

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 7, 2019

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, concurring
James S. Alesi

CASE 18-C-0396 - 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.

ORDER APPROVING TRANSFER OF INDIRECT
CONTROL SUBJECT TO CONDITIONS

(Issued and Effective February 7, 2019)

BY THE COMMISSION:

INTRODUCTION

By Joint Petition filed on July 6, 2018 (Joint
Petition), pursuant to Public Service Law (PSL) §§99 and 100, T-
Mobile USA, Inc. (T-Mobile USA) and Sprint Communications
Company L.P. (Sprint Communications) (collectively, the
Petitioners) request Commission authorization for an indirect
transfer of control that would result in Sprint Communications
becoming an indirect wholly owned subsidiary of T-Mobile USA.¹

¹ Approval was initially requested under PSL §100; after
discussion with Department of Public Service Staff (Staff),
the Petitioners filed a supplement on July 26, 2018, seeking
Commission approval under PSL §99(2), as well.

In approving a proposed telephone company acquisition under PSL §§99 and 100, the Commission must determine that the transaction is in the public interest. In this Order, the Commission determines that the proposed transaction is expected to produce an incremental net benefit after mitigating certain risks and considering certain benefits. Accordingly, Commission approval is granted, subject to the conditions discussed below. Absent acceptance of these conditions, however, the public interest standard cannot be satisfied and the Joint Petition is otherwise denied.

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.

Sprint Communications is authorized to provide intrastate telecommunications services in New York as an interexchange carrier (IXC) and a competitive local exchange carrier (CLEC) pursuant to its Certificate of Public Convenience and Necessity issued in Case No. 88-C-175 and subsequently

amended in Case Nos. 91-C-0590 and 92-C-0525.² Sprint Communications is an indirect, wholly owned subsidiary of Sprint Corporation (Sprint), a publicly traded Delaware corporation.

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 federal and state regulatory authorities SoftBank, through its subsidiary holding companies, acquired a 78 percent indirect interest in the entity that is now Sprint. SoftBank obtained this investment through Starburst I, Inc., a Delaware corporation, and Galaxy Investment Holdings, Inc., also a Delaware corporation. 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.

In anticipation of the transaction, T-Mobile has formed two indirect subsidiaries: Huron Merger Sub LLC (Huron), a Delaware limited liability company and wholly owned subsidiary of T-Mobile; and Superior Merger Sub Corporation (Superior), a

² Sprint Communications has no residential customers in New York. Sprint Communications has a limited number of enterprise and wholesale IXC customers to which it provides private line or data services pursuant to contract. Sprint Communications notified those customers in 2016 that they would have to either disconnect service or transfer to Voice over Internet Protocol (VoIP) services. Sprint Communications expects all customers to be transferred by no later than December 2018. Sprint Communications also serves as the provider of telephone relay service for the hearing impaired in New York State. See, Case 12-C-0257, Petition of the Targeted Accessibility Fund of New York, Inc., seeking approval of Sprint Communications as the designated carrier to provide Telecommunications Relay Service and Captioned Telephone Service in New York State (Dec. 19, 2012).

Delaware corporation and a wholly owned subsidiary of Huron; none of these companies are regulated operating entities.

Appendix A, attached to this Order, depicts the pre-transaction ownership structure and the final ownership structure following the proposed reorganization.

PETITION

Proposed Transaction

Pursuant to PSL §§99 and 100, the Petitioners request that the Commission approve a transaction whereby Sprint Communications will become an indirect wholly owned subsidiary of T-Mobile USA.

T-Mobile and Sprint have entered into an agreement (the Business Combination Agreement) pursuant to which an all-stock transaction will result in Sprint becoming a wholly owned subsidiary of T-Mobile USA (and an indirect subsidiary of T-Mobile). According to the petition, Sprint Communications will not be directly affected by this transaction and will continue to be an indirect wholly owned subsidiary of Sprint.

The Business Combination Agreement sets forth the structure and steps of a proposed transaction (Merger Transaction). Petitioners state that the 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 transaction will be accomplished through several simultaneous steps. The first step will be that SoftBank subsidiaries, Galaxy and Starburst, 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 and finally, Huron will distribute Sprint stock to T-Mobile, which T-Mobile will then contribute to its direct subsidiary, T-Mobile USA. Following the completion of these

steps, Sprint Communications will be an indirect wholly owned subsidiary of T-Mobile USA.

