



COM/CR6/ALJ/KJB/smt 8/13/2021

FILED
08/13/21
12:50 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Sprint Communications Company L.P. (U5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a).

Application 18-07-011

And Related Matter.

Application 18-07-012

**ASSIGNED COMMISSIONER AND ASSIGNED ADMINISTRATIVE
LAW JUDGE'S RULING DIRECTING T-MOBILE USA, INC. TO SHOW
CAUSE WHY IT SHOULD NOT BE SANCTIONED BY THE
COMMISSION FOR VIOLATION OF RULE 1.1 OF THE
COMMISSION'S RULES OF PRACTICE
AND PROCEDURE**

Summary

This Ruling directs T-Mobile USA, Inc. (T-Mobile) to show cause why it should not be sanctioned by the Commission for violating Rule 1.1 of the Commission's Rules of Practice and Procedure for false, misleading, or omitted statements. Specifically, T-Mobile made statements under oath indicating that 1) its code division multiple access (CDMA) network would be available to Boost customers until they were migrated to DISH Network Corporation's (DISH) LTE¹ or 5G services, 2) maintaining service to the CDMA network during

¹ LTE stands for Long Term Evolution and is sometimes referred to as 4G LTE.

the Boost customer migration would not affect T-Mobile's 5G build-out, 3) all former Sprint customers would have a seamless upgrade experience during the migration period and 4) DISH would have up to three years in which to complete Boost customer migration. T-Mobile also omitted and/or provided misleading information regarding the fact that (5) PCS spectrum was used to provide service to Boost customers on the CDMA network and the same spectrum would be required for the build-out of the 5G network.

We note that on August 6, 2022, the following notice appeared on the T-Mobile website: "As of June 30, 2022, Sprint's LTE network will be retired." On its face, the August 6th announcement appears to be inconsistent with Ordering Paragraph 6 of Decision (D.) 20-04-008. Upon further investigation, we may amend this Order to Show Cause to include charges related to the early retirement of the Sprint LTE network.

1. Background

On April 16, 2020, the Commission approved T-Mobile's acquisition of Sprint in D.20-04-008, subject to conditions designed to mitigate the potential adverse impacts that might result from merging two of the four nationwide facilities-based wireless carriers. Prior to the Decision, on July 19, 2019, T-Mobile, Sprint and DISH agreed to a Proposed Final Judgment (PFJ) with the United States Department of Justice (DOJ) in which T-Mobile and Sprint committed to transferring Sprint's Boost wireless business to DISH, allowing DISH to operate as a competitive nation-wide wireless carrier (the "DISH Divestiture")² while building its own wireless network. T-Mobile also agreed

² See DOJ, PFJ (filed July 19, 2019), copied on Aug. 12, 2019, in the Federal Register, Attachment 4 to D.20-04-008, Competitive Impact Statement, Sec. I. The United States District Court for the District of Columbia entered the Final Judgment on April 1, 2020.

that during the DISH build-out period, T-Mobile would make its wireless network (both LTE and CDMA) available for use by DISH as a Mobile Virtual Network Operator (MVNO).³

Among the assets to be divested by T-Mobile pursuant to the PFJ are the 800 megahertz (MHz) spectrum licenses Sprint held and which T-Mobile either has to offer to DISH or auction off within three years of the divestiture of Boost to DISH.⁴ If DISH acquires the 800 MHz spectrum, T-Mobile has the option of leasing it for up to 2 years.⁵ T-Mobile witness Ray testified that the need to maintain CDMA service for Boost customers during the customer migration period would not impact T-Mobile's 5G build-out because T-Mobile planned to use Sprint's 800 MHz spectrum to provide CDMA service.

