

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Application of Sprint Communications
Company L.P. for Approval of a General
Rule Indirect Transfer of Control from
Softbank Group Corp. to T-Mobile USA,
Inc.**

**Public Meeting held May 23, 2019
3003259-TUS**

Docket No. A-2018-3003259

**MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE AND
VICE CHAIRMAN DAVID W. SWEET**

This case involves the application of Sprint Communications, a certificated competitive local exchange carrier (CLEC) and interexchange carrier (IXC) for approval of a merger that will result in the transfer of control of Sprint's parent, Sprint Corporation, from Softbank Group to T-Mobile USA Inc.

T-Mobile and Sprint broadly assert that the benefits of the transaction are largely wireless and largely national in aspiration, effectively raising non-jurisdictional benefits to support the jurisdictional approval and finding of affirmative public benefit required under the Pennsylvania Public Utility Code (Code) and case law. If approved, the parties contend, the transaction will enable the deployment of the strongest 5G in the country, will deliver on rural broadband, will create 600 new stores in rural areas, and will see 5 new Customer Experience Centers (CECs) with 1,000 employees each open in the United States. These parties also claim that the merger will create 12,000 new jobs across the country to benefit small towns and communities, and 5,000 positions to fill the need at the anticipated 600 new stores.¹

In the 12-page application filed on July 6, 2018, Sprint and T-Mobile, referred to here as applicants,² repeated those rural broadband deployment and employment benefits, without specificity as to Pennsylvania, in one paragraph. Presented in general terms of national or international aspirations, the nexus to benefits intended for this Commonwealth was simply the inclusion of the words "including Pennsylvania"³ after each espoused benefit.

¹ December 3, 2018 Response to Data Request (DR) No. 11.

² While not identified in the application as an applicant, T-Mobile was a signatory to the application and authored objections and responses to our data requests. Further, as in both Mississippi and New York, discussed below, Pennsylvania has three separate T-Mobile subsidiaries that obtained designated Eligible Telecommunications Carrier (ETC) status in Pennsylvania from this Commission, allowing it access to federal universal service funds in Pennsylvania. Although we may not regulate entry or services of wireless carriers as public utilities, T-Mobile has a well-defined jurisdictional nexus to both this transaction and this Commission.

³ See, for example, the application at page 7, paragraph 17 (the transaction will enhance consumer welfare throughout this country, including in Pennsylvania), (the transaction will unlock synergies in order to build a world-leading nationwide 5G network, ensuring U.S. leadership in the race to deploy 5G and bringing increased high-speed broadband to rural consumers in Pennsylvania and nationwide). As to benefits to Sprint Communications, the certificated CLEC and IXC in Pennsylvania, the application contained little specifics beyond the assertion that as part of a larger entity, Sprint Communications will enjoy access to increased managerial, technical, and financial resources. Application at page 7, paragraph 16.

In Pennsylvania, the standard for review and approval of change of control transactions such as this is in Chapter 11 of the Public Utility Code. It is not Chapter 30, a statute designed to provide for alternative regulation of the telecommunications industry. Under Chapter 11, a certificate approving a transaction shall be granted *only if* the Commission finds the grant is necessary or proper for the service, accommodation, convenience, or safety of the public. The Commission may impose such conditions as it may deem to be just and reasonable.⁴ And the Commission shall consider the impact of the transaction as it affects all parties.⁵

Since 1972, the courts have interpreted this statutory standard to require an applicant to demonstrate that the transaction will affirmatively promote the public interest in some substantial way. It is not sufficient to do no harm. Significantly, the courts have deferred to our expertise and judgment to weigh the evidence and satisfy ourselves that actual benefits will ensue. We are not required to secure legally binding commitments. We are not required to quantify benefits where doing so is impractical, burdensome, or impossible. We may accept as satisfactory of the Pennsylvania public interest standard an applicant's allegation of benefits based upon *national* aspirations if supported by the record following our conduct of a state-specific review. To that end, by statute and decades of judicial confirmation, we retain the absolute authority to impose reasonable conditions to ensure that benefits to Pennsylvania will ensue.⁶ Alternatively, where we find no benefit to Pennsylvania's interests, we may reject the filing. We did just that recently when finding no affirmative public benefit to affected parties when the applicant's only evidentiary support of public benefit was that the transaction rendered the corporate family better situated financially.⁷

In the time since this application was filed, staff submitted multiple sets of data requests to applicants seeking Pennsylvania-specific information and details to ensure that the national benefits of rural broadband deployment and jobs averred by applicants actually will ensue in Pennsylvania. On the basis of the information T-Mobile and Sprint provided, we have endeavored to find substantial evidence of such Pennsylvania-specific benefits. On the record before us, however, we remain unable to conclude that sufficient evidence exists to support applicants' touted benefits.

