

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) 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

**POST- HEARING BRIEF OF T-MOBILE USA, INC. ON THE ORDER TO SHOW
CAUSE**

(PUBLIC VERSION)

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October 22, 2021

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Pursuant to the procedural schedule established by ALJ Bemesderfer on September 20, 2021, T-Mobile USA, Inc. (“T-Mobile”), respectfully submits this post-hearing brief (“Brief”) with respect to the August 13, 2021 Order to Show Cause (the “OSC”) issued by ALJ Bemesderfer and Assigned Commissioner Rechtschaffen. Additionally, pursuant to leave granted by the assigned ALJs, T-Mobile respectfully attaches to this brief the re-direct examination of its witness, Neville Ray, in written form.¹ The written re-direct testimony is accompanied by a declaration from Mr. Ray attesting that the responses to the questions posed are true and correct to the best of his knowledge.² Finally, pursuant to ALJ Bemesderfer’s October 15, 2021 email ruling amending

¹ See Attach. A, Re-Direct Testimony of Neville R. Ray on Behalf of T-Mobile USA, Inc. (Oct. 22, 2021) (“Ray Re-Direct Testimony”).

² See Attach. B, Declaration of Neville Ray.

the existing procedural schedule, T-Mobile provides its reply to DISH's Opposition to T-Mobile's Motion to Strike, including DISH's baseless and procedurally improper request for sanctions.³

Introduction

Through the OSC, the Assigned Commissioner and ALJ ordered T-Mobile to appear at a September 20, 2021 hearing to address allegations that T-Mobile may have made five "false, misleading, or omitted statements" during the California Public Utility Commission's ("Commission") proceedings evaluating T-Mobile's merger with Sprint, in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure ("Rules"). The five statements cited in the OSC relate generally to the sunset and migration of customers from Sprint's code division multiple access ("CDMA") network. As T-Mobile's Response filed September 13, 2021, and its testimony during the OSC hearing demonstrated, T-Mobile did not make a single one of the purportedly false or misleading statements attributed to it in the OSC. T-Mobile was truthful and candid throughout the Commission's merger proceeding and denies that it violated Rule 1.1.

During the OSC hearing, T-Mobile presented testimony from Neville Ray, T-Mobile's President of Technology. Mr. Ray testified in response to each of the five assertions in the OSC, confirming, unequivocally, that T-Mobile never made any of the five statements. Mr. Ray discussed the record evidence relevant to the OSC's assertions, identified record evidence refuting the OSC's allegations, provided context for why T-Mobile would not have made the statements, and addressed a variety of questions, including hypotheticals, posed by the ALJs and the Assigned Commissioner. Mr. Ray also explained that, contrary to having misled the Commission about its plans, T-Mobile is delivering on its promise to the Commission to deliver significant benefits to

³ DISH Network Corp. Opposition to T-Mobile USA, Inc.'s Motion to Strike September 20, 2021 Order to Show Cause Testimony of Jeffrey Blum (Oct. 12, 2021) ("DISH Opposition to Motion to Strike").

consumers in California following its merger with Sprint, investing billions of dollars in its 5G deployment in California and bringing improved 5G service to millions of California customers.

The Commission permitted DISH to cross-examine Mr. Ray and to present its own witness. As explained in T-Mobile's separate Motion to Strike filed on October 6, 2021, DISH's presentation added nothing of substance germane to the OSC, but T-Mobile's truncated cross-examination of DISH's witness further exposed the fundamental inconsistencies in DISH's arguments that T-Mobile committed to maintain the CDMA network for three years. For example, that testimony confirmed that there is no factual basis for DISH's representation to the Commission that T-Mobile and DISH "memorialized" an agreement that T-Mobile would maintain its CDMA network until at least July 2023, and it further demonstrated that DISH's claim that it believed T-Mobile had so committed is not credible.

T-Mobile also addresses in this Brief the assertions made by DISH in its Opposition to T-Mobile's Motion to Strike. In that Opposition, DISH now claims the Commission should not have been informed of DISH's contemporaneous business plans—despite it never raising an objection based on a common interest agreement or protective order before, during, or after the OSC hearing—and it gratuitously attacks the integrity of both T-Mobile and its counsel. Those allegations are both irresponsible and frivolous, but T-Mobile is nevertheless compelled to address them in this Brief. DISH's feigned indignation cannot paper over the glaring inconsistencies in its claim that T-Mobile promised DISH that it would maintain the CDMA network for three years. The Commission should summarily deny DISH's unmerited and procedurally-improper request for sanctions.

The Commission instituted this OSC to have T-Mobile address allegations—first made by DISH—that T-Mobile may have made false or misleading statements to the Commission about

the shutdown of its CDMA network. As T-Mobile made clear during the OSC hearing, T-Mobile did not make any of the allegedly false statements set forth on page 8 of the OSC, T-Mobile did not mislead the Commission through an omission, there is no basis in the record to find that T-Mobile made these statements, and DISH's contrary claims are meritless. T-Mobile respectfully submits that the Commission should find that it did not violate Rule 1.1.

Argument

I. Legal Standard

Rule 1.1 states:

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 Commission or its staff by an artifice or false statement of fact or law.*⁴

As T-Mobile explained in its Response filed on September 13, 2021, and through testimony during the OSC hearing, T-Mobile did not make any of the five statements set forth on page 8 of the OSC. The Commission should not find a Rule 1.1 violation unless it finds that statements actually made by T-Mobile were false,⁵ and the fact that neither the Commission nor DISH can point to anywhere in the record where T-Mobile actually made any of the five alleged assertions should, on its own, be sufficient to find that T-Mobile did not violate Rule 1.1.

Second, the Commission cannot find that a statement was false merely because it may now believe that a statement, like the meaning of "within three years," was ambiguous or could have

⁴ CAL. CODE REGS. tit. 20, § 1.1 ("Rule 1.1") (emphasis added).

⁵ See, e.g., D.01-11-017 at 6 (finding no Rule 1 violation where statements were "not clearly false," but "at best unclear").

been clearer.⁶ It would be unfair to sanction T-Mobile under Rule 1.1 for perceived ambiguity that appears only with the benefit of hindsight, particularly for topics that were not the focus of the underlying proceeding. To do so would have a chilling effect on government petitioning protected by the First Amendment and Sections 2 and 3 of Article I of the California Constitution. Moreover, in deciding whether statements were false or misleading, the Commission must consider the entire context of the record, including portions of the record that contradict the assertions in the OSC.⁷

Third, “[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”⁸ That requires both that the Commission’s interpretation of Rule 1.1 be sufficiently definite such that it is clear what conduct will trigger liability,⁹ and that the OSC identify with definiteness and prior to the hearing the conduct it is currently alleging violated Rule 1.1.¹⁰

Finally, in evaluating statements about forward-looking plans or intentions, the issue is not whether those statements ultimately proved accurate. The issue is whether the statements

⁶ See, e.g., *id.*

⁷ See, e.g., D.17-06-009 at 15 (finding no violation where party failed to respond completely to an inquiry but the relevant information had been provided elsewhere in the record).

⁸ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

⁹ See, e.g., *id.* at 254-58 (setting aside FCC orders that sanctioned broadcasters based on vague policies that failed to provide notice of the types of broadcasts that were prohibited). See also *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1333-34 (D.C. Cir. 1995) (vacating EPA order imposing penalties and “conclud[ing] that EPA did not provide GE with fair warning of its interpretation of the regulations. Where, as here, the regulations and other policy statements are unclear, where the petitioner’s interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not ‘on notice’ of the agency’s ultimate interpretation of the regulations, and may not be punished.”).

