



Agenda Date: 12/18/18
Agenda Item: 4A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF SPRINT COMMUNICATIONS)
COMPANY L.P.'S NOTIFICATION OF INDIRECT)
TRANSFER OF CONTROL OF SPRINT)
COMMUNICATIONS COMPANY L.P. TO)
T-MOBILE USA, INC.) DOCKET NO. TM18070730

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
James C. Meyer, Esq., Riker Danzig Scherer Hyland & Perretti LLP, on behalf of Petitioner

BY THE BOARD:¹

On July 13, 2018, Sprint Communications Company L.P. ("Sprint Communications") and T-Mobile USA, Inc. ("T-Mobile USA") (together, "Petitioners") submitted a verified letter ("Notification") to the Board of Public Utilities ("Board") detailing a proposed transaction that will result in Sprint Communications becoming an indirect wholly-owned subsidiary of T-Mobile USA. The transaction will be a merger of Sprint Corporation into an indirect subsidiary of T-Mobile USA, with Sprint Communications surviving as an indirect subsidiary of T-Mobile USA. Petitioner states that upon consummation of the transaction, Sprint Communications will continue to provide the same services that it currently provides to customers in the state.

BACKGROUND

T-Mobile US, Inc. ("T-Mobile") is a publicly traded Delaware corporation headquartered in Bellevue, Washington, and is sole parent to T-Mobile USA, also a Delaware corporation. T-Mobile is controlled by Deutsche Telekom AG ("Deutsche Telekom"), which indirectly holds approximately 62 percent of T-Mobile's stock. Deutsche Telekom is based in Bonn, Germany, and provides fixed broadband and wireless services to customers in over 50 countries. T-Mobile does not have CLEC authority in New Jersey.

¹ Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Sprint Corporation is a publicly traded Delaware corporation and global communications company that, through its subsidiaries, offers a comprehensive range of wireless and wireline voice and data products and services to residential, business, government, and reseller consumers throughout the United States and around the world. Sprint Corporation offers wireless and/or wireline voice and data services in all fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Sprint Corporation is primarily a holding company, with most operations conducted by its subsidiaries, including, but not limited to, Sprint. Sprint Corporation holds no authorizations from the Board, has no customers in the State of New Jersey, and does not provide regulated telecommunications services or telephone access line service in New Jersey. Sprint Communications is an indirect wholly-owned subsidiary of Sprint Corporation. Sprint Communications is authorized to provide telecommunications services in New Jersey as an interexchange carrier ("IXC") and a CLEC.² Sprint Communications has no residential customers in New Jersey. Sprint Communications has a limited number of enterprise and wholesale IXC customers to which it provides private line or data services pursuant to contract. According to the notification, Sprint Communications notified those customers in 2016 that they would have to either disconnect service, or transfer to Voice over Internet Protocol ("VoIP") services, which are unregulated by the Board. Sprint Communications is in the process of either disconnecting or transferring those final customers and expects all customers to be transferred by no later than December 2018. Once those customers are no longer on Sprint's TDM network, Sprint Communications will be providing only unregulated VoIP services, Internet Access, and IP-based private network services to business and enterprise customers in New Jersey. Sprint Communications states that it will continue to comply with its obligations as the provider of Telecommunications Relay Service ("TRS") in New Jersey and has confirmed its commitments on the continuation of Lifeline services throughout New Jersey.

Softbank Group Corp. ("SoftBank") is a Japanese corporation and holding company that is publicly traded on the Tokyo Stock Exchange. SoftBank is based in Tokyo, Japan, and provides mobile and fixed-line services in Japan through SoftBank Corp., its telecommunications subsidiary. In July 2013, following approval by the necessary federal and state regulatory authorities, SoftBank, through its subsidiary holding companies, acquired approximately a 78 percent indirect interest in the entity that is now Sprint (the "2013 Transaction"). That transaction was approved by the Board on March 20, 2013. See In the Matter of the Notification of Indirect Transfer of Control of Sprint Communications Company L.P. to Starburst II, Inc., Docket number TM12111044. As of December 31, 2017, SoftBank held approximately an 84.2 percent indirect interest in Sprint: 77.2 percent through Starburst and 7.0 percent through Galaxy. Starburst and Galaxy are not regulated operating entities but were created to operate as intermediary holding companies through which SoftBank owns Sprint.

