delivery. Sprint was asked to re-file the PUBLIC version with a cover letter indicating that only the public version is being included in the electronic filing.

Please contact me if the Commission has any questions regarding this matter.

Respectfully submitted,

  
Michelle Painter

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the responses of Sprint Communications Company L.P. to Staff Inquiry #4 for Review of Transactions and an updated response to Set 2, #1 upon the entities listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54.

Dated this 19th day of February, 2019 in Reston, Virginia

**VIA FIRST CLASS MAIL**

Office of Small Business Advocate  
300 North 2<sup>nd</sup> Street, Suite 1102  
Harrisburg, PA 17101

Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101

Bureau of Investigation and Enforcement  
Pennsylvania PUC  
PO Box 3265  
Harrisburg, PA 17105-3265



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**Sprint Communications Company L.P.'s Updated Response to September 27, 2018  
2<sup>nd</sup> Set of Staff Inquiries for Review of Transactions under 52 Pa. Code §§ 63.321-  
63.325**

1. What wholesale telecommunications services is Sprint providing today and what, if any, wholesale telecommunications services will Sprint be providing independent of technology (IP, Wireless, Fixed Wireless, G5) after the proposed merger?

**Sprint's Response:** Sprint Communications Company, L.P. ("Sprint" or the "Applicant") is certificated to provide wireline services in Pennsylvania and currently provides **BEGIN PROPRIETARY END PROPRIETARY** private line circuits to **BEGIN PROPRIETARY END PROPRIETARY** wholesale customers **BEGIN PROPRIETARY END PROPRIETARY** in Pennsylvania. Sprint is currently waiting on the wholesale customers to provide the disconnect orders for the remaining circuits. All of the remaining circuits has one end of the circuit in Pennsylvania with the other end of the circuit located in a different state.

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**Sprint Communications Company L.P.'s Response to February 11, 2019 4<sup>th</sup> Set of Staff Inquiries for Review of Transactions under 52 Pa. Code §§ 63.321-63.325**

**1. Identify the Pennsylvania specific benefits of the proposed merger related to the wireline operations of Sprint Communications Company L.P. (Sprint) in Pennsylvania.**

**Sprint's Response:**

Despite the stabilization of Sprint's finances over the past few years, Sprint's ability to drive competition is limited, and faces even greater challenges absent the combination with T-Mobile. Sprint's service revenue has been declining for at least the last five years, falling around 25% from 2013 to 2018. The merger with T-Mobile will greatly increase Sprint's managerial, technical, and financial position, and permit Sprint to realize improved service breadth and quality as described in the Application and Applicant's August 10, 2018 Responses to Staff Inquiries, Set I and December 3, 2018 Responses to Staff Inquiries, Set III. The fact that these public benefits are *specific* but not exclusive to Pennsylvania does not diminish how enormously important these public interest benefits are for Pennsylvania.

This Commission has previously found that anticipated benefits to a company's overall financial stability following the merger is a means of accomplishing affirmative public benefits as required under Section 1103(a) of the Code. *Lloyd v. Pa. PUC, 17 A.3d 425, 2011 Pa. Commw. LEXIS 77*; See also, *Joint Application of XO Holdings and Verizon Communications Inc. for approval of a transfer of control of XO Communications Services, Inc. from XO Holdings to Verizon Communications Inc.*, Docket No. A-2016-2535279 (Jan. 26, 2017) at 17 (*hereinafter* referred to as *Verizon Order*).

In addition to the above, the Applicant provided a detailed description of the transaction's wireline benefits in response to Staff Inquiry Set 3, #1. Specifically, the merger will:

- increase the Applicant's operating synergies and provide it with scale and scope advantages;
- strengthen the Applicant's ability to invest in its business and network and compete with other providers of wireline service; and
- contribute to a more competitive wireline market for consumers, thereby inducing better service and driving down prices to the benefit of Pennsylvania's consumers.

Customers are increasingly demanding innovative services that often combine wireline and wireless assets. Since T-Mobile currently does not have any wireline assets, Sprint's wireline services can be integrated with New T-Mobile's wireless products to provide superior options for both wireless and wireline customers in Pennsylvania. The combination of New T-Mobile's wireless assets and Sprint wireline assets will enable New T-Mobile to create more attractive combinations of wireless, landline-replacement, SD-WAN, wireline, and IoT services as single plans. By doing so, New T-Mobile will be able to offer a wider array of service packages that are designed to appeal to enterprise customers in Pennsylvania.

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Other specific benefits of the merger that will include benefits in Pennsylvania are:

**Larger Sales Force.** The transaction will provide Sprint post-closing with the scale and resources to greatly expand its enterprise sales force—a key component to successfully competing in this space. The enterprise segment is highly dependent on direct client contact and relationships, and providers typically employ large teams of direct sellers to market enterprise services to potential customers. After the merger, New T-Mobile will have the resources necessary to enlarge the combined company's enterprise sales force, which will in turn allow it to more effectively target enterprise customers.