While applicants have cited employment benefits and the opening of several new consumer stores as specific nationwide benefits, including Pennsylvania, applicants made no Pennsylvania-specific commitment to ensure that the benefits of employment of any kind will be provided to Pennsylvanians. The impact on Commonwealth employment is a factor we traditionally review under the Chapter 11 public interest statutory standard in a change of control

⁴ 66 Pa. C.S. §§ 1102, 1103.

⁵ *Middletown Twp. v. Pa. PUC*, 482 A.2d 674 (Pa. Commw. 1984).

⁶ *See Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 n.21 (Pa. 2007); *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972).

⁷ *See Application of PPL Electric Utilities Corporation for Approval of Intercompany Restructuring*, Docket No. A-2017-2629534 (Order entered April 25, 2019) (evidence of tax savings to a corporate parent that negatively impacted Pennsylvania's tax revenues and the lack of any verifiable evidence of a benefit to other parties affected by the transaction other than the utility's corporate family constituted a failure of the applicant's burden of proving that approval of the transaction would provide affirmative public benefit or was necessary or proper for the service, accommodation, convenience, or safety of the public).

application.⁸ While the focus on employment in this transaction involving non-jurisdictional wireless service is not common, applicants have placed that issue squarely before us.

Similarly, applicants also cited the nationwide benefit of rural broadband deployment, including Pennsylvania. Yet applicants made no Pennsylvania-specific commitment ensuring that the claim of greater rural broadband deployment will extend beyond those areas where they are already providing service today. More troubling is that applicants have refused to substantiate with facts as opposed to adjectives that the promise of rural broadband includes deployment in those unserved or underserved areas of Pennsylvania where applicants are not providing service to consumers today. It is specifically in those areas, where, absent a specific commitment, the physical and geographic constraints of rural areas generally render deployment uneconomic, that the need for modern rural broadband remains unfulfilled. Again, while mobile broadband and voice service are not traditionally within the Commission's jurisdiction, applicants' reliance on these specific non-jurisdictional benefits to support approval of a transfer of control by a jurisdictional provider has again placed that issue squarely before us.

Finally, in a third matter squarely within our jurisdiction, Sprint has conceded it substantially misreported gross intrastate operating revenues by excluding wholesale revenues, the bulk of its business revenues, under Section 510 of the Code.

For these reasons, we propose to require two clarifications to the "voluntary commitments" applicants have offered to ensure that the affirmative public benefits promised by applicants in this proceeding will accrue to Pennsylvanians in compliance with Chapter 11. Also, while we agree that Sprint's compliance with Section 510 of the Code must be reviewed, given that Sprint has admitted that it has excluded wholesale revenues from its reported revenues, we require a formal comprehensive review of Sprint's gross intrastate operating revenues by our Bureau of Audits for a more extensive period of time than proposed by staff. Thus we move as follows:

⁸ We expressed our concerns over the potential negative impact on employment in Pennsylvania in a prior change of control transaction cited by applicants. *See Joint Application of XO Holding and Verizon Communications, Inc. for Any Approvals Required under the Public Utility Code for a Transfer of Control of XO Communications Services, Inc.*, Docket No. A-2016-2535279 (Order entered January 26, 2017), Statement of Chairman Gladys M. Brown and then-Commissioner David W. Sweet (recognizing that Verizon's reliance on a high level of overall transactional operational efficiencies raised questions not only of the sufficiency of state-specific benefits but also the impact on Pennsylvania employment, particularly in light of the imposition of employment-related conditions by both the New York Public Service Commission and the New Jersey Board of Public Utilities and the proximity of those states to Pennsylvania. Absent similar conditions here, employment protection in those jurisdictions would likely come at the expense of Pennsylvania. We have made substantial progress in engaging in more extensive reviews of the impact of these transactions on Pennsylvania. For example, we inquire about the impact on Pennsylvania jobs, and we require applicants to inform us of the status of transactions throughout the nation and to offer to Pennsylvania the same conditions that are offered or agreed to in other jurisdictions in order to protect Pennsylvania's interests. We see no reason not to continue that progress in this transaction given applicants' broad promises of benefits, "including Pennsylvania." *See* July 21, 2018 DR Nos. 6 (identify whether transaction synergies or savings are expected to arise from the loss of Pennsylvania jobs), 7 (identify the number of employees located in Pennsylvania) and 2 (identify other jurisdictions where the application is pending and the action taken).

