BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)
)
SPRINT COMMUNICATIONS COMPANY L.P.) DOCKET NO. 2009-0289
)
For Authorization of the)
Acquisition of Virgin Mobile USA,)
Inc. by Sprint Nextel Corporation.)

DECISION AND ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of SPRINT COMMUNICATIONS COMPANY L.P. For Authorization of the Acquisition of Virgin Mobile USA, Inc. by Sprint Nextel Corporation.	)	Docket No. 2009-0289

DECISION AND ORDER

By this Decision and Order, the commission grants SPRINT COMMUNICATIONS COMPANY L.P. ("Sprint Communications"); SPRINTCOM, INC., dba SPRINT PCS ("Sprint PCS"); and NPCR, INC.'s ("NPCR") (collectively, "Applicants") request for approval of the acquisition of Virgin Mobile USA, Inc.'s ("Virgin") stock by their parent company, Sprint Nextel Corporation ("Sprint"), as described in the Application filed on September 15, 2009 ("Application").

I.

Background

A.

Description of Entities

Sprint Communications is a Delaware limited partnership wholly-owned by subsidiaries of Sprint. Sprint Communications is authorized by the commission to provide a "full range" of intrastate services in the State of Hawaii ("State").[1] In addition, Sprint Communications is the State's authorized provider of telecommunications relay services ("TRS").[2]

Sprint PCS is a Kansas corporation, and a wholly-owned subsidiary of Sprint. Sprint PCS is authorized by the Federal Communications Commission ("FCC") and the commission to provide commercial mobile radio service ("CMRS") throughout the State.[3] In addition, the commission designated Sprint PCS as an eligible telecommunications carrier ("ETC") for the purpose of receiving federal universal service funding.[4]

NPCR, a Delaware Corporation, is ultimately a wholly-owned subsidiary of Sprint. It holds a certificate of registration ("COR") from the commission to operate as a CMRS

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[1]See In re Sprint Communications Company, L.P., dba Long Distance/USA, Docket No. 94-0005, Decision and Order No. 13262, filed on May 17, 1994; In re Sprint Communications Company, L.P., dba Long Distance/USA, Docket No. 96-0061, Decision and Order No. 14868, filed on August 9, 1996.

[2]In Docket No. 03-0058, the commission selected Sprint Communications as the exclusive provider of intrastate TRS within the State from July 1, 2003, to June 30, 2006. By Order No. 22438, filed on May 1, 2006, in Docket No. 03-0058, the commission extended Sprint Communications' provision of TRS for an additional two years (from July 1, 2006, to June 30, 2008). By letter dated March 4, 2008, the commission selected Sprint Communications to be the TRS provider for the period from July 1, 2008, to June 30, 2011. See In re Public Utilities Commission, Docket No. 2009-0095, Decision and Order, filed on June 9, 2009, at 1-2 n.1.

[3]See In re Sprintcom, Inc., Docket No. 98-0359, Decision and Order No. 16697, filed on November 10, 1998.

[4]See In re Sprintcom, Inc. and NPCR, Inc., Docket No. 2007-0402, Decision and Order No. 24169, filed on April 30, 2008.

provider.[5] NPCR has also been designated by the commission as an ETC for purposes of receiving federal universal service support funding.[6]

Sprint, Applicants' parent company, was formed through the merger between Sprint Corporation and Nextel Communications, Inc., which was approved by the commission in 2005.[7] Sprint, a publicly traded holding company principally located in Overland Park, Kansas, is represented to be: (1) "a global communications company providing a comprehensive range of wireless and wireline communications services" to consumers; (2) the "third largest provider of mobile telephony and related data services in the United States based on subscribership, with about 49 million subscribers"; and (3) a provider of wireline services to individuals, businesses, and governmental entities, and operates a "global Tier 1 Internet backbone."[8] In addition to Applicants, Sprint is the parent entity of Nextel Boost West, LLC ("Boost")

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[5] See In re NPCR, Inc., Docket No. 99-0038, Decision and Order No. 17036, filed on June 15, 1999.

[6] See In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Decision and Order No. 21089, filed on June 25, 2004.

[7] See In re Sprint Communications Company, L.P., Sprint Payphone Service, Inc., and ASC Telecom, Inc.; Docket No. 05-0045; Decision and Order No. 21714; filed on April 4, 2005.

