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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF: THE
MISCELLANEOUS
CORRESPONDENCE AND REPORTS
REGARDING
TELECOMMUNICATIONS UTILITY
SERVICES; 2016**

**DOCKET NO. 16-999-03
RESPONSE TO SEPTEMBER 12, 2016
ACTION REQUEST**

Pursuant to Utah Code Ann. § 54-4a-1 and Utah Admin. Code r746-100 the Utah Division of Public Utilities (“Division”), hereby submits this Response to the September 12, 2016 Action Request in this Docket. The Public Service Commission of Utah (“Commission”) should open a single docket to investigate the proposed transaction.

On September 12, 2015 Sprint Corporation (“Sprint”), Virgin Mobile USA, L.P. (“Virgin Mobile”), and i-wireless, LLC (“i-wireless”) submitted a notification to the Commission that the companies agreed to a transaction where the majority control of i-wireless will be transferred to Sprint and the lifeline customers of Assurance Wireless brand – a sub-brand of Virgin Mobile - will be transferred to i-wireless. i-wireless does not currently share common ownership with Sprint or Virgin Mobile.

The Commission requested an opinion from the Division regarding whether Utah Code Ann. §54-4-28 requires an investigation and hearing before approval of the transaction and if so whether the proposal should be bifurcated to two separate dockets to investigate the two parts of the proposal that are separate simultaneous transactions. Specifically, the Commission identified two components of the transaction: (1) transfer of control or i-wireless to Sprint; and (2) transfer of accounts from Assurance Wireless to i-wireless. The Commission requested advice on “whether the proposed transactions should be required to file two separate applications, one for each transfer.”

The Division recommends that the Commission require a single application and open one docket to investigate the proposal and hold a hearing regarding this set of transactions. Utah Code Ann. § 54-4-28 states that “No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that... [the transaction] is in the public interest.” The transaction as proposed contains two primary components, both of which require investigation and hearing prior to approval. The transfer of controlling ownership of i-wireless to Sprint is a combination of public utilities engaged in the same general line of business. This type of transaction reduces the competitive options for customers and plainly falls within the type of transaction for which the statute requires approval.

The less clear question is whether a transfer of customers among two subsidiaries or consolidation of subsidiaries within the same corporate ownership necessarily requires the same investigation and hearing. The Division recommends that this second type of transaction be reviewed on a case by case basis. In recent years it has been a common occurrence that corporate

restructuring has resulted in customers are transferred to affiliate entities with shared ownership and the transaction is effectively only a name change. Often corporate management and control remain the same, available resources and facilities are unchanged, and customers are largely indifferent. These types of transactions do not present the potential customer harm that the statute was intended to address and may not require investigation and hearing where they are not actually merger, combination, or consolidation.

In this case the combination of customers is significantly different. In a nearly simultaneous transaction, the customers of Sprint's existing wholly owned subsidiary sub-brand will be transferred to a new entity that is only partly owned by Sprint and presumably retains much of the i-wireless management and operations. This transaction is likely to be less transparent to customers and result in greater changes than simply a re-naming or reorganizing of the entity serving the customer within the greater corporate structure. As such the Division recommends that this transfer of customers be investigated and subject to a hearing prior to approval.

In response to the question of whether a single or two separate dockets be opened, the Division recommends that only one docket be opened to investigate both parts of the overall transaction. As the Division understands the proposal it is intended to happen simultaneously. The primary investigation conducted by the Division will be evaluating whether the final operating utility i-wireless will have the resources and expertise to provide adequate service to customers and whether the transaction's final result as compared to the current status will be in the public interest. The Division believes that its investigation of the transaction may be conducted more efficiently if the transaction is viewed as a whole because most of the data review and analysis will be similar.

The Commission has broad authority to determine the scope of its dockets. The statute does

not mandate that each transaction be reviewed independently in its own docket. Both the investigation as well as the potential for consent and approval of both parts of the proposed transaction may be combined in a single docket. In the interests of efficiency, the Division recommends that the Commission open a single docket to investigate the transaction in its entirety.

Submitted this 12th day of October, 2015.

/s/ Justin C. Jetter

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