DISCUSSION

As described in the Notification, on July 13, 2018, T-Mobile and Sprint, among others, have entered into an agreement which sets forth the structure and steps of a proposed transaction (the "Merger Transaction"). The Merger Transaction will be a merger of Sprint into an indirect subsidiary of T-Mobile, with Sprint surviving as a direct subsidiary of T-Mobile USA. This will be accomplished through several virtually simultaneous steps. At closing, if certain conditions are met, the first step will be that SoftBank subsidiaries, Galaxy and Starburst, which currently

² The Board approved Sprint to provide intrastate interexchange service statewide in Docket No. TM8603294, to provide intrastate intraLATA toll service statewide in Docket No. TE92111047, and to provide CLEC services statewide in Docket No. TE96060479.

collectively own approximately 84 percent of Sprint, will merge with and into Huron, with Huron continuing as the surviving corporation. Next, Superior will merge with and into Sprint, with Sprint continuing as the surviving entity. If this step does not occur because the requisite conditions are not met, Sprint shares held by Galaxy and Starburst will be converted into T-Mobile shares in this step. As a final step, Huron will distribute Sprint stock to T-Mobile, which T-Mobile will then contribute to its direct subsidiary, T-Mobile USA. Following completion of these steps, Sprint will be a wholly owned subsidiary of T-Mobile USA. Deutsche Telekom and SoftBank are expected to hold approximately 42 percent and 27 percent of the fully diluted shares of T-Mobile Common Stock, respectively, with the remaining approximately 31 percent of the fully diluted shares of T-Mobile Common Stock held by public stockholders.

Following the Merger Transaction, Sprint Communications will become an indirect wholly owned subsidiary of T-Mobile USA and will continue to operate as an indirect subsidiary of Sprint. T-Mobile USA will continue to be a wholly owned subsidiary of T-Mobile. T-Mobile will retain its headquarters in Bellevue, Washington, and maintain a secondary headquarters in Overland Park, Kansas.

This proposed Merger Transaction will be seamless to existing customers of Sprint Communications. Upon consummation of the transaction, Sprint Communications will continue to provide the same services that it currently provides to customers in this State, subject to Sprint Communications' existing plans to discontinue its TDM services and transition customers to Internet Protocol ("IP") services. All existing Sprint Communications contracts will be honored, including transitioning customers to IP services. Sprint Communications will continue to provide safe and adequate services at just and reasonable rates to its customers. Accordingly, the Transaction will be transparent to customers.

The Notification submits that prior Board approval of this Transaction is not required under N.J.S.A. 48:2-51.1 or any other state statute or regulation because: 1) the Transaction occurs above the holding company level rather than at the "public utility" level contemplated in Section 48:2-51.1; and 2) the New Jersey Legislature has expressly exempted financial transactions that occur at the parent holding company level. See N.J.S.A. 48:2-51.1b; 48:3-7.g; 48:3-9b 48:3-10.b. Further, the Notification states Board review and approval is not required because Sprint Communications' parent company, Sprint, does not itself provide regulated telecommunications or telephone access line services in New Jersey and seeks to merge into an entity that does not directly provide regulated telecommunications or telephone access line service in New Jersey and does not, directly or through affiliates, own a controlling interest in another entity that does.

N.J.S.A. 48:2-51.1.b provides as follows: "...no person shall acquire or seek to acquire control of a public utility directly or indirectly ... without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void." That provision provides, with respect to the review by the Board: "In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates." The current merger standard is the positive benefits test. As per N.J.A.C. 14:1-5.14(c), positive benefits must result from the transaction in order for the Board to approve a merger. Although Sprint asserts that this statute does not apply to this Transaction, the Board will conduct its analysis based upon the framework described above.

No Adverse Impact:

Impact on Competition:

The Transaction is not expected to adversely impact competition. Sprint Communications, the certificated entity operating in this State, will remain a wholly owned indirect subsidiary of Sprint. Neither T-Mobile USA nor its subsidiaries have a registered entity in this State that provides wireline services in competition with Sprint Communications.

Impact on Rates:

The Transaction will not have any negative impact on rates of services to customers. Sprint Communications will continue to provide the same services that it currently provides to customers in this State, subject to Sprint Communications' existing plans to discontinue its TDM services and transition customers to Internet Protocol ("IP") services.

Impact on Employees:

The Transaction will not negatively affect Sprint's employees. Indeed, Sprint Corp.'s regulated entity in New Jersey does not have employees of its own.

Impact on Service:

The Transaction will not have any negative impact on the provision of services to Sprint customers, who will continue to receive the same services over the same facilities following the reorganization.

Positive Benefits:

Furthermore, the Transaction is expected to serve the public interest by providing positive benefits to Sprint's customers and the State of New Jersey. The Notice claims that the Transaction will increase the managerial, technical, and financial resources available to Sprint Communications. Sprint Communications will become part of a much larger scale entity with substantial financial resources. This will benefit existing Sprint Communications customers by creating the opportunity to deploy a more extensive network. As a result of the Indirect Certificated Entity Acquisition, Sprint Communications will be able to offer a wider array of services that can be bundled with wireless services. This will permit Sprint Communications to compete more effectively in the marketplace to the benefit of consumers in New Jersey.