¹⁰ See, e.g., *Today’s Fresh Start, Inc. v. Los Angeles Cty Office of Education*, 57 Cal. 4th 197, 212 (2013) (holding that parties must be given “notice of the case against [them] and opportunity to meet it”) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)).

accurately described the party's plans or intentions at the time they were made.¹¹ Parties before the Commission have no freestanding duty to update the Commission should plans change after the close of the Commission's record in the underlying proceeding, particularly for matters that were not even the subject of inquiry in the proceeding.¹²

II. The Merger Has Benefited Millions of Californians in Precisely the Ways T-Mobile Told the Commission It Would

During the 2019 proceedings, T-Mobile explained in detail how the merger with Sprint would allow T-Mobile to create and rapidly deploy a superior 5G network in California.¹³ And as Mr. Ray explained in his OSC hearing testimony, T-Mobile is carrying out its plan in the way it told the Commission it would, providing millions of people in California with better wireless

¹¹ See, e.g., D.98-12-018 at 4, 14 (finding no Rule 1.1 violation where statements appearing untrue in hindsight were, in context, related to forward-looking plans that had evolved and changed over time).

¹² See *In re PG&E Co.*, D.90-04-021, 1990 Cal. PUC LEXIS 185 at *14 (Apr. 11, 1990) (“At some point, all parties must stop updating information or [else] the record will be unmanageable.”). See also *In re PG&E Co.*, D.85-08-006, 1985 Cal. PUC LEXIS 646 at *29 (Aug 7, 1985) (recognizing a “need to end the continuous updating of a record prior to issuing a decision”); *In re SCE Co.*, D.82-12-055, 1982 Cal. PUC LEXIS 1209 at *199 (Dec. 13, 1982) (concluding general rate case applicant was under no requirement to update study submitted two years earlier). The only case T-Mobile was able to locate discussing an affirmative duty to update the record involved one in which a party had expressly committed to the Commission that it would provide updates. See *In re Facilities-Based Cellular Carriers*, D.94-11-018, 57 CPUC 2d 176 (Nov. 9, 1994).

¹³ See Hearing Ex. Jt. Appl. 3-C, Rebuttal Testimony of Neville R. Ray at 17:3-19:12, 20:15-21:6, 22:3-23:14, 28:8-30:14, 31:3-38:6, 39:3-45:8, 46:3-49:24 (“Ray Rebuttal Testimony”). Oddly, DISH makes the gratuitous and incorrect assertion in its Opposition to T-Mobile’s Motion to Strike that “T-Mobile spent hours of hearing time leading its witness Mr. Ray on an irrelevant recitation of the virtues of 5G.” DISH Opposition to Motion to Strike at 10-11. The testimony took perhaps 20 minutes and was of course about T-Mobile delivering on the merger benefit of accelerated 5G deployment, which is directly relevant to provide the Commission with context.

service and the resulting benefits of increased competition.¹⁴ Testimony regarding these benefits, which flow from T-Mobile integrating Sprint’s assets into T-Mobile’s services, is important context for why T-Mobile would not have promised to maintain Sprint’s antiquated CDMA network for three full years and why it repeatedly told the Commission that it would migrate customers in less time than that.

As Mr. Ray testified, between April 2020 and the end of the second quarter of 2021, T-Mobile made over [Begin Highly Confidential – Attorneys’ Eyes Only (“BHC-AEO”)] [Redacted] [End Highly Confidential – Attorneys’ Eyes’ Only (“EHC-AEO”)] in network-related capital investments in California, including upgrades to the network and cell sites, adding radios and other equipment, and making various other improvements across the network in California.¹⁵ In total, T-Mobile has already upgraded nearly [BHC-AEO] [Redacted] [EHC-AEO] cell sites in California to 5G services as part of carrying out its network plan.¹⁶

¹⁴ [BHC-AEO] [Redacted]

[Redacted] [EHC-AEO]

¹⁵ [BHC-AEO] [Redacted]

REDACTED

[Redacted] [EHC-AEO]

¹⁶ [BHC-AEO] [Redacted]

[Redacted] [EHC-AEO]

T-Mobile’s efforts to roll out 5G services in California have provided enormous benefits to its California customers and wireless consumers. As of the OSC hearing, T-Mobile had about 3.3 million 5G wireless customers in California, up from fewer than 100,000 when T-Mobile and Sprint closed their merger in April 2020.¹⁷ Those customers experience markedly better performance on 5G technology as compared to LTE and antiquated technology like CDMA. T-Mobile’s California 5G customers see average speeds of 200 Mbps, as compared to 30 to 35 Mbps on LTE and just 1 to 2 Mbps on CDMA.¹⁸ As Mr. Ray explained, T-Mobile has “done a huge amount of work to secure the 5G upgrades and services in California.”¹⁹ The merger has resulted in concrete improvements for its customers, just as T-Mobile said it would, and DISH did not and cannot dispute the progress that T-Mobile has made in bringing its improved 5G network to California consumers.

Sunsetting Sprint’s antiquated CDMA network was always part of that plan, and it continues to be an important step in bringing the merger’s benefits to Californians. T-Mobile’s

¹⁷ [BHC-AEO] [REDACTED] [EHC-AEO]

¹⁸ [BHC-AEO] [REDACTED] [EHC-AEO]

¹⁹ [BHC-AEO] [REDACTED] [EHC-AEO]

ability to expand and improve its 5G network is driven by merger synergies.²⁰ A key component of those synergies and T-Mobile’s ability to invest \$7.8 billion in its 5G network in California depends in large part on cost savings derived from the elimination of duplicative and unnecessary network elements.²¹ Sunsetting the CDMA network is a necessary predicate to this work.

Moreover, sunsetting the antiquated CDMA network is an important component of T-Mobile’s network plan to shift resources, network infrastructure, and spectrum from supporting the CDMA network to enhancing T-Mobile’s 5G deployment.²² By sunsetting the CDMA network, T-Mobile will be able to re-deploy spectrum that is currently used to support Sprint’s legacy CDMA network—specifically the PCS spectrum—to “further advance customers’ experiences in California in line of what [T-Mobile] said to the Commission and the FCC and the DOJ.”²³ Sunsetting the CDMA network will also allow T-Mobile to remove legacy equipment from thousands of towers, giving T-Mobile “critical space to conduct and upgrade modernization

²⁰ See Ray Rebuttal Testimony at 47:6-8 (“By undertaking this rapid migration, New T-Mobile will drive synergies to our existing LTE network and free up valuable spectrum for 5G use in a more rapid fashion than either company could accomplish on its own.”); *id.* at 52:28-53:2 (“On the other hand, eliminating these unnecessary sites is critical to realizing the projected network synergies from the transaction, which are essential to making possible the nearly \$40 billion investment in a 5G network and services, which does benefit the network’s resiliency.”).

²¹ See Ray Rebuttal Testimony at 20:17-21:6, 52:28-53:2. See also Merger Decision, D.20-04-008 at 25.

²² See Ray Rebuttal Testimony at 47:5-8 (“By undertaking this rapid migration [off of the CDMA network], New T-Mobile will drive synergies to our existing LTE network and free up valuable spectrum for 5G use in a more rapid fashion.”).

²³ Hearing Tr. 199:15-21 (“But I'm the network guy, and I'm most interested in making sure that we are able to reform the spectrum and put that to great use so we can further advance customers' experiences in California in line of what we said to the Commission and the FCC and the DOJ.”).

and placement of 5G equipment.”²⁴ There can be no dispute that this is fully consistent with the plan laid out by T-Mobile during the 2019 merger proceedings.

During the OSC hearing, DISH’s counsel asked Mr. Ray if it was correct that CDMA customers without compatible handsets would not have the ability to make 911 calls on January 1, 2022.²⁵ DISH also represents on page 2 of its Opposition to T-Mobile’s Motion to Strike that the “planned shutdown will leave customers unable to access services essential to their livelihood, including 911.” To ensure the Commission has correct information about 911 service (which is not relevant to the OSC issues but has been raised by DISH), Mr. Ray clarifies in his attached redirect testimony that, when the Sprint CDMA network is sunset, customers in California will continue being able to make 911 calls anywhere within the coverage area of the Verizon CDMA network, which has much broader coverage than the legacy Sprint CDMA network.²⁶ This is because “FCC rules require that wireless providers transmit *all* 911 calls that they receive, regardless of whether the caller is a subscriber.”²⁷

²⁴ Hearing Tr. 199:22-200:2 (“We also want to free up space on towers and remove legacy and old equipment so that affords us critical space to conduct and upgrade modernization and placement of 5G equipment, and it also, as I mentioned much earlier in my testimony today, allows us and affords us to offer sites, towers and cell sites, to DISH, as part of the MNSA and the agreement with the Department of Justice.”).

