

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

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

**Public Meeting May 23, 2019
3003259-TUS
Docket No. A-2018-3003259**

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Sprint Communications Company L.P. (Sprint Communications) has filed an Application with the Commission for approval of an indirect transfer of control of the company from SoftBank Group Corp. (Softbank) to T-Mobile US, Inc. (T-Mobile). The Application is uncontested.

Sprint Communications is certificated in Pennsylvania as a Competitive Local Exchange Carrier and an interexchange carrier, while both Softbank and T-Mobile are not subject to the Commission's jurisdiction. Pursuant to an agreement between T-Mobile and Sprint Corporation (Sprint Corp.) among others, an all-stock merger transaction will occur at the holding company level. The transaction will result in Sprint Corp. becoming a wholly owned subsidiary of T-Mobile. However, Sprint Communications will continue to be an indirect, wholly owned subsidiary of Sprint Corp.

The Application was filed pursuant to Sections 1102 and 1103 of the Public Utility Code (Code). Section 1102 requires a public utility to obtain a certificate of public convenience before, *inter alia*, transferring property used or useful in the public service.¹ Before granting a certificate of public convenience, the Commission must find that granting the certificate "is necessary or proper for the service, accommodation, convenience, or safety of the public pursuant to Section 1103 of the Code."² In evaluating a transaction under Section 1103, the Pennsylvania Supreme Court in *City of York* held that the Commission must find that the transaction provides affirmative public benefits.³ The Pennsylvania Supreme Court further explained that the affirmative public benefits need not be quantified.⁴

When making our decision here, we should not lose sight of the actual case that is before us. We are being asked to approve one small jurisdictional piece of a much larger merger puzzle. That is, we are being asked to approve the indirect transfer of ownership of one Commission-jurisdictional Sprint entity that has no residential customers in Pennsylvania, has only a limited number of wholesale customers in Pennsylvania, and has no employees or offices in Pennsylvania. Moreover, we are being asked to approve a transaction will not impact Sprint

¹ 66 Pa. C.S. § 1102(a)(3).

² 66 Pa. C.S. § 1103.

³ *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972).

⁴ *Popowsky v. Pa. PUC*, 594 Pa. 583, 937 A.2d 1040 (2007).

Communications' existing contracts for services with customers in Pennsylvania and will not impact the rates, terms, and conditions of services provided to customers in Pennsylvania.

Equally important is what is not before us. We are not being asked to approve the transfer of any Sprint Communications affiliate that provides wireless services in Pennsylvania. Rather, the requisite regulatory approvals for the much larger wireless piece of the merger puzzle will occur primarily at the federal level.

In any event, I commend Applicant for its commitment to deploy a 5G wireless network in Pennsylvania. And, I appreciate Applicant's willingness to follow up the representations in its Application with a voluntary offer providing additional details about that deployment. However, in my view, we do not necessarily need to rely on evidence relating to 5G wireless deployment, a non-Commission-jurisdictional service,⁵ to approve the Application.

Rather, it is arguable that the Application meets the "affirmative public benefits" requirement, based solely on the benefits from the transaction relating specifically to the Commission-jurisdictional entity Sprint Communications. As the evidence shows, competition in Pennsylvania should be enhanced by Sprint Communications becoming part of a larger scale entity, which will give it the ability to compete more effectively in the telecommunications marketplace to the benefit of Pennsylvania consumers. This includes the ability of Sprint Communications to offer a wider array of services to consumers.⁶ I believe this evidence alone, while modest, could meet *City of York*.

Nevertheless, in the interest of moving this case forward, I will support the Motion of Commissioner Place to approve the Application.

DATE: May 23, 2019



**JOHN F. COLEMAN, JR.
COMMISSIONER**

⁵ A wireless service provider is expressly excluded from the definition of "public utility" in the Public Utility Code. 66 Pa. C.S. § 102(2)(iv). Therefore, the Commission generally does not have jurisdiction to regulate wireless services offered in Pennsylvania. Moreover, the Applicant's raising of the 5G wireless deployment benefits does not open the door to Commission jurisdiction over wireless service. This is because jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Rather, only the General Assembly can confer jurisdiction on the Commission. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁶ Application, para. 16.