**Larger Product Portfolio.** The combined company will be able to integrate Sprint's wireline assets to diversify its enterprise offerings and make available fixed broadband products, cloud computing services, network security offerings, or other complementary business lines.

To the extent staff's inquiry seeks detailed information about specific services that New T-Mobile may offer to Pennsylvania customers after the merger, that request goes well beyond what is required by Pennsylvania law. The Pennsylvania Supreme Court has held that, as part of a merger review, an applicant is not required to "quantify benefits where this may be impractical, burdensome, or impossible." *Popowsky v. Pa. PUC (MCI Verizon)*, 937 A.2d 1040, 1055 (Pa. 2007). Further, an applicant does not need to "name particular services and/or products that have yet to be realized" in order to show affirmative public benefits. *Id.* The courts have also rejected the notion that "guaranties must be present to support a finding of benefits." *Id.* Moreover, courts have acknowledged, under the "deliberate approach," that an acquiring company following the closing of a merger may need time to investigate how best to realize the anticipated public benefits. As recognized by the Presiding Officer in the *UGI Southern Union Initial Decision*, it is reasonable and prudent for the parties to undertake a deliberate, "best practices" analysis after the transaction is consummated, not at the application approval stage. See *Application of UGI Utilities, Inc., UGI Utilities Newco, Inc. and Southern Union Co.*, Docket No. A-120011F2000 et al., Initial Decision, slip op. at 31-34 (July 21, 2006) (Colwell, ALJ). This sensible approach properly recognizes that prior to closing the merger, the companies are limited by law from making decisions regarding specific future products and services. Thus, it is reasonable for the Commission to evaluate more general public benefits that Pennsylvania will realize as a result of the merger.

**Burden of Proof**

As the proponent seeking an order approving the transaction from this Commission, the Applicant bears the burden of proof. 66 Pa. C.S. § 332(a). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922 (Pa. Cmwlth. 1975). The term "substantial evidence" has been defined by the Pennsylvania Courts as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought

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to be established. *Murphy v. DPW, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1994); *Erie Resistor Corp. v. Unemployment Compensation Board of Review*, 166 A.2d 96 (Pa. Super. 1961). Agency decisions must be based solely on record evidence. An agency cannot rely on extra-record information or its expertise to consider non-record information. *Kyu Son Yi v. State Bd of Veterinary Med.*, 960 A.2d 864 (Pa. Commw. Ct. 2008), citing *Pennsylvania Labor Relations Board v. Sand's Restaurant Corp.*, 429 Pa. 479, 240 A.2d 801 (1968).

The evidence presented by Applicant in this case, both through the Application and the responses to Staff Inquiries more than satisfies the burden of proof. The public benefits of the transaction to Pennsylvania have been verified by a representative of the Applicant, and where appropriate, a representative of T-Mobile. The public benefits have not been disputed by any party or any evidence in the record. Given the evidence presented, and since no party has presented any evidence challenging the verified public benefits or alleging harm, the Commission should find that the preponderance of the evidence justifies approval. The numerous verified facts in the record regarding benefits of the merger (and the absence of a single fact disputing those benefits or claiming harm from the merger), clearly meet or exceed the standard that this Commission has previously established in numerous other merger proceedings as more than adequate to satisfy the "substantial evidence" requirement.<sup>1</sup>

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<sup>1</sup> See, e.g., Joint Application of XO Holdings and Verizon Communications Inc. for approval of a transfer of control of XO Communications Services, Inc. from XO Holdings to Verizon Communications Inc., Docket No. A-2016-2535279; Joint Application for the Transfer of Control of Level 3 Communications, Inc., together with Level 3 Communications, LLC, TelCove Operations, LLC, TelCove of Pennsylvania, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., and Level 3 Telecom Data Services, LLC, to Transferee, CenturyLink, Inc., Docket No. A-2016-2580274, et.al.; Joint Application of Consolidated Communications Holdings, Inc., Consolidated Communications of Pennsylvania Company, LLC, Consolidated Communications Enterprise Services, Inc., FairPoint Communications, Inc., Bentleyville Communications Corporation, Marianna & Scenery Hill Telephone Company, BE Mobile Communications, Incorporated, Marianna Tel Inc, and FairPoint Business Services LLC for Approval of a General Rule Transaction Involving a Transfer of Control of Telecommunications Public Utilities, Docket No. Docket No. A-2017-2583431, et. al.; Joint Application for the indirect transfer of control of Intellifiber Networks, Inc., Cavalier Telephone Mid-Atlantic, LLC, Talk America, Inc., US LEC of Pennsylvania, LLC, PaeTec Communications, Inc., LDMI Telecommunications, Inc., and McLeodUSA Telecommunications Services, LLC to Windstream Corporation, Docket No. A-2011-2258734, et. al.