²⁵ Hearing Tr. 186:24-187:1 (“And on that same date, on New Year's Day of 2022, if there happens to be a CDMA customer that doesn't have a compatible T-Mobile network device, or SIM card, they don't have the ability to make 911 calls, depending on their location; correct?”); *id.* 188:16-23 (“If there happens to be a customer, CDMA customer, that does not yet have a compatible handset, or SIM card, that would allow them to get customer -- sorry -- service on the New T-Mobile network, then on January 1st of 2022, they will no longer have the ability to make 911 calls, depending on their location; isn't that correct?”).

²⁶ Attach. A, Ray Re-Direct Testimony at 3-4.

²⁷ *Id.* See also 47 C.F.R. § 9.10(b) (stating that Commercial Mobile Radio Service providers “must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority”).

III. T-Mobile Did Not Make the Statements Alleged in the OSC

a. T-Mobile Did Not Say That Sprint's CDMA Network Would Be Available Until Boost Customers Migrated to DISH's LTE or 5G Services

The first assertion on page 8 of the OSC is that T-Mobile may have made “false, misleading or omitted statements indicating that ... its CDMA network would be available to its Boost customers until they were migrated to DISH’s LTE or 5G services.” At no point in either the OSC or during the OSC hearing did the Commission identify where in the record T-Mobile purportedly made this alleged statement, and T-Mobile in fact never made such a statement. As Mr. Ray confirmed, T-Mobile never would have agreed to maintain the CDMA network until DISH had deployed a 5G network.²⁸ T-Mobile does not have any control over DISH’s deployment of its 5G network, and T-Mobile would not tie the sunset of Sprint’s CDMA network to an indeterminate future date that T-Mobile could neither predict nor control.²⁹ Furthermore, T-Mobile *never* said that it would maintain the CDMA network until DISH’s Boost customers had migrated to any other network, whether DISH’s or T-Mobile’s.

To the contrary, T-Mobile made clear that it could not and did not take responsibility for migrating the divested Boost customers off the CDMA network, other than by preparing the network for the migration and facilitating the process, which it has done. When Mr. Ray testified

²⁸ Hearing Tr. 87:11-88:2 (“Q. Do you believe that you said that to the Commission? A. No. Absolutely not. Q. Can you explain why you don't think you said that to the Commission? A. We would never have made a statement that left us responsible for managing and maintaining a CDMA network until such point in time that DISH had built their network. There was no indication or knowledge from T-Mobile as to when or how that would happen. There are many reasons why that information would not be provided to me specifically. So did we have any knowledge as to when DISH was going to build-out its network, LTE or 5G? No. And so we would have never tied a CDMA timeline, a CDMA shutdown time line, to a date in the future that was impossible for us to predict or project.”).

²⁹ *See id.*

in 2019 that “T-Mobile will not terminate the CDMA network in any market without migrating users from the network first,” he expressly limited that testimony to the Sprint customers that T-Mobile retained and excluded the divested Boost customers:

[The FCC and DOJ commitments] did not exist at the time I provided that testimony and thus my prior testimony did not account for the divestiture of the Sprint prepaid business. In light of these commitments, my prior testimony would now have to be modified to include only Sprint CDMA customers who are not divested. As I noted above, *the migration of the Sprint’s prepaid customers (not including Assurance Wireless) will be DISH’s responsibility* although T-Mobile has a number of obligations to facilitate that process as I describe above. Additionally, I suspect that DISH will have every incentive to complete the migration before the CDMA network is terminated in order to continue to provide the divested Sprint prepaid customers with service under the MVNO arrangement.³⁰

T-Mobile was unequivocal that the migration of the Boost customers was fully and exclusively under DISH’s control, and there is no support for the allegation that T-Mobile said it would maintain the CDMA network until DISH migrated its Boost customers to DISH’s own network.

b. T-Mobile Disclosed That the Sprint CDMA Network Used Sprint’s PCS Spectrum

The second assertion on page 8 of the OSC is that T-Mobile may have made “false, misleading or omitted statements indicating that ... maintaining service to the CDMA network did not require use of Sprint PCS spectrum.” That assertion is incorrect. In fact, even though the use of PCS spectrum for CDMA was never raised as an issue by any party or the Commission, T-Mobile disclosed on multiple occasions that Sprint’s PCS spectrum was used for CDMA:

³⁰ Hearing Ex. Jt. App. 28-C, Supplemental Testimony of Neville R. Ray at 20:22-21:6 (“Ray Supplemental Testimony”) (emphasis added). *See also* Hearing Tr. 88:3-91:19.

- T-Mobile included in Attachment E to Mr. Ray’s Supplemental Testimony a spreadsheet of Sprint sites, which shows that thousands of Sprint sites use PCS spectrum to provide CDMA.³¹
- Mr. Sievert’s testimony included as an attachment the Declaration of John C. Saw from T-Mobile’s and Sprint’s Public Interest Statement, which was submitted to the FCC. In that declaration, Mr. Saw, then the Chief Technology Officer for Sprint, stated that “[u]ntil VoLTE is deployed, voice traffic will continue to be served on our 3G CDMA network in the 800 MHz and 1.9 GHz bands.”³² The 1.9 GHz spectrum referenced in that declaration is Sprint’s PCS spectrum and is also referenced in the record as 1900 MHz spectrum.³³
- Mr. Sievert’s testimony also included as an attachment the Reply Declaration of John C. Saw from T-Mobile’s and Sprint’s Joint Opposition, which was submitted to the FCC. In his declaration, Mr. Saw stated that “Sprint must continue to devote its 800 MHz and 1.9 GHz spectrum to our 4G LTE and 3G CDMA networks.”³⁴

Mr. Ray confirmed during the OSC hearing that this information was disclosed to the Commission, and he was available to answer any questions about them.³⁵ In sum, T-Mobile clearly disclosed to the Commission in multiple places that Sprint’s PCS spectrum was used for CDMA.

³¹ Ray Supplemental Testimony, Confidential Attach. E.

³² Hearing Ex. Jt. Appl. 2-C, Rebuttal Testimony of G. Michael Sievert (“Sievert Rebuttal Testimony”), Confidential Attach. 2A at 246 (PDF) (Decl. of John C. Saw) (Jan. 29, 2019).

³³ See Joint Applicants’ Post-Hearing Opening Brief at 20 (Apr. 26, 2019) (referring to Sprint’s “1900 MHz PCS” spectrum).

³⁴ Sievert Rebuttal Testimony, Confidential Attach. 2B at 194 (PDF) (Reply Decl. of John C. Saw).

³⁵ Hearing Tr. 94:1-101:5.

During the OSC hearing, ALJ Bemesderfer asked about a spectrum chart that, in part, showed standalone Sprint's future plans for its spectrum at the time of the 2019 proceedings. As Mr. Ray explained, while T-Mobile was aware and disclosed to the Commission that Sprint used PCS spectrum for its CDMA network,³⁶ Sprint's standalone plan at that time was to redeploy Sprint's PCS spectrum from CDMA to LTE in 2020.³⁷ For that reason, the chart, which illustrated the companies' respective planned spectrum deployments as of year-end for calendar years 2020 through 2024, showed that Sprint did not *plan* to have PCS spectrum supporting the CDMA network by the end of 2020.

The chart accurately represented T-Mobile's understanding of Sprint's standalone plans for the future at the time they were provided to the Commission.³⁸ And, as discussed above, the record is clear that T-Mobile disclosed multiple times to the Commission that Sprint was using its PCS spectrum for CDMA as of 2019.³⁹

³⁶ Hearing Tr. 216:22-217:1 (“When did you first learn – when did T-Mobile first become aware that Sprint was using the PCS spectrum to support CDMA? A. Well, we filed testimony on that, your Honor. So that was -- that was clearly the case, you know, in 2018, 2019. Sprint's plan was that by the end of 2020 they would not be using PCS spectrum for CDMA services.”).