[8] See Application at 5.

which also holds a COR to operate as a CMRS provider in the State.[9]

Virgin is a publicly traded Delaware corporation with its principal place of business located in Warren, New Jersey. It is the parent entity of Virgin Mobile USA, L.P. ("Virgin Mobile")[10] and Helio LLC ("Helio")[11] each of which holds a COR to operate as a CMRS provider in the State.[12] According to Applicants, Virgin's single largest shareholder is Virgin Group Holdings Limited ("Virgin Group"), a British Virgin Islands limited company, which holds 28% ownership interest in Virgin. Applicants state that Sprint and SK Telecom Company, Ltd. currently own approximately 13% and 15% of Virgin, respectively.

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[9]Applicants state that Boost is not a party to this proceeding since the commission has waived the requirements that CMRS providers obtain commission approval of the transfer of control type transactions or transactions affecting their parent and/or affiliates. See Application at 5-6 n.6 (reference and citation omitted).

[10]Virgin Mobile is a Delaware limited partnership authorized by the commission to provide wireless telecommunications services in the State on a resold basis. See Application 7. Applicants represent that Virgin Mobile provides prepaid telecommunications services under the "Virgin Mobile" brand using Sprint's network infrastructure and wireless transmission facilities and that Sprint retail outlets "already market and sell Virgin Mobile service and Sprint currently counts Virgin Mobile subscribers in its publicly available subscriber numbers." Id.

[11]Helio holds a COR to operate as a reseller of wireless telecommunications services in the State. Helio was acquired by Virgin in August 2008. See Application at 7.

[12]Applicants state that Virgin Mobile and Helio are not parties to this proceeding since the commission has waived the requirements that CMRS providers obtain commission approval of the transfer of control type transactions or transactions affecting their parent and/or affiliates. See Application at 1 n.1 (citing to Decision and Order No. 20890, filed on April 7, 2004, in Docket No. 03-0186 ("CMRS Order")).

B.

Application

On September 15, 2009, Applicants[13] filed the Application seeking commission approval of the stock acquisition of Virgin by Applicants' parent, Sprint.[14] Applicants state that on July 27, 2009, Sprint and Virgin, entered into a definitive agreement under which Sprint will acquire Virgin's outstanding shares that Sprint currently does not own ("Proposed Transaction"). Under the Proposed Transaction, Virgin shareholders will receive shares in Sprint in exchange for their current shares in Virgin (and cash in lieu of partial shares). According to Applicants, "[n]o Virgin [] shareholder will acquire more than a 10 percent ownership interest in Sprint as a result of the transaction" and "the combined ownership interest in Sprint that will be acquired by the two largest shareholders of Virgin[], Virgin Group [] and SK Telecom Company, Ltd. will be less than 3 percent."[15]

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[13]On October 21, 2009, Applicants submitted a request to amend the Application to include Sprint PCS and NPCR as applicants to the docket. According to Applicants, this amendment addresses the inconsistency with Docket No. 2008-0176, in which Sprint PCS and NPCR "acknowledged that in that case, their designation as ETCs likely raised different policy considerations than were originally considered by the Commission in granting the waivers in the CMRS Order." <u>See</u> Applicants' letter filed on October 21, 2009 to the commission at 1 (footnote omitted).

[14]Copies of the Application were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an <u>ex officio</u> party to this docket pursuant to Hawaii Revised Statues ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. No persons moved to intervene or participate without intervention in this docket.

[15]<u>See</u> Application at 4.

Applicants' request for approval of the Proposed Transaction is made under HRS § 269-7(a).[16] In addition, Applicants request commission waiver of any filing requirements of HAR Chapter 6-61, to the extent that the Application is inconsistent with the requirements, under HRS § 269-16.9(e) and HAR § 6-80-135 ("Waiver Request").

Applicants represent that the acquisition is at the parent level only, with "no changes to the Sprint subsidiaries operating in Hawaii or in Virgin Mobile or Helio, the Hawaii certificated entities."[17] According to Applicants, the certificates, authorizations, and licenses currently held by Sprint and Virgin's subsidiaries will continue to be held by the respective entities and the Proposed Transaction will not alter their relationship with the commission.

Applicants state that Sprint and Virgin both have substantial financial resources and large customer bases and thus, the Proposed Transaction will not adversely affect Applicants' fitness, willingness or ability to provide telecommunication services in the State. According to Applicants, the Proposed Transaction will be transparent and neutral for Sprint's wireline customers (including those in Hawaii) and "the transaction will serve the public interest and

[16]Applicant states that Sprint and Virgin's applications for FCC consent for Sprint to acquire control over the two international 214 certificates held by Virgin (under its operating subsidiaries, Virgin Mobile and Helio) through the Proposed Transaction were granted by operation of rule on September 11, 2009. See Application at 5.