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**2. What is the anticipated increase to rural broadband availability?**

**OBJECTION:** Applicant objects to this question as outside the scope of the Commission's jurisdiction and scope of review, not germane to the Commission's review of the pending Indirect Certificated Entity Acquisition nor reasonably calculated to lead to the discovery of relevant information. Applicant does not provide wireline broadband services to retail customers in Pennsylvania and is not required to do so. Any retail rural broadband services will be mobile broadband services provided over a wireless network. Wireless service is not within the jurisdiction of the Commission and wireless carriers are specifically excluded from the definition of "public utility" in the Public Utility Code. See 66 Pa. C.S.A § 102. Furthermore, Section 332 of the Communications Act constrains state authority over commercial mobile radio services, establishing that "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." 47 U.S.C. §332. The Commission acknowledged this preemption of its authority in *In Re: Implementation of the Omnibus Budget Reconciliation Act of 1993* and, therefore, the Commission has declined jurisdiction over wireless carriers. Also, Applicant's regulated wireline service does not give the Commission jurisdiction over wireless services. See, e.g., *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564 (Pa. Super. 2001). Applicant is certificated as a wireline carrier in Pennsylvania and for that reason is required to file for approval of this merger. As the Court held in *Aronson*, a "wireless telephone service provider does not become a regulated public utility simply because the Commission regulates a related entity." *Id.*

Moreover, the fact that the wireless and 5G benefits of this merger were noted in the Application does not and cannot expand the Commission's jurisdiction under its enabling statute and grant the Commission subject matter jurisdiction over wireless services. Lack of subject matter jurisdiction of a court or administrative tribunal to act in a matter is an issue that cannot be waived by the parties, nor can the parties confer subject matter jurisdiction on a court or tribunal by agreement or stipulation. *Blackwell v. State Ethics Commission*, 523 Pa. 347, 358, 567 A.2d 630, 636 (1989). *Mastrocola v. SEPTA*, 941 A.2d 81, 2008 Pa. Commw. LEXIS 6.

However, the Pennsylvania Supreme Court has found that the Commission's lack of jurisdiction, or authority to secure commitments, does not preclude the agency's consideration of a benefit from a proposed transaction. The Commission is permitted to consider deployment of wireless service as an affirmative public benefit of the transaction (even where, as here, the Commission does not have jurisdiction to mandate such a public benefit). Moreover, the Commission has in the past considered public benefits that were outside the scope of its jurisdiction. In *Lloyd*, the Commission adopted the ALJ's decision regarding various public benefits of the merger, including, "the development of core competencies in emerging technologies, such as 700 MHz

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wireless service and IPTV (internet protocol television), and the opportunity to connect in the future to CenturyTel's Lightcore fiber backbone network." *PUC Opinion at page 12, quoting ALJ Initial Decision at 22.* In reviewing that decision, the Commonwealth Court specifically held: "We do not believe that the ALJ and PUC erred in viewing these benefits arising as a result of the financial strengthening of the merged company in the "public benefits" analysis." *Lloyd at 432, 18.* Likewise, in approving Verizon's acquisition of XO Communications, the Commission cited as a public benefit that Verizon would be able to use XO's underutilized fiber to provide wireless backhaul for 5G services. *Verizon Order at 17.* The Commission does not have jurisdiction over dark fiber or wireless backhaul.

Thus, this Commission previously has explicitly taken into account the development of new, emerging technologies over which the Commission does not have jurisdiction as an affirmative public benefit of a merger.

**Sprint's Response:** Subject to and without waiver of its objection, Applicant responds as follows:

As Applicant described in its Application and responses to prior staff inquiries, the transaction will result in a substantial increase in rural broadband availability in Pennsylvania.

The anticipated increase to rural broadband availability necessarily requires a comparison of what rural broadband coverage would look like if the transaction is not approved, compared to what rural broadband coverage will look like if the transaction is approved. This material was previously provided in the December 3<sup>rd</sup> discovery responses but is provided again for ease of reference.

As illustrated in Figure 1 below, on a stand-alone basis T-Mobile would be able to provide 5G coverage by deploying its 600 MHz spectrum across the overwhelming majority of Pennsylvania's geography, including in many rural areas, but would only be able to deploy its limited amount of higher-capacity mid-band spectrum in a handful of population dense areas—including the Philadelphia, Pittsburgh, Harrisburg, Lancaster, Allentown, Scranton/Wilkes-Barre, and State College metropolitan areas. In most rural areas, this would mean 5G coverage that would enable mobile broadband services, but would not have either the depth or the capacity typically required for high speed broadband services demanded by consumers and vital to keep rural businesses competitive.