³⁷ Hearing Tr. 52:28-53:8 (“So CDMA is not shown on the standalone PCS blocks for Sprint because that was their plan. When this document was put together, Sprint intended to refarm that spectrum from CDMA use to LTE use. And that is what is depicted on this chart. When this chart was put together, that was Sprint's plan, was by the end of 2020, the CDMA would not be occupying PCS spectrum.”).

³⁸ Hearing Tr. 46:22-28 (“But, in your view, did the graphic accurately depict what you were trying to show by presenting it? A. Yes, absolutely. That was our plan when, you know, this document was created. And it outlined the steps that we would take on spectrum as we move forward.”).

³⁹ Hearing Tr. 56:12-22 (“ALJ BEMESDERFER: I understand that, but I'm actually asking you a different question about what you, in fact, knew about Sprint's use of PCS spectrum. Is it your testimony that you were unaware that Sprint was allocating a significant portion of PCS spectrum to the support of the CDMA? THE WITNESS: No, your Honor. And I believe we filed written testimony to evidence that fact to the Commission.”); *id.* 105:27-106:5 (“Q. Was there any effort by T-Mobile to hide the fact that PCS was both currently used by Sprint for

c. T-Mobile Fully Disclosed That It Planned to Use PCS Spectrum for 5G

The third assertion on page 8 of the OSC is that T-Mobile may have made “false, misleading or omitted statements indicating that ... PCS spectrum would not be used for T-Mobile’s 5G build-out.” That assertion, too, is simply wrong. T-Mobile never said that, and the Commission pointed to nothing in the OSC or at the OSC hearing even suggesting that T-Mobile told the Commission it did not plan to use PCS spectrum for 5G. To the contrary, T-Mobile has identified multiple places in the record where it disclosed that it planned to use PCS spectrum, including Sprint’s PCS spectrum, for its 5G network:

- Mr. Ray’s Supplemental Testimony clearly stated that “[t]he spectrum reformatting table from my Rebuttal Testimony (copied below) shows that New T-Mobile will deploy 5G using the following five types of spectrum ... (ii) PCS.”⁴⁰
- In Mr. Ray’s Rebuttal Testimony, Mr. Ray was asked, “Can you please explain the characteristics of each type of spectrum, and why each spectrum band is critical to New T-Mobile’s 5G network?” In his response explaining why mid-band spectrum is critical to T-Mobile’s 5G network, Mr. Ray referenced “Sprint’s 2.5 GHz and 1900 MHz spectrum,” the latter referring to Sprint’s PCS spectrum.⁴¹

CDMA at the time, and that it would be used for 5G in the combined network? A. No. We absolutely disclosed that information.”).

⁴⁰ Ray Supplemental Testimony at 10:15-19. *See also id.* at 12:3-8 (“This table (copied below) shows how many cell sites in California will receive each of the five types of spectrum listed above that New T-Mobile plans to use for 5G. Again this chart does not show any cell sites receiving 800 MHz spectrum.”).

⁴¹ Ray Rebuttal Testimony at 13:3-4, 13:12-15.

- In Attachment C to Mr. Ray’s Rebuttal Testimony, T-Mobile provided a set of slides titled “Overview of the Network Model,” which reference the types of spectrum New T-Mobile would use for 5G, including Sprint’s PCS spectrum.⁴²
- In T-Mobile’s April 26, 2019 brief filed with the Commission, T-Mobile stated that, “by aggregating T-Mobile’s and Sprint’s legacy LTE customers on the AWS band, New T-Mobile will be able to deploy a much larger contiguous block of PCS spectrum to 5G use.”⁴³
- In the Public Interest Statement filed with the FCC, which is in the record of these proceedings, T-Mobile said, “New T-Mobile, on the other hand, would be able to deploy 5G on Sprint’s PCS spectrum.”⁴⁴

Mr. Ray confirmed during the OSC hearing that this information was disclosed to the Commission, and he was available to answer any questions about them.⁴⁵ The record is absolutely clear on this point: T-Mobile repeatedly disclosed that it planned to use PCS spectrum, including Sprint’s PCS spectrum, in its 5G network. The OSC’s assertion on this point is incorrect.

d. T-Mobile Clearly Disclosed That DISH Was Responsible For Migrating Its Boost Customers

The fourth assertion on page 8 of the OSC is that T-Mobile may have made “false, misleading or omitted statements indicating that ... all former Sprint customers would have a seamless, undegraded experience during the migration period (2020-2023).” T-Mobile did not make such a statement about former Sprint customers who were divested to DISH. To the contrary,

⁴² *Id.*, Confidential Attach. C at 18.

⁴³ Post-Hearing Opening Brief at 24.

⁴⁴ Sievert Rebuttal Testimony, Confidential Attach. A at 25 (Public Interest Statement).

⁴⁵ Hearing Tr. 102:11-106:5.

as discussed above in Section III(a), Mr. Ray testified unequivocally in December 2019 that DISH—not T-Mobile—would be responsible for migrating DISH’s Boost customers from the Sprint CDMA network. T-Mobile could not and did not take responsibility for DISH fulfilling its obligations with respect to migrating its Boost customers.

To support this assertion, the OSC alleged that “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.’”⁴⁶ But that selective quotation omits important context and distorts Mr. Ray’s testimony. Mr. Ray’s full testimony was as follows:

[S]ites will start to free up and start – the decommissioning process will start within the three years, but the lion’s share of the activity would be once we’ve successfully migrated the customers. *Obviously the intent there* is 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.⁴⁷

That testimony was true and accurate. As Mr. Ray explained at the OSC hearing, the “three-year integration program” for the Sprint and T-Mobile networks referenced in his prior testimony is a multi-step process. The first step requires T-Mobile to prepare its network for the migration of customers from the Sprint network to the T-Mobile network.⁴⁸ The second step is

⁴⁶ OSC at 5.

⁴⁷ Hearing Tr. 1382:19-1383:1 (Dec. 2019) (emphasis added).

⁴⁸ Hearing Tr. 110:22-111:3 (“A. Well, I was -- to begin with, I was outlining, you know, this is a three-year integration program. And, by that, the discussion at the beginning here was about towers and when they would be made available and when we would decommission them. And so the three-year integration program commences with the work that T-Mobile needs to do to prepare its network. So that’s the first phase, Step 1.”).

the actual migration of customers from the Sprint network to the T-Mobile network.⁴⁹ And the third and final step is finishing the decommissioning of cell sites, which can itself be a lengthy process due to the need to potentially renegotiate contracts with landlords, remove equipment, and complete other decommissioning tasks.⁵⁰

In other words, the migration work would need to take place well within the three years because, as Mr. Ray clearly testified, “the lion’s share of the activity would be once we[‘ve] successfully migrated the customers.”⁵¹ And he was also clear that “all of those steps were planned to be undertaken within the three-year timeframe.”⁵²

As for Mr. Ray’s prior testimony that “the intent there is to make sure that no [customer] suffers anything approaching a degraded experience,”⁵³ Mr. Ray explained that, within that second step—the actual migration of customers from the CDMA network—various actions must be taken to ensure that customers have handsets compatible with the new network, including upgrading customers’ devices or swapping their SIM cards.⁵⁴ The division of responsibilities for these

⁴⁹ Hearing Tr. 111:4-8 (“Step 2 is the migration of the customers. And in this case, Boost customers and/or T-Mobile (inaudible) CDMA customers, the migration of those customers onto the T-Mobile network.”).

⁵⁰ Hearing Tr. 111:9-23 (“And then the third phase is the final decommissioning of cell sites and towers so that the integration work can be completed. And all of those steps were planned to be undertaken within the three-year timeframe. And the decommissioning of towers, which was what was being questioned here, can be a lengthy process. We have to often go back and renegotiate with landlords and remove equipment and reinstate facilities, et cetera. So there are three phases. And I was outlining that the integration program would cover, kind of, a three-year period at the outset.”).

⁵¹ Hearing Tr. 112:6-8 (quoting Hearing Ex. OSC T-Mobile 9, December 5, 2019 Evidentiary Hearing Tr. 1382:21-23).