- (1) To ensure that the real benefit of the deployment of modern broadband to those rural areas in Pennsylvania that currently lack it ensues, we clarify applicants' commitment to deploy such broadband by ensuring that not less than 5% of the additional wireless sites New T-Mobile projects to deploy in Pennsylvania through 2024 be in areas identified as **underserved or unserved in rural Pennsylvania** using the Federal Communications Commission's (FCC) Mobility Fund II (MF II) map,⁹ and provide that we have the ability to confirm this deployment through independent mapping *or, at a minimum, applicants' filing of annual reports with the Commission*,¹⁰
- (2) To ensure no harm flows to Pennsylvania employment despite applicants' promise of enhanced employment opportunities in Pennsylvania, in the absence of applicants' commitment to affirmative and verifiable employment opportunities in Pennsylvania, there shall be a moratorium on job losses in Pennsylvania resulting from the transaction for a transitional period of 18 months dating from the entry date of this order;¹¹ and
- (3) To ensure Sprint's compliance with Section 510 of the Code, our Bureau of Audits shall conduct of a formal, comprehensive review of Sprint's Pennsylvania CLEC and IXC business practices for the years for which Sprint has indicated data is available – 2009 through the present – to determine assessable gross intrastate operating revenues (including wholesale revenues) and report of any discrepancies from those amounts reported to the Commission on Sprint's annual financial and assessment reports to our Bureau of Administration for reassessment for any years Sprint is found to have underreported its revenues.

The determination whether there is substantial evidence of an affirmative public benefit *in Pennsylvania*, in both quantity and quality, is a state issue particularly within the expertise and judgment of this Commission. Given our statutory obligation, we believe that these clarifications to our staff order ensure that substantial evidence supports approval. Ensuring compliance with Pennsylvania law, including the proper accounting and reporting of intrastate revenues and the verification that the rural broadband deployment and employment benefits promised by applicants actually materialize, is a minimal threshold issue to be confirmed when conducting a Chapter 11 review.

In this transaction, applicants alone made the promised benefits of employment and rural broadband deployment the centerpiece of their application. Our desire to verify that those benefits will ensue arises directly from applicants' filing and their responses to staff's data

⁹ December 3, 2018 Response to DR No. 5 (confidential version).

¹⁰ As discussed below, applicants have agreed to provide independent mapping to confirm actual rural broadband deployment to 99% of residential locations in California and have agreed to file written confidential reports to confirm actual deployment progress in Mississippi.

¹¹ As discussed below, applicants have agreed to provide actual, verifiable employment benefits in California, and New York. Applicants have also promised the opening of a new CEC in Overland Park, Kansas, presumably mitigation to that jurisdiction from the elimination or reduction of Sprint's current corporate headquarters.

requests over the past 10 months.¹² Yet applicants repeatedly refused to provide detailed information on new rural areas to be deployed or new employment opportunities sufficient to allow us to assess whether, or to what extent, those benefits will ensue in Pennsylvania.

Stated differently, applicants ask us to accept the generalities and rhetoric surrounding the proceeding but without the specific detailed information needed either to assure or confirm that these purported affirmative public benefits will actually be realized in Pennsylvania. This is despite applicants' provision of similar confirmation to other jurisdictions similarly situated to Pennsylvania in their regulatory authority, as discussed below. Discerning whether substantial evidence that an affirmative public benefit *in Pennsylvania* will ensue is the essential state interest at issue here. Absent our proposed clarifications of applicants' promises, we do not agree that approval of this transaction contains the substantial evidence needed to support the affirmative public benefit requirement of Section 1102 of the Code. Without this minimal showing, applicants have failed to carry the burden of proof necessary to protect Pennsylvania's interests and demonstrate an affirmative public benefit specific to Pennsylvania.

In order to gauge the sufficiency of applicants' promises of Pennsylvania benefits, our staff issued multiple data requests to the applicants, each progressively attempting to nail down with some verifiable specificity the positive impact in Pennsylvania. In our first effort to obtain more robust information for Pennsylvania, applicants simply restated the merger benefits espoused in the application in the broadest scope possible:

- (1) An overall beneficial impact nationwide through merger synergies included cost savings and revenue growth estimated at \$43.6 billion in total net present value, of which nearly \$40 billion will be tapped to build a 5G network and with specific expenditures of \$14 billion in 2019, \$12.3 billion in 2020, and \$13.3 billion in 2021;
- (2) American job creation;
- (3) network investment; and
- (4) increased high-speed broadband coverage to rural consumers, including those in Pennsylvania.¹³

Regarding the imposition of a comprehensive review by our Bureau of Audits of Sprint's revenue reporting as a condition of our approval, following several efforts to confirm Sprint's gross intrastate operating revenues under Section 510 of the Code¹⁴ for the years 2006, the date of Sprint's certification as a CLEC by this Commission, to the present, applicants filed amended

¹² Throughout the duration of the Commission's ongoing examination of this matter, it was only as a part of applicants' May 13, 2019 responses to data requests that applicants offered any voluntary commitments to address our well-identified concerns.