Several times in his testimony Mr. Ray listed the types of spectrum that would be needed for 5G service, but PCS spectrum – and specifically the PCS spectrum acquired through the merger with Sprint – was not on these lists.⁶ Moreover, in response to questions regarding the potential of the DISH Divestiture to affect the 5G build-out, T-Mobile never indicated that using PCS spectrum for CDMA service could impact T-Mobile's 5G build-out. Nor did T-Mobile ever reveal that PCS spectrum was used to provide CDMA service to Boost customers.⁷

³ *Idem.*

⁴ See Supplemental Testimony of Neville Ray, Executive Vice President and Chief Technology Officer, T-Mobile (November 7, 2019, corrected December 4, 2019) (“Ray Suppl. Test.”) at 8:27-9:2 & n. 22

⁵ *Idem.*

⁶ *Ibid* at 9:14-22, 10:15-19, 12:7-8.

⁷ *Ibid.* at. 9:7-12:8.

In April 2021, DISH filed a Petition to Modify D. 20-04-008,⁸ indicating that T-Mobile had informed DISH that it intends to shut down its CDMA network on January 1, 2022. In its Response to DISH's Petition to Modify, T-Mobile flatly contradicted its witness Ray's prior statements regarding the type of spectrum needed for CDMA and 5G service, now saying that "PCS spectrum comprises the *significant majority* of spectrum being used to provide CDMA," (*emphasis supplied*) and "[d]elaying the CDMA sunset would impact the re-farming of this PCS spectrum to support 5G services."⁹ T-Mobile further contradicted prior sworn statements that maintaining CDMA services would not delay its 5G build-out, now saying that the build-out requires both the PCS spectrum and the cell towers presently employed to provide CDMA service including the equipment on the towers.¹⁰ In explaining this about-face, T-Mobile says only that "... Mr. Ray's Supplemental Testimony regarding the merged entities spectrum holdings and reframing inadvertently did not show PCS spectrum as being used for CDMA."¹¹

In D.20-04-008, the Commission noted that it could rely on obligations imposed on T-Mobile and DISH in agreements with the FCC and the DOJ.¹² Moreover, D.20-04-008 stated in Ordering Paragraph (OP) 6 that "[t]he legacy Sprint and T-Mobile customer experience shall not be degraded during the customer migration period (2020-2023) . . .".¹³

⁸ Petition of DISH Network Corporation to Modify Decision D.20-04-008 (Petition), filed April 28, 2021

⁹ See T-Mobile Response to DISH Petition, filed May 28, 2021, at 24 (*emphasis added*).

¹⁰ *Ibid.* at 22-24.

¹¹ *Ibid.* at 24, 74

¹² D.20-04-008, at 48, Conclusion of Law 7.

¹³ D.20-04-008, at 50.

In his Supplemental Testimony, Mr. Ray stated that T-Mobile's MVNO agreement with DISH "will have no adverse impact at all on our existing LTE network or on our planned world-leading 5G network."¹⁴ In a December, 2019 pleading, T-Mobile stated that its "service to existing Sprint CDMA and LTE customers will be maintained *until* they are migrated to the New T-Mobile network as customers of New T-Mobile or DISH."¹⁵ Emphasizing the three-year duration of the migration period ("That's why we've always said it's a three-year integration program"),¹⁶ T-Mobile pledged "to make sure that no Sprint customer during that migration process, be they a Boost customer or a Sprint customer, or however they are strayed, [sic] suffers anything approaching a degraded experience."¹⁷

2. Discussion

Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules) states, in relevant part, as follows:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the

¹⁴ See Ray Suppl. Test. at 21:18-19.

¹⁵ Joint Applicants Post-December 2019 Hearing Brief, December 20, 2019 ("Appl. Dec. 2019 Brief"), at 35 (emphasis added).

¹⁶ Evidentiary Hearings (EH), Vol. 8, at 1382.

¹⁷ EH, Vol. 8, at 1382-83; see also Ray Suppl. Test. at 20:5-7 ("In sum, T-Mobile will do all it can to make it possible for DISH to successfully and timely migrate the Sprint prepaid customers to the network."); Appl. Dec. 2019 Brief, at 35 ("In addition, as discussed below, the record is clear that New T-Mobile is otherwise obligated to cooperate with DISH to facilitate the migration of the Sprint divested customers to the New T-Mobile network.")