⁵² Hearing Tr. 111:12-14.

⁵³ Hearing Ex. OSC T-Mobile 9, December 5, 2019 Evidentiary Hearing Tr. 1382:24-1383:1.

⁵⁴ Hearing Tr. 113:27-114:9 (“A. Well, the customers have to be migrated from these legacy technologies onto LTE and/or 5G. That migration activity requires some changes and some

actions was carefully worked out in the Master Network Service Agreement (“MNSA”). “[T]he migration responsibility within this period was fully with the respective parties, DISH for Boost and T-Mobile for Sprint.”⁵⁵ Mr. Ray was clear that T-Mobile’s plan and intent was for those customers to be migrated before the sunset, but ultimately DISH took responsibility, under the express terms of the MNSA, for ensuring the Boost customers were migrated.⁵⁶

Mr. Ray’s testimony was truthful and was based on the reasonable expectation that DISH would fulfill its contractual obligations and responsibilities to its Boost customers. If DISH would do so, T-Mobile’s intent to avoid customers having a degraded experience would be realized. This is the intended outcome that Mr. Ray described. The fact that DISH may fail to fulfill its obligation does not somehow change the intent that Mr. Ray testified about in 2019 and retroactively make his prior statement untrue.

e. T-Mobile Never Said DISH Would Have Up to Three Years to Migrate Its Boost Customers

The fifth assertion on page 8 of the OSC is that T-Mobile may have made “false, misleading or omitted statements indicating that ... DISH would have up to three years in which to complete [the] Boost customer migration.” As with the OSC’s other assertions, T-Mobile never made that statement. Rather, T-Mobile repeatedly said that it expected to complete its own migration within

change-outs, whatever the applicable action may be. And it was Boost's responsibility to migrate their customers and T-Mobile's responsibility to migrate their customers. The migration responsibility within this period was fully with the respective parties, DISH for Boost and T-Mobile for Sprint, prospect.”).

⁵⁵ Hearing Tr. 114:6-9.

⁵⁶ Hearing Tr. 114:16-23 (“Was that plan intended and designed to make sure that all those customers got migrated just fine before the shutdown within the three years? A. That was clearly the intent, yes. Q. And was that truthful testimony, in your view? A. Absolutely.”); Ray Supplemental Testimony, Attach. G, MNSA, Annex 1, Section 2.2(c) (“MNSA”).

three years and that the Boost customer migration was DISH's responsibility, per the terms of the MNSA.

There is no dispute that, as ALJ Bemesderfer noted at the OSC hearing, T-Mobile referred at various places in the record "to completing the customer migration or integration within three years."⁵⁷ But it is equally clear that none of those references conveyed or meant that T-Mobile would take a full three years to migrate only the CDMA customers. In fact, Mr. Ray testified in December 2019:

The divestiture commitments give us three years of continued use of the 800 MHz spectrum from the time we divest Sprint's pre-paid assets to DISH. New T-Mobile planned and still does plan to use that spectrum exclusively to support former Sprint customers during the anticipated 3-year migration period and *to complete the migration of Sprint customers before this deadline.*⁵⁸

During the OSC hearing, ALJ Bemesderfer remarked that "within three years" could be interpreted to mean either "less than three years" or "not more than three years."⁵⁹ T-Mobile's plan to shut down the CDMA network at the end of 2021 is fully consistent with either of those interpretations. And, in any case, "within three years" unquestionably does not mean "at least three years" or "not less than three years." Insofar as the Commission believes that "within three years" is subject to multiple interpretations, any perceived ambiguity should be resolved in T-Mobile's favor, as an ambiguous statement cannot be deemed false if it is reasonably susceptible

⁵⁷ Hearing Tr. 223:26-224:2 ("In reading through your testimony and your supplemental testimony, one of the things I note is that you almost always refer to completing customer migration or integration within three years.").

⁵⁸ Ray Supplemental Testimony at 13:14-18 (emphasis added).

⁵⁹ Hearing Tr. 224:2-7 ("I know it's being nit picky, but within three years could mean less than three years or not more than three years. And in context, I think it frequently reads as if it's not more than three years.").

to an accurate meaning.⁶⁰ This is especially true here, where T-Mobile repeatedly informed the Commission that it intended to complete the migration rapidly.⁶¹

T-Mobile also submitted evidence on its network migration and integration timing as part of the 2019 proceedings. For example, T-Mobile submitted evidence showing that it planned to integrate its networks—and therefore complete the migration of Sprint customers off the legacy Sprint network—by the end of 2021.⁶²

⁶⁰ See, e.g., D.01-11-017 at 6 (finding no Rule 1 violation where statements were “not clearly false,” but “at best unclear”).

⁶¹ See, e.g., Ray Rebuttal Testimony at 5:3-9 (“Finally, the Sprint network migration process to create New T-Mobile will be seamless and rapid. Our plan is heavily based upon our successful experience in migrating MetroPCS customers to the T-Mobile network, which analysts refer to as the ‘template for almost any telecom merger.’ As we will use the same game plan, and many of the same tools and team for the migration of the Sprint customer base, I am confident that California subscribers will rapidly receive the full benefits of the combined network without negatively affecting their experience in the interim.”); *id.* 46:6-12 (“New T-Mobile’s network and customer migration will be timely and efficient. We plan an aggressive technology migration program for the combined company that will allow for a smooth and rapid expansion of capacity and enable customers to quickly experience the benefits of the transaction. The combination will be accomplished through a network and customer migration. This migration plan involves: (1) accommodating Sprint’s existing LTE customers in California on the existing T-Mobile network as rapidly as possible after closing, and (2) utilizing the freed up spectrum resources for 5G as soon as practical thereafter.”); *id.* at 47:5-8 (“T-Mobile expects that all Sprint customers are likely to be completely migrated within three years. By undertaking this rapid migration, New T-Mobile will drive synergies to our existing LTE network and free up valuable spectrum for 5G use in a more rapid fashion than either company could accomplish on its own.”). See also, e.g., Hearing Tr. (Dec. 2019) at 1375:18-1376:1 (“That said, we are very, very confident that we will be at a complete migration of customers onto the New T-Mobile network within that three-year period. And we have, you know, a strong history of that type of work. Very recently we conducted a transaction in combination with MetroPCS which was very similar in nature and we migrated the base – actually a similar base of over 8 million customers very successfully in actually less than three years.”); Joint Applicants’ Post-Hearing Brief (April 2019) at 48 (“All Sprint customers will be migrated to the New T-Mobile network as quickly and as seamlessly as possible. Indeed, every single market in the New T-Mobile network will see customer migration from Sprint’s network within the first year of the merger.”).

⁶² See Feb. 2019 Hearing Tr. 851:28-852:20 (“Our merger assessment commences in 2021, by which time the integration of the parties’ wireless network is anticipated to be largely complete, meaning that the available tools can be used to model the endogenous evolution of the New T-Mobile network.”).

Moreover, at no point did T-Mobile tell DISH or reach an agreement with DISH that it would have a minimum of three full years to migrate Boost customers.⁶³ There is no statement to this effect in the record of this proceeding, and the MNSA between T-Mobile and DISH explicitly requires only that T-Mobile provide “reasonable advance notice of at least six months” to DISH ahead of shutting down the CDMA network.⁶⁴

That provision of the MNSA was identified for the Commission as part of Mr. Ray’s supplemental testimony.⁶⁵ Mr. Ray mentioned the notice period in his written supplemental testimony submitted before the December 2019 hearing, attaching the relevant portion of the MNSA as an exhibit to his testimony,⁶⁶ and T-Mobile also described that notice requirement in its brief following the December 2019 hearing.⁶⁷ The Commission had all of this information at the

⁶³ See Hearing Tr. 68:5-9 (“Q. Is there any contractual commitment in the MNSA to your knowledge that T-Mobile would maintain the Sprint CDMA network for at least three years? A. Absolutely not.”); *id.* 68:21-69:6 (“Q. Do you recall if anyone from DISH ever communicated to you that they believed that T-Mobile would maintain the Sprint CDMA network for at least three years? And I’m using the time frame now of when this was negotiated. A. Absolutely not. This was -- again, I can repeat my testimony, but DISH and T-Mobile agreed to this contractual arrangement with the Department of Justice. And the only provision regarding CDMA shutdown was that T-Mobile would provide DISH a reasonable notice period of at least six months.”); *id.* 116:2-21 (“But I just want to ask you if you think T-Mobile ever committed to maintaining CDMA for three years, no matter what? A. No, we did not. Q. Do you recall ever being asked directly whether you would give DISH three years to complete the migration, no matter what? A. Nope. Q. And we talked about the MNSA earlier on in this testimony and how that provided timing of 6-months’ notice at least -- reasonable, but at least 6 months. In the course of the negotiations over that MNSA, and in all your discussions with DISH and the Justice Department, do you recall ever being asked to commit to keep the Sprint network, the CDMA network, up and running for three years, no matter what? A. Never. No.”).