¹³ August 10, 2018 Response to DR No. 5. When considered in conjunction with applicants' May 13, 2019 responses to our final set of data requests noting that wireless sites will be de-duplicated and that there will be fewer New T-Mobile new sites post-merger than if each company continued to operate on a standalone basis through 2024, it is reasonable to conclude that applicants intend to upgrade networks in areas where they are already providing service by replacing current service with 5G. While that alone may be an affirmative public benefit to existing consumers already receiving mobile broadband, it does not substantiate the affirmative public benefit of the deployment of modern broadband in those rural areas currently lacking such service.

¹⁴ 66 Pa. C.S. § 510.

Sprint Section 510 assessment reports for the years 2015, 2016, and 2017, amended Annual Financial Reports for the years 2015 and 2016, and provided revenue data for the additional years of 2013 and 2014.¹⁵ In each of the three years for which Sprint filed amended Section 510 assessment reports, Sprint underreported gross intrastate revenues, thereby paying reduced assessments. In just one year the value of the underreported gross revenues was 900% higher than what was reported.¹⁶

Applicants asserted various explanations why gross intrastate revenues did not include its wholesale revenues, the essence of Sprint's business plan upon certification.¹⁷ All rang hollow. For example, Sprint asserted that the revenue report due for Pennsylvania Universal Service Fund assessment is limited to retail revenues, hence it filed on the same basis for Section 510 annual assessment purposes. However, our PA USF regulations specifically define those revenues subject to assessment as "total intrastate end-user telecommunications *retail*" revenues whereas Section 510 of the Code not only contains no such limitation but also clearly requires a report of "*gross intrastate operating revenues.*"¹⁸

Understanding the distinction between pre-filing due diligence and post-merger planning limitations, we asked applicants to identify where the synergy savings identified in the filing would result in the deployment of 5G broadband in **rural** Pennsylvania with as much precision as possible. Applicants responded with statistics but no evidence of specific geographic locations even broadly defined.¹⁹ Even at its best, applicants fail to provide a statistic on the percentage of rural Pennsylvanians with modern broadband better than recent reports from the Federal Communications Commission, which indicate that 522,000 Pennsylvanians are without access to wireless broadband today or that 803,000 Pennsylvanians were without wireline broadband as of

¹⁵ February 13, 2019 Sprint letter filing amended reports; December 3, 2018 Response to DR 14.

¹⁶ While that precipitous decline may be explained as a result of changing technology or business plans, this may also reflect Sprint's claim in its May 13, 2019 responses to data requests that Internet Protocol (IP) transport is beyond the Commission's jurisdiction. However, Pennsylvania and federal law equally hold that wholesale transmission is telecommunications regardless of the services provided by that transmission or the technology used to facilitate that transmission. This is an important distinction for jurisdiction and assessments and is best explored as part of the subsequent Audits' review.

¹⁷ *Application of Sprint Communications Company L.P. for Approval of the Right to Offer, Render, Furnish or Supply telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket No. A-31083F0002AMA et al. (Order entered December 2, 2006) (in which Sprint sought certification to facilitate its business plan, which was to leverage its network to provide wholesale services to other carriers or providers that would provide the last mile and not to end users directly, in which we concluded that such an arrangement constituted telecommunications service subject to our jurisdiction, and for which we also exerted jurisdiction over the wholesale contracts).

¹⁸ Compare 52 Pa. Code § 63.162 and 66 Pa. C.S. § 510(b).

¹⁹ November 19, 2018 response to DR No. 5 (confidential version). Also, references to statistics, for example a promise that a certain percentage of a population will be served, includes urban and rural areas where services will be available. This does not mean rural areas with populations where wireless services are currently not available will be any better served if the transaction is approved.

2016.²⁰ Applicants also eventually provided color-coded maps purporting to show enhanced rural broadband deployment capability on a combined-company basis.²¹

However, these responses left unanswered questions whether the color-coded areas included *new coverage to currently underserved rural* areas or just better coverage to those areas where broadband currently exists and there is a business case for New T-Mobile to upgrade and provide consumers with 5G technology in order to better compete with existing broadband providers. Also not conveyed was whether increased capacity equated to increased coverage. And despite a final round of data requests to seek common ground on a level of granularity to allow us to test the averment of enhanced rural broadband where it was needed, no new information was forthcoming. We were unable to confirm to our satisfaction that approval of the transaction, even with applicants' "voluntary commitments," contained sufficient specific information to constitute substantial evidence that the alleged promise of rural broadband as an affirmative public benefit would ensue in the form of new broadband deployment to the areas of rural Pennsylvania that need it the most.