By letter to the Board dated November 8, 2018 the New Jersey Division of Rate Counsel ("Rate Counsel") advised that it would not oppose Board approval of the acquisition with the inclusion of certain recommendations. Rate Counsel recommends that the Board require Sprint Communications to make New Jersey specific commitments on the continuation of Lifeline services throughout New Jersey. Further, Rate Counsel recommends the Board obtain commitments on benefits that are New Jersey specific (i.e. a New Jersey specific 5G deployment plan for rural and other underserved areas) and aimed at resolving service and digital divide gaps experienced by New Jersey consumers. Rate Counsel also urges that the Board condition approval on a commitment that "the contemplated post acquisition/merger employment reductions will not jeopardize the provision of safe and adequate service for Sprint Communications' New Jersey customers."

Subsequently, on December 3, 2018, the Petitioners filed a response to Rate Counsel's letter. With regard to employment, the letter states that there is no need or basis for this condition, for several reasons. First, the Verified Notice does not state that there will be post acquisition/merger employment reductions in New Jersey of Sprint Communications and the Board does not have jurisdiction over or regulate wireless services. Second, Petitioners have already confirmed that the Acquisition will be seamless to existing New Jersey customers of Sprint Communications. Finally, the provision of safe and adequate service should not be a concern since Sprint Communications does not have any remaining voice TDM customers in New Jersey. Also, Sprint Communications has no residential customers in New Jersey.

In response to Rate Counsel's recommendation that the Board require New Jersey specific commitments on the continuation of Lifeline services in New Jersey, Petitioners state there is no basis or any need for such a condition. Petitioners point out that as Rate Counsel has noted (RC Letter at 2-4), Sprint Communications has already confirmed that the acquisition will not affect Sprint Communications' provision of Lifeline wireless service in New Jersey.

In response to Rate Counsel's request that the Board obtain a commitment regarding New Jersey specific wireless benefits aimed at resolving service and digital divide gaps experienced by New Jersey customers, the Petitioners note that the Board has recognized that "terms for the provisioning of wireless service and for the funding, infrastructure and building of wireless facilities in the State of New Jersey ... [do] not fall within the purview of the Board" and "the lack of its jurisdiction over wireless base facilities."³ In addition Petitioners note that the Acquisition will unlock synergies in order to build a nationwide 5G network; that network, in turn, will bring improved high speed broadband services to rural consumers nationwide, including in New Jersey. Thus, there is ample basis to render a determination that the Acquisition will afford benefits to the State and New Jersey consumers, without the need for a condition outside the Board's jurisdiction.

FINDINGS AND CONCLUSIONS

Based on the Board's review of the record in this matter, and the review of N.J.S.A. 48:2.51.1, the Board **HEREBY FINDS** that the Transaction will not create any adverse impacts and the Board is satisfied that positive benefits will flow to customers based on the record presented. As such, the Board **HEREBY FINDS** the Transaction in compliance with relevant law and regulation and therefore **HEREBY APPROVES** the Transaction as described in the Notification.

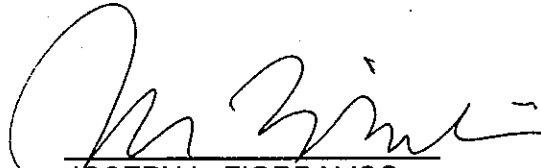
With regards to Rate Counsel's concerns, we agree with the Petitioner that Rate Counsel's concerns are unwarranted because the Board lacks jurisdiction with respect to wireless infrastructure. In addition, approval of the Petitioner's request is subject to the representations it made within its Petition. As such, we fully expect that the Company will remain committed to providing Lifeline services in the future, and that New Jersey customers will reap the expected benefits of improved broadband speeds with the intended buildout of its nationwide 5G network.

³ See I/M/O the Petition of Mobilitie, LLC For Approval of a Municipal Consent Pursuant to N.J.S.A. 48:2-14, BPU Docket No. TE17080927 (Jan. 31, 2018).

This Order shall be effective on December 28, 2018.

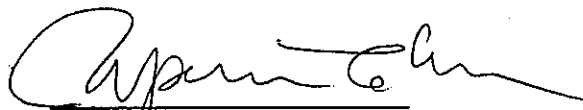
DATED: 12/18/18

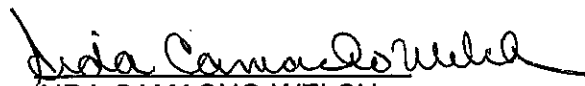
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ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF SPRINT COMMUNICATIONS COMPANY L.P.'S NOTIFICATION OF
INDIRECT TRANSFER OF CONTROL OF SPRINT COMMUNICATIONS COMPANY L.P. TO
T-MOBILE USA, INC.
DOCKET NO. TM18070730

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