The Petitioners further state that following the Merger Transaction, Sprint Communications will become an indirect subsidiary of T-Mobile USA, but will not otherwise experience a change of control 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. The Merger Transaction is conditioned upon receipt of the approval of both T-Mobile and Sprint shareholders and approval by the Federal Communications Commission (FCC), and required regulatory and other governmental consents.

Stated Benefits

The Petitioners maintain that the transaction is in the public interest. Sprint Communications will remain a wholly owned indirect subsidiary of Sprint. Petitioners assert that there is no risk of competitive harm resulting from the wireline operations of Sprint Communications being acquired by T-Mobile. This transaction will be transparent to existing Sprint Communications customers, and upon consummation, Sprint Communications will continue to provide the services that it currently provides to its New York customers, subject to Sprint Communications' existing plans to discontinue its Time Division Multiplexing (TDM) services and transition customers to internet protocol (IP) services. All existing Sprint Communications contracts will be honored, according to the Petitioners, including transitioning customers to IP service. The Petitioners state that the transaction will increase the managerial, technical, and financial resources available to Sprint Communications, and Sprint Communications will become part of a much larger entity with substantial financial resources. This, according to Petitioners, will benefit

existing Sprint Communications customers by creating the opportunity to deploy an extensive network. Sprint Communications will be able to offer a wider array of services that can be bundled with wireless services. This will enable Sprint Communications to compete more effectively in the telecommunication marketplace to the benefit of its consumers.

In addition, the Petitioners state that the transaction will bring several other public interest benefits to the residents of New York State, including facilitating the deployment of 5G networks, which the Petitioners argue will stimulate job growth and boost the economy.

NOTICE AND COMMENTS

On October 19, 2018, the Secretary issued a Notice Inviting Comments on T-Mobile USA and Sprint Communications' July 6, 2018 petition, soliciting comments from interested parties and the public. A number of interested parties and members of the public filed comments regarding this transaction. These commenters are comprised of New York Building Congress; The Business Council; National Puerto Rican Chamber of Commerce (NPRCC); Communications Workers of America (CWA); Public Utility Law Project of New York (PULP); DISH Network Corporation (DISH); Prepaid Wireless Group (PWG); Common Cause; Consumers Union; New America's Open Technology Institute; Public Knowledge & Writers' Guild of America, West, Inc.; Greater Rochester Chamber of Commerce; Altice USA, Inc. (Altice); and 26 other public commenters.

New York Building Congress, NPRCC, PWG, Greater Rochester Chamber of Commerce, The Business Council of New York and 26 members of the public commented in support of the proposed merger.

The commenters opposing the proposed merger include the CWA, PULP, DISH, Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge & Writers' Guild of America, West, Inc., and Altice. The major concerns indicated by these commenters are: impact on Sprint Communications' customers, job losses, reduction in competition, consolidation of excessive wireless spectrum, and 5G network build out.

CWA

CWA asserts that the Petitioners have not provided any substantive evidence of benefit to the public interest stemming from the merger beyond the mere assertion of benefit, that 5G deployment by Sprint and T-Mobile would also proceed in the absence of the merger, and that the merger would consolidate excessive amounts of wireless spectrum. Further they state that the merger will result in the loss of jobs through the closing of newly redundant store locations. CWA also observes that the Petitioners did not describe services offered in New York, the number of customers served, or the number of employees in the State. CWA did not address the transfer of indirect control of Sprint Communications.

In its reply comments, CWA objects to the Commission's decision to allow the Petitioners to file initial comments, which effectively allowed them to amend their petition. CWA also expands on its concerns about job losses in both the prepaid and postpaid market segments due to store closures. Furthermore, CWA expresses concern that concentration of the wireless industry will produce concentration of the wireless industry labor market, which would create downward pressure on wages. CWA requests that the Commission extract commitments from the Petitioners to preserve New York employment. CWA also expresses concern about the loss of competition, particularly

in the prepaid market, where MetroPCS (T-Mobile) and Boost (Sprint) are primary competitors. CWA notes that 5G deployment is not dependent on the merger, and that the Petitioners' claim that the merger is a financial necessity is "overblown."