Finally, applicants provided no employment assurances specific to Pennsylvania. And our ability to find evidence sufficient to confirm a Pennsylvania employment benefit, rather than the harm we find more likely, is challenging. Applicants raised jobs as an affirmative public benefit, specifically referencing 12,000 new jobs nationally, with 5,000 positions needed to fill at least 600 new stores serving small towns and rural communities, employment opportunities applicants claim neither would provide on a standalone basis. There was also the promise of 5 new "Customer Experience Centers." Applicants also averred that as the 5th most populous state, Pennsylvania would see a net gain of thousands of employment opportunities.²²

Unfortunately, when again asked for more granular data and detail to ensure that this general claim would provide affirmative public benefit in Pennsylvania, and contrary to positive employment commitments made in other jurisdictions, applicants' responses simply reiterated the same general information previously provided with insufficient specific information on Pennsylvania.

The number of potential new stores identified for Pennsylvania was a fraction of a percentage compared to national projections.²³ Rather than providing data requested on the number of existing standalone stores to allow us to compare net employment prospects with potential existing losses, applicants referred us to store locator internet links on the web, stated that decisions regarding closure of stores have not been made, and employment decisions in

²⁰ *In re: Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199 (February 2, 2018), Appendix D-1 at 62; *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191 (January 29, 2016), Appendix D at 67.

²¹ See December 10, 2018 Response to DR No. 5 (confidential version).

²² December 3, 2019 Response to DR No. 11.

²³ December 3, 2019 Response to DR No. 11 (confidential version).

Pennsylvania will be made independent of any commitments in other states.²⁴ And provided an opportunity to comment on a mid-March letter filed at the FCC by a bipartisan coalition of 33 Pennsylvania legislative and congressional representatives, the AFL-CIO, and other interested associations, New T-Mobile denied assertions that it will shutter more than 168 stores or eliminate 635 retail jobs.²⁵

Jobs are important to Pennsylvania, particularly when employment has been cited as an affirmative public benefit supporting approval of a merger pending before the Commission. When the promise of enhanced employment opportunities is made, it should be real, and it should be kept. In New York, a commission with no more jurisdiction over this transaction than Pennsylvania, the NY PSC concluded as follows:

Loss of employment opportunities is not in the interest of the State of New York and, unlike national market power issues, state-level job losses is not an issue for federal review. ... Maintaining the same level of the combined company's workforce will help ensure that its current customers continue to receive high-quality reliable service after the two companies are integrated. The [NY PSC] recognizes T-Mobile's announced plans to invest in facilities and jobs in Upstate New York [the planned Rochester new customer service center[.]]²⁶

Pennsylvania has no fewer employment concerns and should expect no less a promise of employment benefit than the actual, verifiable benefit afforded New York.

Despite our best efforts to provide applicants every opportunity to submit additional information to confirm real benefits to Pennsylvania specifically, absent the clarifications express in this motion, we are left with limited, unsatisfactory, options. At best, we are asked to trust but not verify. At worst, we are left with claims of affirmative public benefits to Pennsylvania that are either illusory or even negative.

In response to our concerns, applicants offered "voluntary commitments" to "***strive to deliver, using industry best practices and barring factors beyond T-Mobile's control***" and that it is "***expected***" to deploy rural broadband to its existing points of presence including in rural areas but "***subject to physical or geographical limitations[.]***"²⁷ Instead of providing objective and verifiable geographic specificity as requested, applicants offered the vague and highly

²⁴ May 13, 2019 Responses to DR Nos. 14, 15.

²⁵ May 13, 2019 Response to DR No. 17. We note that pursuant to Section 5.408 of our regulations, 52 Pa. Code § 5.408, we may take official notice of facts not appearing in the record with notification to parties and an opportunity to respond.

²⁶ *Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. for Approval of an Indirect Transfer of Control Pursuant to Sections 99 and 100 of the New York State Public Service Law, Case 18-0396* (Order Issued and Effective February 7, 2019) at 16 (*NY PSC Order*).

²⁷ May 13, 2019 Response to DR No. 6 (responding to our May 9, 2019 DRs that had requested, inter alia, that applicants substantiate their promises with greater details of new coverage areas either through the provision of better maps with or through a recitation of estimated municipal areas).

qualified expectation to “cover a significant portion” of FCC Connect America Fund (CAF) II areas and provide broadband in all 67 Pennsylvania counties.