⁶⁴MNSA, Annex 1, Section 2.2(c).

⁶⁵ See Ray Supplemental Testimony, Attach. G.

⁶⁶ See, e.g., Ray Supplemental Testimony at 19:15-20:8.; *id.*, Attach. G.

⁶⁷ Joint Applicants’ Post-Hearing Brief at 46 (Dec. 20, 2019) (“The Asset Purchase Agreement also facilitates the migration process for the divested customers. Among other things, it obligates New T-Mobile [BCH-AEO] **REDACTED**”).

time it was evaluating the merger, and could have asked T-Mobile or DISH any questions it wished about that term in the MNSA. There is absolutely no question that T-Mobile disclosed this information as part of the 2019 proceedings.

ALJ Bemesserfer also asked Mr. Ray and counsel for T-Mobile during the OSC hearing several questions regarding the “reasonableness” of T-Mobile’s notice to DISH under the terms of the MNSA. Whether the amount of notice that T-Mobile gave to DISH is “reasonable” under the terms of the MNSA, however, is irrelevant to the issues in the OSC. And, in any event, the amount of notice that T-Mobile gave DISH was plainly reasonable. The MNSA provided for at least six months’ notice, and T-Mobile gave DISH fifteen months’ notice, more than twice what the MNSA calls for. Moreover, it was DISH itself that proposed that the notice period be six months:

ALJ BEMESDERFER: Would that have been a reasonable notice?

THE WITNESS: That was the agreement that had been reached between the two parties, your Honor. And when this agreement was being negotiated, the original statement and agreement was going to be on three months' notice, and DISH requested that that would be extended to six.⁶⁸

The Commission has also recently found, in a proposed decision, that six months was a reasonable time period to transition “hundreds of thousands” of wireless customers who have incompatible devices.⁶⁹ In sum, DISH had ample time to prepare for the migration. (In any event, to the extent

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[ECH-AEO]”).

⁶⁸ Hearing Tr. 69:18-26. *See also* Attach. A, Ray Re-Direct Testimony at 5 (“[D]uring our negotiation with DISH, we had proposed three months’ notice and DISH had responded that was not reasonable notice. We asked them what was reasonable notice, and they specified six months. And we agreed to exactly what DISH requested.”).

⁶⁹ In the proposed decision in the Verizon/TracFone merger issued last week, the Commission proposed a six-month migration process. *See* A.20-11-001, Proposed Decision Granting Joint Application and Approving Transfer of Control of TracFone Wireless, Inc. to Verizon Communications, Inc., Subject to Conditions (Oct. 15, 2021) (“Verizon/TracFone PD”). The

there is any doubt in the Commission’s mind about whether the fifteen months’ notice was reasonable, it should be eliminated by T-Mobile’s recent decision to delay the CDMA sunset by three months, to March 31, 2022.⁷⁰)

f. T-Mobile Had No Obligation to Speculate on the Potential Impact of DISH’s Failure to Meet Its Contractual Obligation to Migrate Boost Customers

During the OSC hearing, Commissioner Rechtschaffen asked Mr. Ray whether T-Mobile ever “flag[ged] for the Commission that there could be a substantial number of CDMA customers who were left on the network when the transition was made and T-Mobile was shutting down the CDMA network.”⁷¹ As Mr. Ray explained in his response to that question, T-Mobile had no reason to believe during the Commission’s merger proceeding that DISH might choose not to timely prepare for and migrate its customers. The parties’ agreements—entered into as part of the Department of Justice’s (“DOJ”) consent decree process—both specified the notice that T-Mobile was required to provide DISH before sunsetting the CDMA network and clearly allocated to DISH the responsibility for upgrading the devices of and migrating its Boost customer base.⁷²

Commission recognized that, despite there being “[i]n California, ... hundreds of thousands of current TracFone customers [] need[ing] to be migrated ... to Verizon’s network” – over 200,000 of which will require new devices and many more requiring SIM swaps – a six-month migration timeline was necessary to ensure “an effective and predictable transition period for customers.” *Id.* at 25, 39. Certainly, if this transition timeline is acceptable to the Commission, T-Mobile’s 15 months’ advance notice to DISH is more than reasonable.

⁷⁰ See Update to T-Mobile’s Response to DISH’s Petition to Modify D.20-04-008 (Oct. 22, 2021).

⁷¹ Hearing Tr. 209:26-210:5 (“Q. I appreciate that, and I appreciate what you said about lagging or small number of customers. What I was really getting at is did you ever flag for the Commission that there could be a substantial number of CDMA customers who were left on the network when the transition was made and T-Mobile was shutting down the CDMA network?”).

⁷² See Hearing Tr. 210:6-211-7 (“A. Commissioner, how could we have done that? That was never the plan from both parties. The intent was to decommission CDMA within these notice periods. Everybody had locked hands with the Department of Justice, and at that time how would it have been possible for me or anybody else to project that this issue would be there,

T-Mobile fully disclosed to the Commission how the migration responsibilities were divided between T-Mobile and DISH. T-Mobile not only provided the Commission with the relevant portion of the MNSA but also explained DISH’s obligation to migrate its own Boost customers in its testimony.⁷³ T-Mobile made clear to the Commission that DISH had taken on the responsibility of upgrading devices for its Boost customers and that T-Mobile could not be responsible for those customers.⁷⁴ Moreover, DISH’s own witness, Jeffrey Blum, represented in his own testimony that DISH would migrate its Boost customers “in the normal course, but in any event before the legacy Sprint network is shut-down.”⁷⁵

whereby DISH is saying that – you know, that DISH is not doing the job that they committed to go do. That was never the discussion. I mean, both parties came in front of the Commission and yourself and talked about all of the benefits that would come from this transaction, and the retirement of these legacy, old, dated technologies and the provision of new and capable 4G and 5G services and coverage and all the things we're all so excited about, and that's what we were talking to the Commission about. And it was impossible for us back then, December of 2019, before the deal was even approved, to have predicted that there would be a circumstance where DISH would not meet the obligations it had freshly -- freshly signed up for and agreed to whereby a situation where a customer would be disconnected and not have a compatible device could be predicted.”).

⁷³ See, e.g., Ray Supplemental Testimony at 19:15-20:8; *id.*, Attach. G.

⁷⁴ Ray Supplemental Testimony at 19:15-22 (“Q. How will migration of Sprint prepaid customers be handled after the divestiture? A. My Rebuttal Testimony regarding the migration of Sprint’s prepaid customer base provided that they would be ‘migrated in exactly the same fashion and on the same timeframe as Sprint postpaid customers.’ At that time the DOJ Commitments did not exist. In light of those commitments, I can no longer offer testimony as to how DISH will address the post-divestiture migration of legacy Sprint prepaid (excluding Assurance) customers to the New T-Mobile. DISH will be responsible for its customers’ handset upgrades and compatibility after the divestiture.”); *id.* at 21:1-3 (“As I noted above, the migration of the Sprint’s prepaid customers (not including Assurance Wireless) will be DISH’s responsibility although T-Mobile has a number of obligations to facilitate that process as I describe above.”); Hearing Tr. (Dec. 2019) 1377:7-11 (“Q. Has T-Mobile developed a detailed plan to ensure that the divested customers to DISH will have handsets that are compatible with the New T-Mobile network? A. That's DISH's responsibility.”).