PULP

PULP states that the Petitioners did not meet their legal burden to show that the proposed merger is in the public interest. Rather than requesting the Commission to simply deny the transaction, PULP suggests that the Commission should request or require the Petitioners to place evidence in the record that would tend to satisfy their legal burden or otherwise take judicial notice of such evidence, which may be part of the record in the FCC proceeding analyzing the proposed merger.

PULP further requests that the Commission include an evidentiary process to this proceeding, to hold a series of public statement hearings at which active parties, stakeholders and the Petitioners might provide evidence to create a robust record upon which the Commission might act. PULP also suggests that the Commission should exercise the broadest possible reach of its powers to execute the public interest and analyze this proceeding in the context of the vast changes occurring in New York's Lifeline, rural/universal service and accessible telephony markets; the potential exit of a major telecommunication, broadband and Lifeline provider - Charter Communications - from the State's telecommunications market; and, the FCC's possible removal of Tracfone - New York's largest Lifeline provider- from the market serving vulnerable households.

Other Comments

Altice comments that the proposed transaction will hinder the entry of new facilities-based wireless competition due to the impact on the availability of reasonable wholesale agreements needed for initial entry by full infrastructure-based Mobile Virtual Network Operators (MVNOs). Altice contends that consolidation from four to three in the wireless market will cause wholesale costs to rise sharply for regional carriers and MVNOs.

Altice and DISH further believe that the proposed transaction could have negative impacts on wireless competition and consumers in the State of New York. In comments substantially similar to those filed with the Federal FCC, Altice and Dish argue that the proposed transaction would result in consolidation in the wireless market.

Finally, both Altice and DISH contend that the merger is not necessary for either Sprint or T-Mobile to deploy 5G wireless technology and that the economic analysis submitted to the FCC indicates that that the merger may delay 5G by diverting resources to the combination of the Sprint/T-Mobile network that either company would otherwise allocate to 5G buildout as separate companies.

Conversely, TracFone (as well as other MVNOs), a large MVNO with wholesale agreements with Verizon, AT&T, T-Mobile, and Sprint supports the merger between T-Mobile and Sprint. TracFone notes that it has had a "long-standing and mutually-beneficial relationship with T-Mobile..." and does not anticipate changes due to the merger. Additionally, TracFone believes that new T-Mobile will be capable of building a robust 5G network that it will make available to TracFone and other MVNOs.

Petitioners' Comments

With regard to customer impact due to the transaction, the Petitioners assert that the transaction will be transparent to the existing Sprint Communications customers, Sprint Communications will continue to provide services that it currently provides to customers in the State, subject to Sprint Communications' existing plans to discontinue its TDM services and transition customers to IP services. All existing Sprint Communications contracts and contractual obligations to customers will be honored, including Sprint Communications' obligations as the Telephone Relay Service (TRS) provider in New York and Sprint Communications' Tariff No.7. Additionally, Sprint Communications will maintain its Syracuse relay service center.

The Petitioners maintain that the transaction will create no harm to competition, because neither T-Mobile USA nor its parent, affiliate or subsidiaries provide wireline services in competition with Sprint Communications, there will be no increase in the concentration of wireline telecommunications provider in the State after the transaction. They further contend that it will in fact increase competition by enhancing Sprint Communications' ability to provide wireline enterprise services. The transaction will significantly increase the managerial, technical and financial resources available to Sprint Communications, enabling the company to compete more effectively in the telecom market place.

REPLY COMMENTS

Following the filing of comments, CWA and PULP objected to the comments filed by the Petitioners. They argued that such comments were an inappropriate supplement to the Petition and that they should 1) be allowed to respond to the

comments, and 2) be provided confidential information filed with the comments in order to adequately respond.

In response, on December 20, 2018, the Secretary to the Commission issued a Notice Inviting Responsive Comments and Reply Comments, due January 3, 2019 for Reply Comments and January 10, 2019 for Responsive Comments respectively. A subsequent limited extension was granted by Notice issued December 26, 2019 to January 4, 2019 for Reply Comments and January 11, 2019 for Responsive Comments. Additionally, an Administrative Law Judge was assigned to facilitate the exchange of information filed confidentially. A Ruling Adopting Protective order was issued on December 20, 2019 to allow such an exchange to occur.

Reply Comments were received from PULP and the CWA. Responsive Comments were received from the Petitioners. To the extent that these comments raised information beyond that discussed previously, they are summarized as follows.