As proposed, this offer is both thin and unenforceable. We don’t know how T-Mobile will determine what is not within its control. T-Mobile offers expectations, not verifiable commitments. And, most conspicuously, by qualifying its promised benefit of rural broadband deployment with “physical or geographic limitations,” it undermines rather than supports that promise. These “physical or geographical limitations” are precisely the impediments that already inhibit the more robust deployment of modern broadband throughout rural Pennsylvania. Enhancing broadband where T-Mobile already has points of presence may provide the “haves” greater speeds and capacity, but it does little to ensure the “have nots” will benefit from the promise of rural broadband deployment. A general promise of upgraded 5G service does not substantiate with facts and specifics how that upgrade translates into expanding broadband into rural Pennsylvania beyond where it may already be present.²⁸

With respect to employment prospects, applicants rebuffed our efforts to ensure that positive employment opportunities will ensue in Pennsylvania, not only failing to provide us substantial evidence that the promised employment, “including Pennsylvania,” will be an affirmative public benefit from the transaction, but more disconcertingly leaving a strong potential for harm.

In the absence of commitments to ensure broad promises of rural broadband and employment opportunities will ensue in Pennsylvania, to gauge the degree to which past general promises were realized in Pennsylvania we asked Sprint to confirm the specific benefits that ensued following our approval of two prior transactions on the basis of national aspirations and the allusion to a stronger more managerially, financially, and technically fit Sprint. In response, applicants objected, averring that current efforts to confirm past promises constituted impermissible prosecutorial investigation, referred us to years of archived Securities and Exchange Commission filings, and simply flatly stated that applicants were unaware of any benefits that did not accrue.²⁹

Further, applicants are required to provide periodic updates to the Commission of actions in other jurisdictions, including the FCC and U.S. Department of Justice (DoJ).³⁰ When specifically requested to identify any conditions under consideration, imposed, or agreed to in any jurisdiction outside Pennsylvania, applicants objected to disclosing such information,

²⁸ Mobile and fixed broadband are not necessarily a clear “either/or” option under federal policy. The FCC has stated that Americans do not have broadband service unless they have access to fixed and mobile broadband. Applicants’ references to the CAF II wireline broadband deployment program when asked for details on the claim of affirmative public benefit from broadband in this merger, suggest that the Applicants’ view mobile service as an alternative to the fixed wireless goals of CAF II. But it is the FCC’s MF II program, not the CAF II program, that focuses on mobile broadband in rural areas. On that issue, the Applicants stated that MF II is beyond the scope of this proceeding. May 13, 2019 Response to DR No. 10. And despite our request to further identify CAF II areas, applicants refused to provide any specific, detailed, or quantitative data on what census blocks in what locations, in their view, will benefit from this commitment.

²⁹ December 3, 2018 Response to DR Nos. 2 and 3.

³⁰ 52 Pa. Code § 63.324(e).

alleging the requests sought irrelevant information that also constituted privileged settlement discussions.³¹

In our judgment, applicants have not provided substantial evidence of the breadth or depth of Pennsylvania-specific benefits because the promises repeatedly espoused by Sprint and T-Mobile remain primarily generalized on a non-geographic specific scale. But that is not to say that specific state benefits were not otherwise identifiable and verifiable to other regulatory jurisdictions based on public information.

- **Mississippi:**

By order dated January 10, 2019, the Mississippi Public Service Commission (MS PSC) approved the transaction filed by T-Mobile USA, Inc and Sprint Communications. As in Pennsylvania, T-Mobile USA, through subsidiaries, is an ETC in Mississippi but T-Mobile otherwise has no wireline certification in Mississippi. As in Pennsylvania, Sprint Communications is certificated to provide CLEC and IXC services in Mississippi. And like Pennsylvania, Mississippi does not regulate wireless carriers. Thus the merging parties' presence, and the state's jurisdiction, in Mississippi is similar to that in Pennsylvania.

In Mississippi, however, the PSC was able to find, as it noted in its order, that the transaction benefitted Mississippi based upon a Mississippi-specific filing provided to the PSC. Referring to a confidential exhibit filed under seal with the MS PSC, the MS PSC asserted the transaction will allow the deployment of more extensive infrastructure in Mississippi than otherwise would be possible for either company on a standalone basis. To ensure that benefit was realized in Mississippi, however, the MS PSC also imposed, and applicants accepted, a reporting requirement that the parties *file updates* on the progress of Mississippi's build out starting one year after the close of the transaction *and every year thereafter through 2024*, thus providing Mississippi the ability to ensure the touted benefits ensued.³²

- **New York:**

The New York Public Service Commission (NY PSC) issued the *NY PSC Order* on February 7, 2019.³³ As in Mississippi, petitioners in New York were Sprint Communications, certificated by the NY PSC as a CLEC and IXC, and T-Mobile USA. And like Pennsylvania and Mississippi, New York does not regulate wireless carriers.³⁴ The NY PSC approved the transaction but only on the unconditional acceptance by Sprint Corporation and T-Mobile USA Inc. of conditions, without which the PSC would deny the application for the applicants' failure to meet their burden of proving public benefit under New York law.³⁵

³¹ August 10, 2018 Response to DR No. 3; December 3, 2018 Response to DR No. 19.