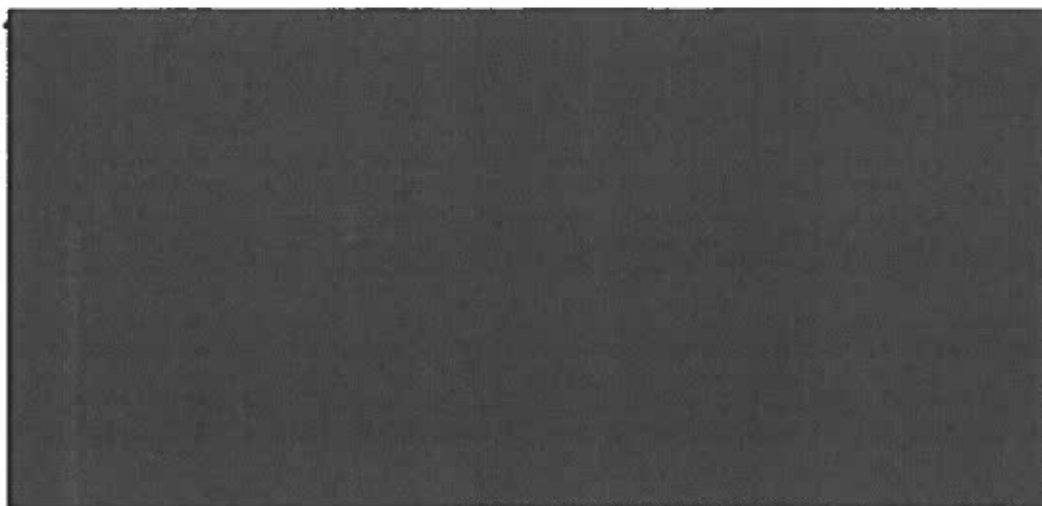


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**Figure 1: T-Mobile Standalone Projected 5G Coverage in 2024: Pennsylvania**

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**[END HIGHLY CONFIDENTIAL]**

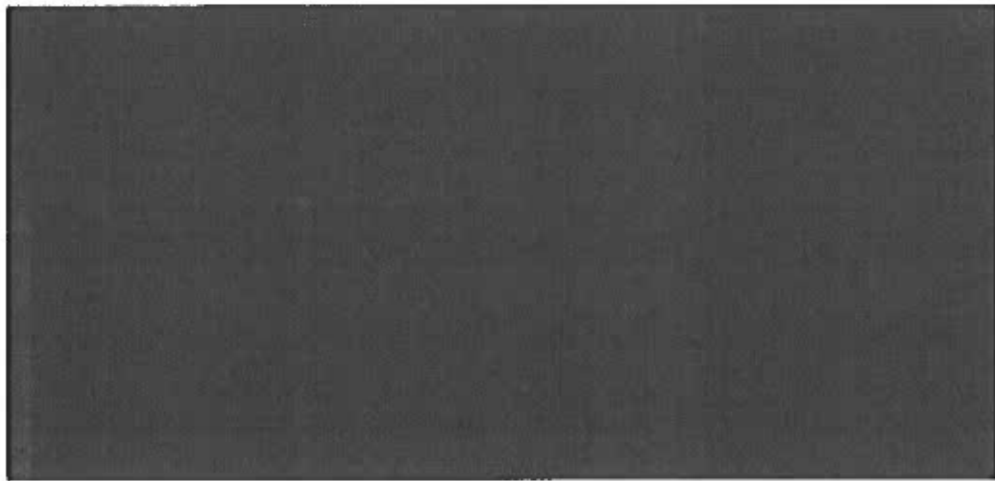
Conversely, standalone Sprint, because it lacks adequate low-band spectrum, would need to rely on its mid-band spectrum for 5G deployment to provide mobile broadband services. Therefore, as illustrated in Figure 2, Sprint would be unable to provide any 5G-based broadband coverage in rural areas because its mid-band deployment would be limited to a few population dense areas.

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**Figure 2: Sprint Standalone Projected 5G Coverage in 2024 : Pennsylvania**

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**[END HIGHLY CONFIDENTIAL]**