Commission or its staff by an artifice or false statement of fact or law.

The purpose of Rule 1.1. is to preserve the integrity of the Commission's process and to provide an enforcement tool to address situations when parties appearing before the Commission have not provided truthful, accurate, or complete information. A violation may occur "where there has been a lack of candor, withholding of information, or failure to correct information or respond fully to data requests;"¹⁸ an intent to mislead is not required to find a Rule 1.1 violation.¹⁹ Candor and accuracy during testimony under oath is especially important as the Commission relies on testimony to form decisions, and misrepresentations may harm the public.²⁰

Based on the preliminarily determined facts, which may be modified or corrected through further investigation, there is a reasonable basis to conclude that T-Mobile, through its officers, agents, and/or attorneys, misrepresented material facts and misled the Commission. The statements made in testimony appear to directly contradict claims in T-Mobile's response. Specifically, 1) T-Mobile previously represented that it would not need PCS spectrum for its 5G build-out and the 800 MHz spectrum would be used for CDMA service for Boost customers²¹ but now indicates a significant need for PCS spectrum for both CDMA service and its 5G build-out, 2) T-Mobile generally stated that the MVNO agreement with DISH would have no adverse impact on T-Mobile's existing and 5G networks but now claims that maintaining the CDMA network

¹⁸ D.13-12-053, at 21 (citations omitted).

¹⁹ See *Id.*; D.15-08-032, at 57; *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 854.

²⁰ See D.15-12-016, at 41.

²¹ See Ray Suppl. Test. at 8:24-12:8; EH, Vol. 8, at 1374-75.

would delay the 5G build-out, and 3) T-Mobile previously stated that service would be maintained for Boost customers until migration was completed during the migration period (2020-2023), but now contends that it cannot delay its planned shutdown of its CDMA network on January 1, 2022, which could impair the service of customers who have not yet migrated to DISH's LTE or 5G service. The discrepancy between information in T-Mobile's testimony and information provided in its response is so serious that it warrants further investigation by this Commission. Furthermore, impacts on service could harm Boost prepaid customers, who are frequently low-income, rural, and transient.²²

The Commission relied on the specific false statements, omissions, and/or misleading assurances T-Mobile gave regarding its use of the PCS spectrum and its repeated references to a three-year customer migration period without a degraded experience in framing D.20-04-008. Further, it appears that these false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger.

T-Mobile is ordered to appear at the hearing scheduled below and show cause why it should not be sanctioned for violating Rule 1.1 of the Commission's Rules. Pursuant to Public Utilities Code Section 2107, the Commission may impose penalties for each offense, if found to be supported by evidence at the hearing, of not less than \$500 nor more than \$100,000 for each offense.

²² See Petition, at 9-9; Declaration of Stephen Sokols in Support of Petition to Modify (Sokols Decl.), paragraphs 11-14.

The hearing before the assigned ALJ is set for:

**Monday September 20, 2021 at 9:30 a.m.
Remote - Webex (Details to Follow)**

IT IS RULED that:

1. T-Mobile is ordered to show cause why it should not be sanctioned by the Commission for Violation of Rule 1.1 for its false, misleading or omitted statements indicating that 1) its CDMA network would be available to its Boost customers until they were migrated to DISH's LTE or 5G services, 2) maintaining service to the CDMA network did not require use of Sprint PCS spectrum, 3) PCS spectrum would not be used for T-Mobile's 5G build-out, 4) all former Sprint customers would have a seamless, undegraded experience during the migration period (2020-2023) and 5) DISH would have up to three years in which to complete Boost customer migration.

2. The hearing before the assigned Administrative Law Judge, on the order to show cause, is set for Monday September 20, 2021 remotely via Webex.

Dated August 13, 2021, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN

Clifford Rechtschaffen
Assigned Commissioner

/s/ KARL J BEMESDERFER

Karl J. Bemesderfer
Administrative Law Judge