CWA

In its Reply Comments, CWA objects to the Commission's decision to allow the Petitioners to file initial comments, which effectively allowed them to amend their petition. CWA also expands on its concerns about job losses in both the prepaid and postpaid market segments due to store closures. Furthermore, CWA expresses concern that concentration of the wireless industry will produce concentration of the wireless industry labor market, which would create downward pressure on wages. CWA requests that the Commission extract commitments from the Petitioners to preserve New York employment. CWA also states the transaction will result in the loss of competition, particularly in the prepaid market, where MetroPCS (T-Mobile) and Boost (Sprint) are primary competitors.

Petitioners

The Petitioners reply comments state that the comments of CWA and PULP are without merit, because the commenters raised no relevant concerns related strictly to the indirect CLEC acquisition. Petitioners indicate that the proposed indirect CLEC acquisition and the larger merger will create numerous benefits for consumers of both wireline and wireless services in New York.

With respect to CWA and PULP's claims regarding on job losses, the Petitioners assert that the new T-Mobile's total number of employees will equal or exceed the total number of employees of Sprint and T-Mobile in New York at closing, as of two years following the merger. This, according to Petitioners, assumes inclusion of contractors hired and adjustments for current employees who voluntarily decline employment at T-Mobile. T-Mobile, Petitioners state, will maintain the total number of direct employees in New York for at least two years following the Merger.³

The Petitioners also state that the merger is necessary to create a powerful 5G network and that the combined company will strive to deliver 5G coverage to the overwhelming majority of its FCC licensed covered Point of Presence (POP's) throughout the State (including the Upstate Region), within three to five years from the merger's closing and that this 5G network will provide capabilities far beyond those of the standalone networks, including in Upstate and rural areas.⁴

Finally, in response to CWA's claim that the transaction "will harm low-income consumers and communities of color in New York," Petitioners state that the merger will

³ Case 18-C-0396, T-Mobile and Spring Reply Comments (filed January 11, 2019), Appendix A.

⁴ Id., pp. 15-16.

provide better services at a lower price for low-income and lifeline consumers and communities of color and that CWA has not provided any evidence to the contrary.⁵

LEGAL AUTHORITY

Under PSL §§99 and 100 the Commission must find that the transaction is in the public interest to grant approval. PSL §99(2) requires the consent of the Commission for any proposed transfer of a telephone corporation's "works or system." As the Commission has noted in another merger case, "[a]lthough PSL §99(2) does not specify a standard of review, all such utility transfers have been interpreted as requiring an affirmative public interest determination by the Commission."⁶ PSL §§100(1) and (3) require the Commission's consent for the acquisition of the stock of a telephone corporation.⁷ Unlike Section 99(2), however, these provisions expressly bar the Commission from giving its consent unless the applicant has shown, in the first instance, that the acquisition is in the public interest.⁸

⁵ Id., pp. 39-42.

⁶ Case 05-C-0237, Joint Petition of Verizon Communications et al., Order Asserting Jurisdiction and Approving Merger Subject to Conditions (issued November 22, 2005), p. 46.

⁷ Consent is presumed after 90 days unless it is determined, as it has been here, that the public interest requires the Commission's review and written opinion.

⁸ Again, consent is presumed unless it is determined, as it has been here, that the public interest requires the Commission's review and written opinion.

DISCUSSION

In evaluating the public interest relevant to this transaction, the Commission finds that, on balance, after evaluating the comments received and the risks associated with the proposed transaction the transaction will advance public interest and is approved, but only subject to the conditions discussed herein.

The transaction under consideration is the transfer of indirect control of Sprint Communications to T-Mobile USA. This transfer is not expected to cause interruptions or changes in service for existing Sprint wireline customers, and planned upgrades will continue, including a transition to IP-based services. In order to ensure that Sprint's New York business is not negatively impacted by the transaction, however, Sprint will be required to continue to operate its relay call center in Syracuse and honor existing contracts until their respective expiration.

Additionally, there will be no material change in the competitive wireline market in New York State. T-Mobile does not provide a regulated telecommunications service in New York State and its indirect acquisition of Sprint, therefore, does not present any risk to competition in this wireline market.