³² January 11, 2019 Updated Response to DR No. 2; *Sprint Communications Company L.P.*, TC 123-0817-00. TC 123-0817-02, Docket No. 2018-UA-124 (Order entered January 10, 2019).

³³ February 8, 2019 Updated Response to DR No. 2.

³⁴ "T-Mobile does not provide a regulated telecommunications service in New York[.]" *NY PSC Order* at 14.

³⁵ Like Pennsylvania, New York law requires that in order to consent to a stock transfer, the acquisition must be shown to be in the public interest. New York Consolidated Laws, Public Service Law – PBS §§ 99, 100. To satisfy

First, the PSC required Sprint to continue maintain its relay call center in Syracuse and honor existing contracts until expiration. Second, to gauge the actual 5G deployment applicants touted as significant, the NY PSC advised it would track applicants' FCC Form 477 broadband rollout of 5G network and services in New York. Third, identifying job losses and service quality as state issues, the NY PSC imposed a three-year requirement to *maintain or increase* combined company direct employee levels of Sprint Corporation and T-Mobile USA Inc. To verify applicants' satisfaction of this condition, applicants were required to file a report identifying standalone employee levels today and a combined company employee count after the third anniversary of the merger's approval.

Also, it is notable that two days before the NY PSC approved the merger, Sprint and T-Mobile announced that the upstate New York greater Rochester area would be the site of the second new Customer Experience Center to open post-merger (the first announced location being Sprint's hometown of Overland Park, Kansas).

- **California**

On February 1, 2019, T-Mobile announced that it signed a memorandum of understanding (MOU) with the National Diversity Coalition that outlined mutual diversity, community, investment and delivery goals, including to low-income consumers. In that MOU, T-Mobile increased its goal for annual diversity spending in California,³⁶ providing evidence there that the proposed merger would bring value and benefit to consumers throughout California. Also in California, on April 15, 2019, the California Emerging Technology Fund also reached a MOU with T-Mobile regarding the "public benefits" of its proposed merger with Sprint, calling for upgrades to 5G wireless networks, continued Lifeline support, and investment in school improvement programs and digital literacy. Specifically regarding broadband deployment, T-Mobile agreed to upgrades to advanced 5G wireless networks available to 99% of California households with verification of actual coverage by high-resolution coverage maps and speed by an independent third-party beginning in 2022 and until the 5G upgrades are completed.³⁷ Also in early May 2019 it was publicly reported that the third of the five promised Customer Experience Centers with its promised 1,000 jobs will be located in California's Central Valley, a fact applicants subsequently confirmed.³⁸

that public interest standard, the NY PSC unequivocally held that "the proposed transaction is expected to produce an incremental net benefit after mitigating certain risks and considering certain benefits" but that "approval is granted, subject to the conditions" imposed and that "[a]bsent acceptance of these conditions[,] the public interest standard cannot be satisfied and the Joint Petition is otherwise denied." *NY PSC Order* at 2.

³⁶ California regulates both wireline and wireless services.

³⁷ On May 10, 2019, applicants filed a joint motion at the California Public Utility Commission (CA PUC) seeking immediate action on the pending application. On that same date, the administrative law judge presiding over the proceeding admitted the MOU into the record without any reference to or indication of ultimate action by the CA PUC. The MOU becomes effective if the merger is approved by the CA PUC, which is still reviewing the deal. In California, the California Public Advocates Office and other parties oppose the merger, arguing that the proposed transaction is not in the public interest, *inter alia* claiming the alleged benefits are not specific, measurable, verifiable, and enforceable. See California proceeding at Applications 18-07-011 and 18-07-012 (pending).

³⁸ May 13, 2019 Response to DR No. 16, reporting only the newest publicly announced CEC, not all those considered frontrunners or in any other way more in line than other areas of the country for a new CEC as requested.

Accordingly, for all these reasons, and without more detailed and specific evidence that was clearly in applicants' ability to provide, we cannot conclude on the basis of the record before us that substantial evidence supports approval of the transaction by bringing affirmative public benefit to Pennsylvania. The voluntary commitments that address these deficiencies lack the detailed and specific information on Pennsylvania-specific impacts sufficient to sustain the alleged affirmative public benefit arising from the merger when it comes to employment and rural broadband.