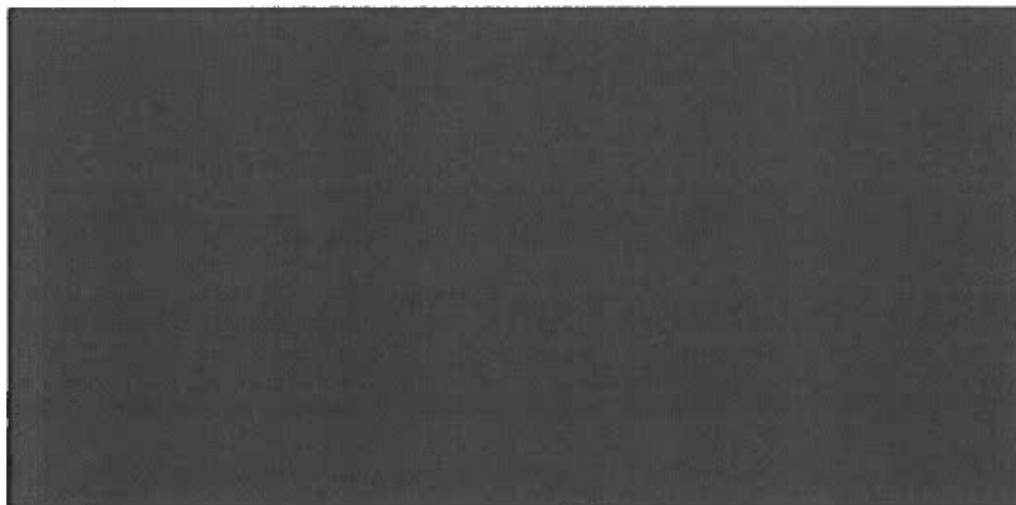
Because T-Mobile and Sprint have complementary spectrum portfolios, their combination would allow the New T-Mobile to deploy mid-band spectrum far more expansively than either company could as standalones, providing mid-band coverage over the majority of Pennsylvania's geography, and thus expanding speed, capacity and improving performance that would support high speed mobile broadband coverage in rural areas. This far more extensive deployment is illustrated by the dark magenta in Figure 3.

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**Figure 3: New T-Mobile Projected 5G Coverage in 2024 : Pennsylvania**

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**[END HIGHLY CONFIDENTIAL]**

The practical effect of New T-Mobile's more extensive mid-band deployment in Pennsylvania will be far greater capacity across the entire Commonwealth and far higher mobile broadband connectivity speeds for Pennsylvania's consumers, especially in rural areas.

As illustrated in Figure 4, New T-Mobile's Pennsylvania network will have more than double the average throughput (Mbps) by 2022 as compared to either of the standalone networks, and the speed gap between the networks would grow going forward.

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**Figure 4: New T-Mobile Average Throughput (Mbps) in Pennsylvania**

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**[END HIGHLY CONFIDENTIAL]**

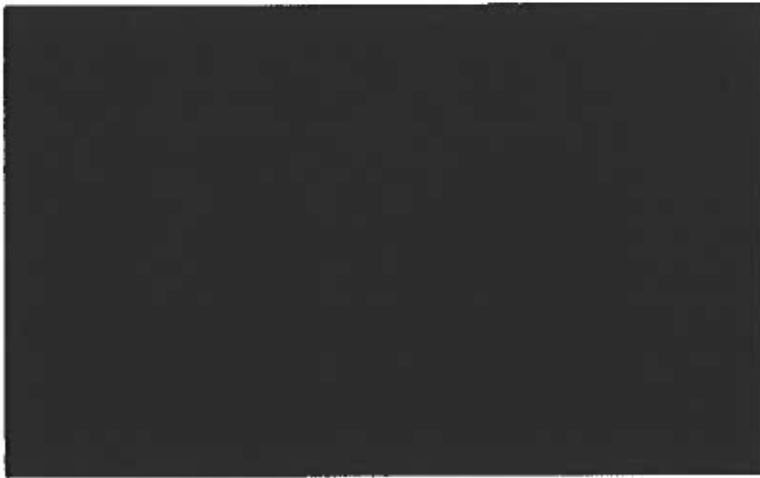
As illustrated in Figure 5, New T-Mobile's Pennsylvania network will have double the combined capacity of the standalone networks by 2021, and more than three times the capacity of the standalone networks from 2022 going forward.

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**Figure 5: New T-Mobile 5G Offered Traffic in Pennsylvania**

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**[END HIGHLY CONFIDENTIAL]**

These impressive contrasts are even more significant when considered in the context of how many Pennsylvania consumers will experience these fiber-like speeds. **[BEGIN HIGHLY CONFIDENTIAL]**