[17]See Application at 4.

benefit Sprint and Virgin[]'s wireless customers by generating a number of incremental efficacies and benefits."[18] Further, Applicants state that: (1) Virgin will be able to compete more effectively in the prepaid wireless segment of the market since it will have access to Sprint's "network ownership economics, cost structure and scale"; (2) the acquisition of Virgin by Sprint will benefit Sprint by increasing its customer base and revenues since Virgin has a "strong reputation as a provider of prepaid wireless service"; and (3) the Proposed Transaction will be seamless to Virgin's current customers since Virgin uses Sprint's "network to provide its services, existing customers will not experience any loss, interruption or impairment in the services and features they currently receive."[19] In addition, Applicants represent the following:

> In Hawaii, the transaction will not have any adverse impacts on Applicant[s], including [Sprint Communications'] ability to continue to provide TRS services. Likewise, the transaction will not have any impact on the ability of Sprint PSC and NPCR to meet their universal service commitments. Thus, the proposed transaction will not adversely affect [Applicants'] fitness, willingness, and ability to provide intrastate telecommunications services in the State.[20]

Furthermore, Applicants contend that the Proposed Transaction will not have any anti-competitive effects. According to Applicants, "[n]one of the Sprint or Virgin [] subsidiaries operating in Hawaii have been classified as a

[18] Id. at 8.

[19] Id.

[20] Id.

dominant carrier in Hawaii, and numerous entities are certificated by the Commission to provide the services provided by these entities."[21] Thus, Applicants state that the existing competitive market for their services will continue to protect the public interest after the Proposed Transaction.

C.

Consumer Advocate's Position

On September 18, 2009, the Consumer Advocate submitted its Statement of Position informing the commission that it will not be participating in this proceeding.[22]

II.

Discussion

A.

Proposed Transaction

Under State law, the commission is vested with broad powers to review the Proposed Transaction by which Applicants' parent seek to acquire control over Virgin and its operating subsidiaries. Specifically, HRS § 269-7(a), states, in relevant part:

> The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with

[21] Id. at 9.

[22] The Consumer Advocate notes in its statement that its lack of participation in this docket should not be construed as either accepting, supporting, or adopting any of the positions proposed, justifications offered, or requested relief articulated in the petition.

> reference to . . . the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HRS § 269-7(a).

Under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

Upon review, the commission finds the Proposed Transaction to be reasonable and in the public interest. The commission's decision is based on, among other things, Applicants' representations that the Proposed Transaction will: (1) not adversely affect their fitness, willingness or ability to provide intrastate telecommunications services in the State; (2) be transparent and neutral for Sprint and Virgin's customers; (3) not adversely impact Applicants and, specifically, Sprint Communications' ability to continue to provide TRS services; and (4) not have any impact on Sprint PSC and NPCR's ability to meet their universal service commitments.

In addition, it appears that the Proposed Transaction will bring about incremental efficiencies and benefits in the telecommunications market. According to Applicants, Virgin will be able to compete more effectively since it will have access to Sprint's network ownership economics, cost structure, and scale. The Proposed Transaction should also benefit Sprint by increasing its customer base and revenues, and Applicants, as subsidiaries of Sprint, should likewise benefit. In addition, this Proposed Transaction should benefit customers of both Sprint and Virgin through, among other things, realized savings from economies of scale and strengthened market and financial positions.

Based on the foregoing, the commission concludes that Applicants' request for commission approval of the Proposed Transaction should be granted.

B.

Waiver Request

HRS § 269-16.9(e) allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Given our finding above that the Proposed Transaction is consistent with the public interest; the commission also finds that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes

Applicants' Waiver Request regarding filing requirements of HAR chapter 6-61, should be granted.

III.

Orders

THE COMMISSION ORDERS:

1. Applicants' request for commission approval of the Proposed Transaction, described in the Application filed on September 15, 2009, is granted.

2. Applicants' request for a waiver of the filing requirements of HAR chapter 6-61, to the extent that the Application does not fully comply with requirements, as applicable, is granted.

3. As soon as reasonably practicable, Applicants shall provide notice of the consummation of the Proposed Transaction.

4. This docket will be deemed closed upon Applicants' compliance with ordering paragraph no. 3, above.

DONE at Honolulu, Hawaii OCT 29 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By
Carlito P. Caliboso, Chairman

By
John E. Cole, Commissioner

By
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Commission Counsel

2009-0289.sl

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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