As noted above, a number of commenters have expressed concern regarding the broader merger of T-Mobile and Sprint's wireless operations, specifically market power concerns, potential for job losses and a reduction in MVNO competition. The Commission notes as an initial matter that issues related to wireless and MVNO competition are the subject of the FCC and Department of Justice reviews and that those concerns are before

those federal bodies.⁹ However the Petitioners have addressed concerns related to the broader issues raised by other parties in this case. In response to predictions of job losses and reduced employee benefits, the Petitioners assert that the number of new T-Mobile employees in New York State will be at least equal to the total number of Sprint and T-Mobile employees as of the closing of the merger and will remain so for two years. Additionally, they state that by virtue of the transaction between the two companies, current T-Mobile employees will continue to receive the same benefits, and that current Sprint employees will receive equivalent benefits, as stated in the merger agreement.¹⁰

In response to claims that T-Mobile and Sprint would have built 5G networks in any case, the Petitioners assert that the new T-Mobile will be able to build a larger, more robust network in a more timely fashion, than either of the two companies on their own. Their stated intent is to deliver 5G service to the "overwhelming majority" of their coverage areas in New York State (including the Upstate Region) within three to five years of closing.

In order to track the Petitioners' performance in reaching their goal of significant 5G deployment, the Commission will track the Petitioners FCC 477 Data regarding the rollout of 5G network and services in New York State.

⁹ While Altice and DISH correctly state that the Commission has in the past relied on the wireless market as a constraining factor for wireline and other facilities-based competition, PSL §5(6) prohibits, in the absence of a hearing, the Commission from regulating wireless service, as such, matters regarding the impact of wireless competition on Altice and DISH are the exclusive province of federal authorities and not at issue here.

¹⁰ T-Mobile and Sprint Reply Comments, Appendix A.

As the Commission has found in previous cases, any major transaction, such as the one at issue here, is likely to result in potential harms. In this case, the likely harms are job related. CWA and other parties have explicitly expressed concern that the combined entity will shed jobs in pursuit of synergy savings from the transaction. 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. The Commission also wants to ensure that new T-Mobile maintains service quality.

In order to protect customers and mitigate the potential for job losses following the close of the transaction, the Commission will condition its approval of the transaction on Petitioners agreeing that, they shall demonstrate that the total number of employees in New York State as of the date of this Order is maintained on the third anniversary of the close of the transaction. 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 Commission recognizes T-Mobile's announced plans to invest in facilities and jobs in Upstate New York.¹¹

Consistent with representations made on the record we will require for approval that the total number of New T-Mobile direct employees in the State of New York at three years after the close will be equal to or greater than the total number of employees of Sprint Corporation and T-Mobile USA, Inc. in the

¹¹ See, Business Wire, T-Mobile and Sprint Announce New York State as Second Location for Customer Experience Center to Serve New T-Mobile Customers Pending Merger Approval, (February 5, 2019), available at <https://www.businesswire.com/news/home/20190205005892/en/T-Mobile-Sprint-Announce-New-York-State-Location>.

State of New York as of the date of this Order. We require the Petitioners to file a report of the total number of direct employees of T-Mobile USA, Inc. and Sprint Corporation in New York as of the date of the Order within 14 days of the issuance of this Order; and, on the third anniversary of the Merger's close, a report on the total number of direct employees of New T-Mobile in New York. Such reports may be filed with a request for confidential treatment to the Commission Secretary.

Enforcement

The conditions adopted in this Order shall be binding and enforceable by the Commission upon unconditional acceptance by Petitioners within seven business days of the issuance of this Order. If the Petitioners' unconditional acceptance is not received within seven business days of the issuance of this Order, the Petitioners will have failed to satisfy their burden under the Public Service Law as described herein, and this Order shall constitute a denial of the Petition.

Through this Order, Petitioners will be required to fully and completely comply with the conditions detailed herein and any failure to comply with those conditions as described above may result in the commencement of a penalty and enforcement action under PSL §§25 and 26.

CONCLUSION

The Commission finds that authorization of the proposed transaction, subject to the conditions discussed herein, and the acceptance by the Petitioners thereof, is in public interest and it is therefore approved.

The Commission orders:

1. The Joint Petition of T-Mobile USA, Inc. and Sprint Communications Company L.P. concerning an indirect transfer of control is granted pursuant to Public Service Law §§99 and 100 and subject to the conditions discussed in this Order.