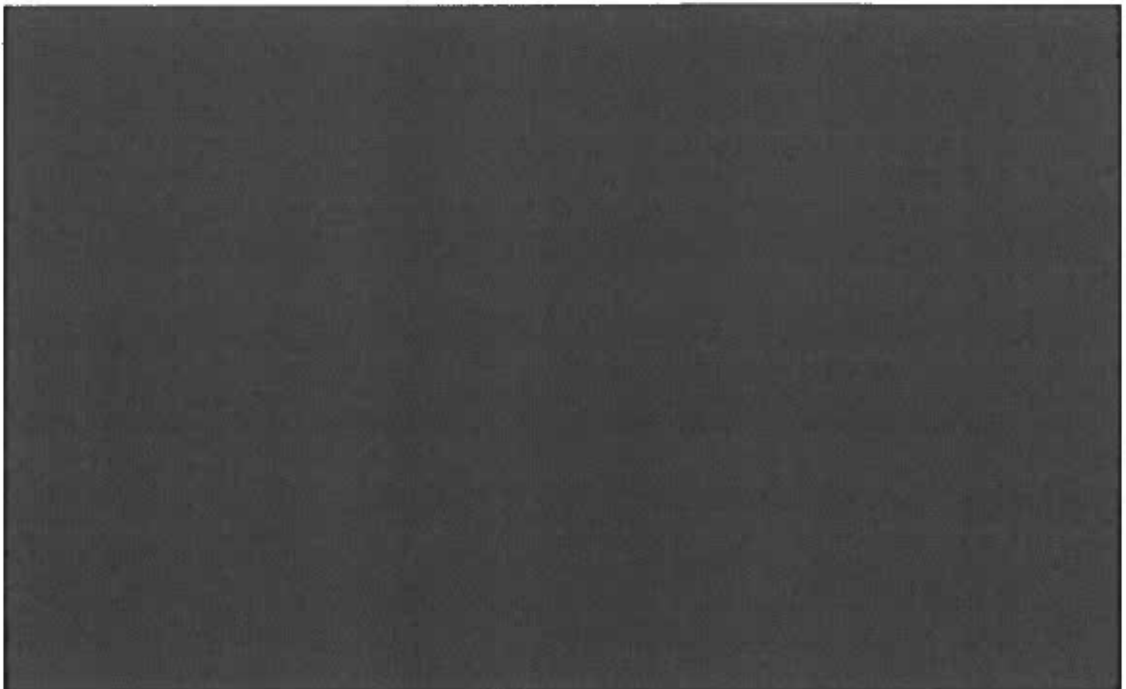
**[END HIGHLY CONFIDENTIAL]** That additional coverage at great speeds is a direct result of the combination of the parties' complementary spectrum and network assets, and the deal synergies.

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**Figure 6: New T-Mobile 5G Speeds vs. Pops Distribution in Pennsylvania by 2024**

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**3. What is the potential effect of the proposed merger on wireless transport markets?**

**OBJECTION:** To the extent that this question relates to wireless services, Applicant objects to this question as outside the scope of the Commission's jurisdiction and scope of review, not germane to the Commission's review of the pending Indirect Certificated Entity Acquisition nor reasonably calculated to lead to the discovery of relevant information. Wireless service is not within the jurisdiction of the Commission and wireless carriers are specifically excluded from the definition of "public utility" in the Public Utility Code. See 66 Pa. C.S.A § 102. Furthermore, Section 332 of the Communications Act constrains state authority over commercial mobile radio services, establishing that "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." 47 U.S.C. §332. The Commission acknowledged this preemption of its authority in *In Re: Implementation of the Omnibus Budget Reconciliation Act of 1993* and, therefore, the Commission has declined jurisdiction over wireless carriers. Also, Applicant's regulated wireline service does not give the Commission jurisdiction over wireless services. See, e.g., *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564 (Pa. Super. 2001). Applicant is certificated as a wireline carrier in Pennsylvania and for that reason is required to file for approval of this merger. As the Court held in *Aronson*, a "wireless telephone service provider does not become a regulated public utility simply because the Commission regulates a related entity." *Id.*

Moreover, the fact that the wireless and 5G benefits of this merger were noted in the Application does not and cannot expand the Commission's jurisdiction under its enabling statute and grant the Commission subject matter jurisdiction over wireless services. Lack of subject matter jurisdiction of a court or administrative tribunal to act in a matter is an issue that cannot be waived by the parties, nor can the parties confer subject matter jurisdiction on a court or tribunal by agreement or stipulation. *Blackwell v. State Ethics Commission*, 523 Pa. 347, 358, 567 A.2d 630, 636 (1989). *Mastrocola v. SEPTA*, 941 A.2d 81, 2008 Pa. Commw. LEXIS 6.

**Sprint Response:** Subject to and without waiving its objection, Applicant responds as follows:

Sprint interprets the term "wireless transport" in this question to refer to the transport of wireless voice traffic via local exchange carrier transport facilities to local exchange carrier end offices. Wireless transport can also refer to the wireline transmission services that wireless carriers use to transport voice calls to other wireless carriers for termination to customers served by their networks. The parties to this transaction understand that just as the standalone companies do now, they will have to ensure the voice traffic of the customers of the merged company is transported to the customers of local exchange companies and to other wireless carriers. As such, Applicant is not aware of any way in which the merger will have an effect on wireless transport markets.