Applicants' voluntary commitments are insufficient. They provide no more verifiable detail of the extent to which **real new modern broadband coverage in those areas of rural Pennsylvania that currently lack such broadband** will be deployed. Adjectives claiming "significant" deployment are no more fact-based than the rhetoric in applicants' application, and reservations on deploying modern broadband based on "physical or geographical limitations" are an outward admission of the difficulty of achieving meaningful rural broadband deployment. Applicants' statement that they will provide broadband in 67 counties, without more, is meaningless since Pennsylvania already has broadband in all 67 counties. What Pennsylvania needs, but applicants refused to confirm will ensue from their promises with specificity and without qualification, is the deployment of new broadband in new areas of rural Pennsylvania that are currently underserved or unserved.

Second, a voluntary offer to meet with our staff annually to discuss 5G coverage, but refusal to file the same information at the Commission – under seal as necessary – lacks the transparency of commitment that was afforded in Mississippi, a state with the same regulatory authority as Pennsylvania, and California.

In developing the record, we purposefully provided applicants multiple opportunities to provide information sufficient to allow us to make that determination, but applicants chose a different path. While applicants responded to multiple sets of staff data requests, the quantity and quality of the information did not change sufficiently from the vague promises set forth in the application to support our approval.

On that note, we take particular issue with applicants' demand that this Commission approve this transaction no later than today's Public Meeting, May 23, 2019, or they "reserve[] the right to withdraw" the "voluntary commitments" presented in their May 13, 2019 data responses.³⁹

The FCC and DoJ have not yet acted. The transaction also remains under review in California and Hawaii. Surely nothing will occur until those agencies act. There is no reason we have to act today when our next Public Meeting is merely two weeks away. Applicants' focus on Pennsylvania by demanding that we act today is also at odds with their minimization of our action through their repeated assertions that our jurisdiction over this transaction is limited. If as limited as they say, the FCC would be wrong to draw any conclusion from our approval, as it is

³⁹ May 13, 2019 Response to DR No. 6.

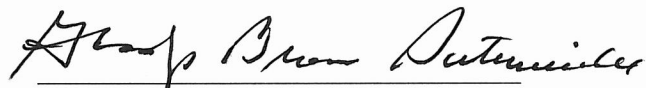
of no significance at the federal level. Moreover, absent clarifications to the proposed public benefits and corrective action regarding Sprint’s revenue reporting, we conclude it has no significance at the state level either.

Accordingly, in order to ensure a Pennsylvania-specific benefit would ensue, we would modify the draft order before us as described herein.

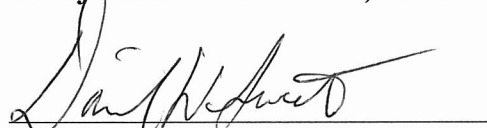
THEREFORE, WE MOVE THAT:

1. The recommendation be amended consistent with this Motion;
2. To ensure the promise of the deployment of rural broadband ensues in Pennsylvania, no less than 5% of the additional wireless sites that are projected to be deployed in Pennsylvania through 2024 will be located in areas identified as **underserved or unserved in rural Pennsylvania** using the Federal Communications Commission’s Mobility Fund II map, and this deployment will be confirmed through independent mapping *or, at a minimum, annual reports filed with the Commission* to confirm the delivery of the promise by Sprint Communications and T-Mobile USA of broadband deployment in rural Pennsylvania where it is needed the most;
3. To ensure the promise of enhanced employment ensues in Pennsylvania, or in the absence of a commitment to verifiable, affirmative employment opportunities in Pennsylvania to minimize the harm of immediate job losses, there will be a moratorium on job losses for a transitional period of 18 months dating from the entry date of this order; and
4. To ensure Sprint Communications’ compliance with Section 510 of the Public Utility Code, our Bureau of Audits shall conduct of a formal, comprehensive review of Sprint’s Pennsylvania CLEC and IXC business practices for the years for which Sprint has indicated data is available and shall be maintained – 2009 through the present – to determine assessable gross intrastate operating revenues (including wholesale revenues) and report any discrepancies from those amounts reported to the Commission on Sprint’s annual financial and assessment reports to our Bureau of Administration for reassessment for those years for which Sprint is found to have underreported intrastate revenues.
5. The Law Bureau, with the Bureau of Technical Utility Services as necessary, prepare an Opinion and Order consistent with this Motion.

Date: May 23, 2019



Gladys Brown Dutrieuille, Chair



David W. Sweet, Vice Chair