⁷⁵ Hearing Ex. DISH-3, Blum Testimony at 3 (“Blum Testimony”).

In short, T-Mobile plainly disclosed to the Commission T-Mobile's and DISH's respective obligations with respect to the Boost customer migration. The potential consequence of DISH failing to meet its obligations are apparent from those disclosures, and neither the Commission nor any other party to the merger proceeding asked T-Mobile or DISH about the potential for DISH to fail to meet its MNSA obligations or whether there would be potential consequences if DISH failed to meet its MNSA obligations. No further disclosure was necessary or required under the circumstances.⁷⁶

IV. DISH's Proffered Testimony About Its Belief in a Three-Year Commitment Was Both Irrelevant and Immaterial

a. Mr. Blum's Testimony Was Not Relevant to the OSC

As explained in T-Mobile's motion to strike, the testimony of Mr. Blum that DISH offered during the OSC hearing is irrelevant to the issues in the OSC. As DISH's counsel acknowledged at the OSC hearing, the OSC hearing was "not a hearing about what DISH did or did not do or what DISH did or did not know."⁷⁷ Yet that is all that Mr. Blum testified about, apart from legal argument dressed up as fact witness testimony. He provided no evidence to assist the Commission in determining whether the five assertions on page 8 of the OSC were made, and he offered no testimony that would show that any statement made by T-Mobile during the proceedings was false.

Indeed, Mr. Blum's testimony was most noteworthy for the many things he did not say:

- Mr. Blum did not testify about any of the five assertions on page 8 of the OSC.

⁷⁶ Nor would it be appropriate to consider any claimed failure to identify for the Commission the potential impacts of DISH failing to timely migrate its Boost customers as a potential basis for Rule 1.1 liability. This question was raised for the first time by Commissioner Rechtschaffen during the OSC hearing. The OSC did not allege that T-Mobile could be liable on that basis, and T-Mobile has not had a fair opportunity to defend itself against any such theory. *See, e.g., supra* notes 7-9.

⁷⁷ Hearing Tr. 272:27–273:1.

- Mr. Blum did not testify at all about the record of the 2019 proceedings other than to make a conclusory assertion that a January 1, 2022 shutdown of T-Mobile’s CDMA network is inconsistent with those proceedings, without identifying any supporting statements,⁷⁸ and to offer his personal interpretation of Ordering Paragraph 6 of the Commission’s April 2020 merger decision.⁷⁹
- Mr. Blum did not dispute Mr. Ray’s testimony that DISH never asked T-Mobile for a commitment to maintain CDMA for three years.⁸⁰
- Mr. Blum identified no contemporaneous business record evidencing that DISH believed in 2019 that T-Mobile would maintain CDMA for at least three years.⁸¹

⁷⁸ Hearing Tr. 238:6-16 (“Q And was [the October 2020 letter informing you of the January 1, 2022 shutdown] consistent with what DISH understood the arrangement for CDMA migration to be? A No. It was entirely inconsistent with what they discussed with us during our negotiations. It’s inconsistent with what Mr. Ray testified to at the hearing. It’s inconsistent with what T-Mobile filed in their post-trial brief. And it’s inconsistent with what the Commission imposed upon T-Mobile in ordering paragraph 6.”).

⁷⁹ Hearing Tr. 234:5-15.

⁸⁰ Hearing Tr. 68:10-69:6 (“Q Are you aware of any attempt by DISH or by the Justice Department at the time this agreement was negotiated to get a commitment from T-Mobile to maintain the Sprint CDMA network for at least three years? A No. This agreement was negotiated and agreed between T-Mobile and DISH with the Department of Justice, and the notice provision was very clear at six months. And there was never a mention or discussion maintaining the CDMA network for three years. Q Do you recall if anyone from DISH ever communicated to you that they believed that T-Mobile would maintain the Sprint CDMA network for at least three years? And I’m using the time frame now of when this was negotiated. A Absolutely not. This was -- again, I can repeat my testimony, but DISH and T-Mobile agreed to this contractual arrangement with the Department of Justice. And the only provision regarding CDMA shutdown was that T-Mobile would provide DISH a reasonable notice period of at least six months.”).

⁸¹ Hearing Tr. 265:6-266:2 (**[Begin Highly Confidential DISH-T-Mobile Outside Counsel Only (“BHCD-TOOO”)] REDACTED**)

Instead, Mr. Blum’s testimony focused on a specious argument that DISH believed it had a contractual commitment from T-Mobile in 2019 to maintain the CDMA network for at least three years. Regardless of whether DISH held that belief—and there is ample reason to doubt that it did—Mr. Blum’s testimony is of no help to the Commission in deciding whether the assertions on page 8 of the OSC have merit.

b. Mr. Blum’s Testimony that T-Mobile Made a Promise to Keep the CDMA Network Active for Three Years was Uncorroborated and Contradicted by the Contemporaneous Business Documents in the Record

Mr. Blum testified that DISH believed T-Mobile had made a promise to maintain its CDMA network for three years, but failed to provide any evidence to support this belief. Despite Mr. Blum’s personal involvement in negotiations with T-Mobile and the DOJ, he was unable to identify who specifically at T-Mobile told him, at the time of negotiations, that T-Mobile was making such a commitment, and what specifically that person said. Even at face value, the vague statement Mr. Blum recounts from “[e]arly on in the discussions” identified a plan or a need, which obviously might change depending on the circumstances; it most certainly was not a commitment.⁸² He was also unable to point to any email, memo, Board presentation, or other



REDACTED [End Highly Confidential DISH-T-Mobile Outside Counsel Only (“EHCD-TOOO”)].

⁸² Hearing Tr. 230:7-17 (“Q What was the basis for that belief? A Early on in the discussions, T-Mobile basically said they had a three-year CDMA migration plan and that we could not purchase the 800 megahertz spectrum where CDMA resided for three years. They said that it’s complex but if they can’t get it done, they insisted upon the right to lease back the 800 megahertz spectrum for up to five years so they could continue the migration process before they shut down the spectrum.”).

ordinary course document from 2019 stating that DISH believed it had a three-year commitment from T-Mobile to maintain the CDMA network.

DISH's purported understanding of a three-year commitment is also in tension with the actual contemporaneous business documents in the record. First, the MNSA: Mr. Blum did not dispute Mr. Ray's testimony that DISH never asked for a three-year commitment during negotiations, and there can be no dispute that the MNSA does not require T-Mobile to maintain its CDMA network for three years. DISH is a sophisticated commercial negotiator that had the DOJ looking out for its interests as a divestiture buyer, and yet Mr. Blum asks the Commission to believe that DISH was comfortable signing an agreement with a six-month notice provision, relying on unspecified oral statements from early discussions, when that agreement had a clause barring such parole evidence.⁸³

Second, T-Mobile presented evidence at the OSC hearing that, in the latter part of 2019, DISH had a plan showing complete migration off the legacy Sprint network [BHCD-TOOO] [REDACTED] [EHCD-TOOO].⁸⁴ Given that only the Sprint network supports CDMA, this necessarily included migration off of CDMA. Further cross-examination during the OSC hearing could have revealed Southern District of New York ("SDNY") trial testimony by Charles Ergen not consistent with Mr. Blum's assertion that the plans were [BHCD-TOOO] [REDACTED] [EHCD-TOOO].⁸⁵ (In light of DISH's now change of heart about objecting and in an abundance

⁸³ MNSA § 12.4 ("This Agreement and its Schedules and Annexes constitute the entire agreement and understanding between T-Mobile and DISH with respect to the subject matter herein and supersede all offer, negotiations and other agreements concerning the Service.").

⁸⁴ Hearing Ex. OSC T-Mobile 30 at 745 ([BHCD-TOOO] [REDACTED] [EHCD-TOOO]).