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**4. What is the potential effect of the proposed merger on wireless termination markets?**

**OBJECTION:** To the extent that this question relates to wireless services, Applicant objects to this question as outside the scope of the Commission's jurisdiction and scope of review, not germane to the Commission's review of the pending Indirect Certificated Entity Acquisition nor reasonably calculated to lead to the discovery of relevant information. Wireless service is not within the jurisdiction of the Commission and wireless carriers are specifically excluded from the definition of "public utility" in the Public Utility Code. See 66 Pa. C.S.A § 102. Furthermore, Section 332 of the Communications Act constrains state authority over commercial mobile radio services, establishing that "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." 47 U.S.C. §332. The Commission acknowledged this preemption of its authority in *In Re: Implementation of the Omnibus Budget Reconciliation Act of 1993* and, therefore, the Commission has declined jurisdiction over wireless carriers. Also, Applicant's regulated wireline service does not give the Commission jurisdiction over wireless services. See, e.g., *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564 (Pa. Super. 2001). Applicant is certificated as a wireline carrier in Pennsylvania and for that reason is required to file for approval of this merger. As the Court held in *Aronson*, a "wireless telephone service provider does not become a regulated public utility simply because the Commission regulates a related entity." *Id.*

Moreover, the fact that the wireless and 5G benefits of this merger were noted in the Application cannot expand the Commission's jurisdiction under its enabling statute and grant the Commission subject matter jurisdiction over wireless services. Lack of subject matter jurisdiction of a court or administrative tribunal to act in a matter is an issue that cannot be waived by the parties, nor can the parties confer subject matter jurisdiction on a court or tribunal by agreement or stipulation. *Blackwell v. State Ethics Commission*, 523 Pa. 347, 358, 567 A.2d 630, 636 (1989). *Mastrocola v. SEPTA*, 941 A.2d 81, 2008 Pa. Commw. LEXIS 6.

**Sprint Response:** Subject to and without waiving its objection, Applicant responds as follows:

Applicant interprets the term "wireless termination" in this question to mean the end office switching performed by a local exchange carrier to deliver an originated wireless voice call to a local exchange carrier's end user customer. Wireless termination can also mean how wireless carriers connect voice calls to other wireless carriers and their customers. The parties to this transaction understand that just as the standalone companies do now, they will have to ensure the voice traffic of the customers of the merged company is terminated to the customers of local exchange companies and to other wireless carriers. As such, Applicant is not aware of any way in which the merger will have an effect on wireless termination markets.



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5. **How does Sprint reconcile that the need for transport and termination services is declining if a primary benefit of the proposed merger, the 5G buildout, may likely increase the need for backhaul transport and termination of wireless traffic?**

**OBJECTION:** To the extent that this question relates to wireless services, Applicant objects to this question as outside the scope of the Commission's jurisdiction and scope of review, not germane to the Commission's review of the pending Indirect Certificated Entity Acquisition nor reasonably calculated to lead to the discovery of relevant information. Wireless service is not within the jurisdiction of the Commission and wireless carriers are specifically excluded from the definition of "public utility" in the Public Utility Code. See 66 Pa. C.S.A § 102. Furthermore, Section 332 of the Communications Act constrains state authority over commercial mobile radio services, establishing that "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service." 47 U.S.C. §332. The Commission acknowledged this preemption of its authority in *In Re: Implementation of the Omnibus Budget Reconciliation Act of 1993* and, therefore, the Commission has declined jurisdiction over wireless carriers. Also, Applicant's regulated wireline service does not give the Commission jurisdiction over wireless services. See, e.g., *Aronson v. Sprint Spectrum, L.P.*, 767 A.2d 564 (Pa. Super. 2001). Applicant is certificated as a wireline carrier in Pennsylvania and for that reason is required to file for approval of this merger. As the Court held in *Aronson*, a "wireless telephone service provider does not become a regulated public utility simply because the Commission regulates a related entity." *Id.*

Moreover, the fact that the wireless and 5G benefits of this merger were noted in the Application cannot expand the Commission's jurisdiction under its enabling statute and grant the Commission subject matter jurisdiction over wireless services. Lack of subject matter jurisdiction of a court or administrative tribunal to act in a matter is an issue that cannot be waived by the parties, nor can the parties confer subject matter jurisdiction on a court or tribunal by agreement or stipulation. *Blackwell v. State Ethics Commission*, 523 Pa. 347, 358, 567 A.2d 630, 636 (1989). *Mastrocola v. SEPTA*, 941 A.2d 81, 2008 Pa. Commw. LEXIS 6.

Sprint further objects on the basis that this question assumes facts not in evidence. It is unclear where in the record there is an indication that the need for transport and termination services is declining or that a "primary benefit" of the merger is the increased need for "backhaul transport and termination of wireless traffic." Agency decisions must be based solely on record evidence. An agency cannot rely on extra-record information or its expertise to consider non-record information. *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864 (P. Commw. Ct. 2008), citing *Pennsylvania Labor Relations Board v. Sand's Restaurant Corp.*, 429 Pa. 479, 240 A.2d 801 (1968).