2. The Petitioners shall demonstrate that the total number of New T-Mobile direct employees in the State of New York at three years after the close will be equal to or greater than the total number of employees of Sprint Corporation and T-Mobile USA, Inc. in the State of New York as of the date of this Order.

3. The Petitioners shall file a report with the Secretary to the Commission of the total number of direct employees of T-Mobile USA, Inc. and Sprint Corporation in the State of New York as of the date of this Order within 14 days of the issuance of this Order.

4. On the third anniversary of the Merger's close, the Petitioners shall file with the Secretary to the Commission a report on the total number of direct employees of New T-Mobile in the State of New York as of that date.

5. Petitioners must honor all existing Sprint Communications Company L.P. contracts in New York State, including Sprint's status as New York State Relay Service Provider until their respective end dates.

6. Petitioners, and their successors in interest, shall certify that they unconditionally accept and agree to comply with the commitments set forth in the body of this Order by submitting a certification to the Commission within seven (7) business days of the issuance of this Order. If the Petitioners do not unconditionally accept within seven (7) business days of the issuance of this Order, this Order shall constitute a denial of the Joint Petition.

7. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

8. This proceeding is continued for compliance purposes.

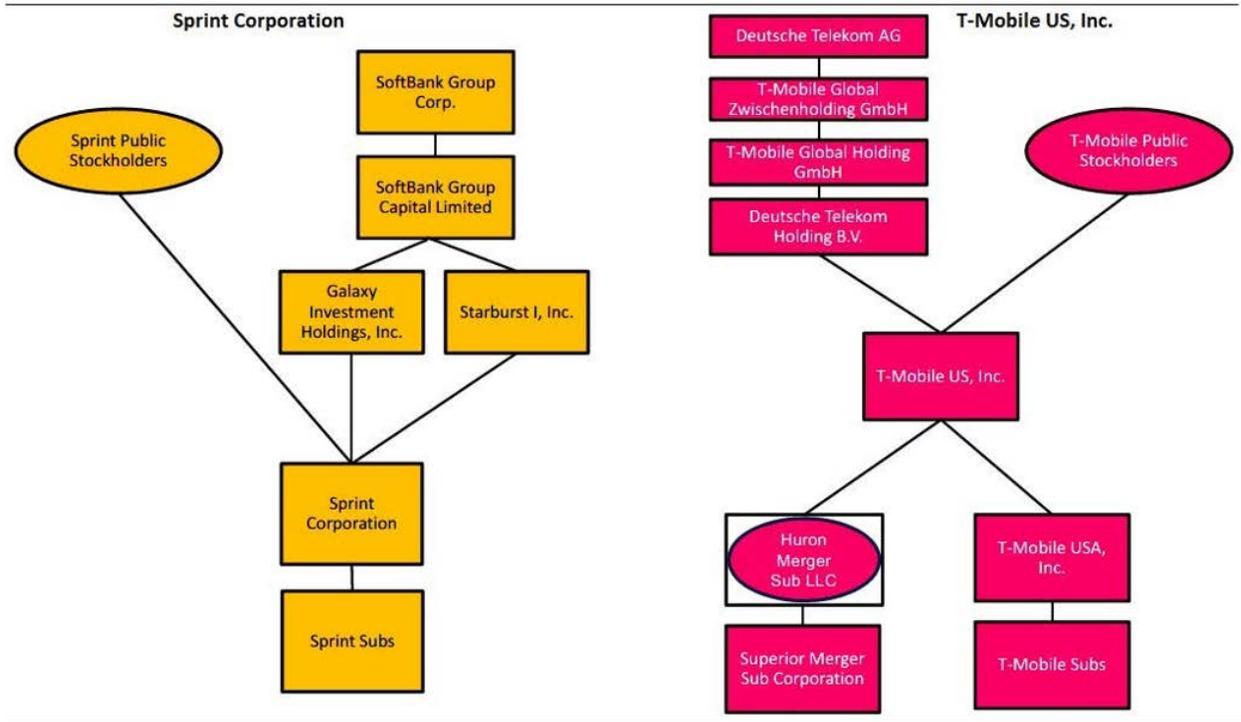
By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

APPENDIX A

Pre-Transaction Ownership Structure



APPENDIX A

Post-Transaction Ownership Structure