Application of Sprint Communications Company L.P., for Approval of a General Rule Transaction of the Indirect Change in Control by Merger of Applicant from Softbank Group Corp. to T-Mobile US, Inc.; PA PUC Docket No. A-2018-3003259

**Sprint Communications Company L.P.'s Response to February 11, 2019 4<sup>th</sup> Set of Staff Inquiries for Review of Transactions under 52 Pa. Code §§ 63.321-63.325**

**Sprint Response:** Subject to and without waiver of its objections, Applicant responds as follows:

This inquiry incorrectly assumes that a decline in the use of local wireline networks to transport and terminate wireless traffic should also lead to a decline in a wireless carrier's demand for wireline backhaul service. The fact is that these are two entirely distinct services that are subject to very different marketplace forces.

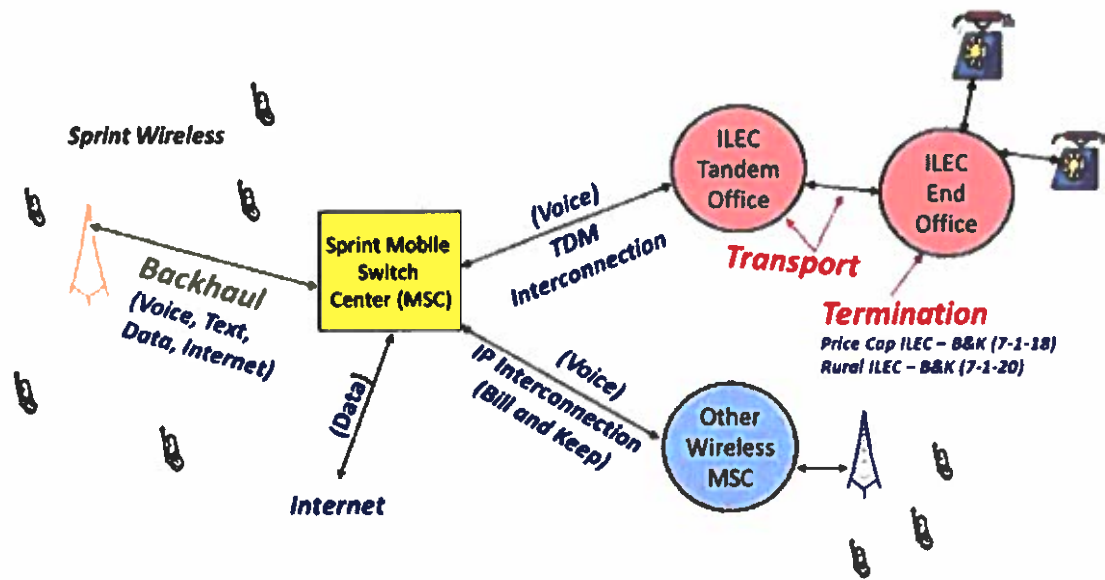
As explained in responses to the prior questions, Sprint interprets the terms "wireless transport" and "wireless termination" to refer to services provided by (usually incumbent) local exchange carriers to transport voice traffic via TDM-based facilities from a wireless carrier to an end user on the exchange carrier's network. Local exchange carriers may also provide a transport service to transmit traffic from a wireless carrier to another wireless carrier's point of presence. In contrast, backhaul service refers to the dedicated transmission links that local exchange carriers provide between a cellular transmission site and a wireless carrier's mobile switching center for the transport of data, Internet, text, and voice traffic. These different services are depicted in the diagram below.

The primary reason for the decline in the need for local transport and termination services is the ongoing replacement of TDM-based transmission services with IP-based services. When a local exchange carrier and wireless carrier are able to interconnect on an IP basis, the wireless traffic is not terminated over the legacy TDM-based network. The primary reason for the growing demand for backhaul transport is the enormous and continuing increase in the use of wireless devices for data applications, such as streaming video. As described above, New T-Mobile's 5G network will offer much greater capacity at much faster speeds than the current 4G networks and, consequently, will require much larger backhaul connections to carry that traffic between cell sites and the wireless carriers' switching offices.

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Backhaul / **Transport and Termination**



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Company L.P., for Approval of a General  
Rule Transaction of the Indirect Change  
in Control by Merger of Applicant from  
Softbank Group Corp. to T-Mobile US, Inc.

Docket No. A-2018-3003259

**VERIFICATION**

I, Mary Ellen Hassell, hereby state that the facts set forth in the responses to the February 11, 2019 Staff Inquiries are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same if a hearing were held in this matter. I understand that the statements made herein are made subject to the penalties of Pa. C.S. §4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Mary Ellen Hassell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Sprint Communications  
Company L.P., for Approval of a General  
Rule Transaction of the Indirect Change  
in Control by Merger of Applicant from  
Softbank Group Corp. to T-Mobile US, Inc.

Docket No. A-2018-3003259

**VERIFICATION**

I, David R. Conn, hereby state that the facts set forth in the responses to the February 11, 2019 Staff Inquiries are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same if a hearing were held in this matter. I understand that the statements made herein are made subject to the penalties of Pa. C.S. §4904 (relating to unsworn falsification to authorities).

  
David R. Conn