⁸⁵ Hearing Tr. 245:16-247:2 ([BHCD-TOOO] [REDACTED] [REDACTED]).

of caution, T-Mobile has not reproduced those statements here, but is happy to do so if DISH returns to its prior no-objection position or at the Commission's order.) In any case, whatever assumptions may have changed over time in this plan, there is no evidence to suggest they would extend to three years. Although DISH would prefer that the Commission not see this evidence, it undermines DISH's story and impeaches Mr. Blum's testimony that DISH was "depending on" a commitment it believed T-Mobile had given for a three-year CDMA migration period.⁸⁶

DISH attempted to rely on the parties' License Purchase Agreement ("LPA"), which in previous briefing, DISH stated "memorialized" a three-year commitment to maintain Sprint's CDMA network.⁸⁷ But, on cross-examination, Mr. Blum acknowledged that the LPA does not actually say this, and that instead he was offering a chain of inferences based on the interplay of two separate contract provisions, Sections 2.3 and 5.4.⁸⁸ These provisions simply state that: (1)

REDACTED

[EHCD-TOOO)].

⁸⁶ Hearing Tr. 236:12-17 ("Q. So I assume DISH was not shy about this. DISH told T-Mobile that it believed T-Mobile was reneging on a commitment that DISH was depending on for a three-year CDMA customer migration period; correct? A. Yes.").

⁸⁷ See Hearing Ex. OSCD-4, License Purchase Agreement.

⁸⁸ See *id.* §§ 2.3, 5.4.

T-Mobile will not divest Sprint's 800 MHz spectrum until April 2023,⁸⁹ and (2) T-Mobile will maintain the validity of the 800 MHz licenses until they are divested.⁹⁰ Neither provision has anything to do with maintaining a CDMA network, because the 800 MHz spectrum is currently used for both CDMA and LTE, and T-Mobile's use of the spectrum for LTE services (including on the T-Mobile and not Sprint LTE network) suffices to maintain the licenses' validity. Although Mr. Blum in his direct examination testified to the contrary,⁹¹ he acknowledged both of these points during cross-examination.⁹²

Moreover, wanting to ensure access to spectrum in case the migration took up to three years in no way contradicts also having a goal to complete the migration more quickly than that.⁹³ Neither does the two-year leaseback provision in the LPA,⁹⁴ which was merely a prudent way for T-Mobile to have the spectrum available to address potential contingencies.⁹⁵ In particular, Sprint had entered into contracts with operators of non-consumer CDMA devices that extended beyond three years, and while T-Mobile was ultimately able to negotiate an end to those contracts before divestiture of the 800 MHz spectrum, the leaseback afforded T-Mobile flexibility, if necessary.⁹⁶

⁸⁹ *See id.* § 2.3.

⁹⁰ *See id.* § 5.4.

⁹¹ *See* Hearing Tr. 231:23-233:15 (Blum Direct); *id.* 268:12-27 (Blum Cross).

⁹² Hearing Tr. 271:17-26 (“Q. Well, you talk about CDMA here, Mr. Blum. Now you're saying it all the hinges on LTE. So let's make sure we're on the same page. So you agree with me that if the CDMA network is shut down, but the LTE network continues on, those licenses are maintained; correct? A. If they are providing service in each of those license areas.”); *id.* 270:10-13 (“Q. But they don't need to maintain that service for a CDMA Boost network, do they? A. Not specifically.”).

⁹³ *See, e.g.,* Hearing Tr. 118:23-119:11.

⁹⁴ License Purchase Agreement § 5.2.

⁹⁵ Attach. A, Ray Re-Direct at 3.

⁹⁶ *Id.*

For these reasons, Mr. Blum’s testimony that DISH believed T-Mobile had made a commitment to maintain the CDMA network for three years is entitled to no weight.

V. DISH’s Arguments that T-Mobile and Its Counsel Should Be Sanctioned Are Baseless

In its Opposition to T-Mobile’s Motion to Strike, DISH also argues that T-Mobile and, specifically, its counsel should be sanctioned, because: (1) T-Mobile’s use of Mr. Blum’s testimony created a “false impression” that Mr. Blum contradicted himself; and (2) T-Mobile’s use of a September 2019 DISH business plan that contradicted Mr. Blum’s testimony violated a Common Interest Agreement and the SDNY protective order. This request is nothing more than frivolous grandstanding, and it should be summarily rejected.⁹⁷

a. T-Mobile Did Not Create a False Impression of Mr. Blum’s Testimony

T-Mobile stands by the characterizations of Mr. Blum’s testimony in its Motion to Strike. DISH wrongly says that, in that Motion, T-Mobile made a “knowing misrepresentation that the model purportedly showed DISH had conversations with T-Mobile about the CDMA timeline during negotiations.”⁹⁸ In support of its position, DISH wrongly argues that T-Mobile asserted two things about the September 2019 business plan that T-Mobile did not actually assert, and which are simply irrelevant to the underlying arguments T-Mobile made in the Motion to Strike:

⁹⁷ The portion of T-Mobile’s brief that seems to have touched a nerve discusses the fact that T-Mobile’s cross-examination of Mr. Blum was cut off before it was finished. The point of this argument was that the abrupt end to T-Mobile’s cross-examination prevented development of a complete record around the issues that Mr. Blum testified to. Thus, T-Mobile said in its brief that certain facts “became apparent during the limited cross-examination that was allowed” or were “established, through the limited cross-examination that was permitted.” T-Mobile Motion to Strike at 2, 6.

⁹⁸ Attach. C, Email from A. Taff Rice to ALJ Bemserderfer, ALJ Mason, S. Toller, et al. Re: A1807011, A1807012 T-Mobile OSC Ruling: Reply to Response to Motion to Strike (Oct. 14, 2021); Attach. D, Declaration of Suzanne Toller ¶ 4 (“Toller Declaration”).

(1) that the document was shared with T-Mobile “business personnel” and (2) that it was shared “during [the parties’] negotiations.”⁹⁹ T-Mobile said neither of these things, and DISH provides no citation to show where it purportedly did.

First, T-Mobile never asserted that the plan had been shared with business personnel. Instead T-Mobile asserted that the existence of the September 2019 plan showing complete migration off of Sprint’s legacy network [BHCD-TOOO] REDACTED [EHCD-TOOO] and the fact that it was disclosed to T-Mobile—albeit T-Mobile’s counsel—impeached Mr. Blum’s testimony that the only timeframe for CDMA migration discussed at the time was three years or more.¹⁰⁰ Indeed, despite DISH claiming that T-Mobile omitted references to counsel from its motion,¹⁰¹ T-Mobile did both cite and quote the exact statements it complains about.¹⁰²

Second, T-Mobile’s motion never asserted that the discussion of the September 2019 business plan was limited to the context of the parties’ negotiations. In fact the key question and answer on this point clearly referred to discussions generally between the parties at any time:

MR. GELFAND: Mr. Blum, did I hear you testify that *you never discussed* with T-Mobile the possibility of a migration that would occur in less than three years?¹⁰³

⁹⁹ Opposition to Motion to Strike at 14.

¹⁰⁰ See, e.g., Hearing Tr. 240:27-241:1 (“All the conversations were that this would be a three-to-five-year migration period.”).

¹⁰¹ DISH Opposition to Motion to Strike at 18.

¹⁰² Compare DISH Opposition to Motion to Strike at 18 (saying that T-Mobile omitted the question, [BHCD-TOOO] REDACTED [EHCD-TOOO]) with Motion to Strike at 8 n.21 (citing and quoting that exact language); and compare Opposition to Motion to Strike at 18 (saying that T-Mobile omitted the question, [BHCD-TOOO] REDACTED [EHCD-TOOO]) with Motion to Strike at 8 n.21 (citing and quoting that exact language).

¹⁰³ Hearing Tr. 240:23-26.

MR. BLUM: No. All the conversations were that this would be a three-to-five-year migration period.¹⁰⁴

That Mr. Blum elsewhere testified about what happened “during negotiations” is irrelevant.¹⁰⁵

Finally, DISH’s assertions that “the model was not about, nor did it reference T-Mobile’s CDMA transition” and that the model was “keyed to...assumptions” are similarly contradicted by evidence T-Mobile would have further developed in the OSC hearing if given the opportunity, in particular from Mr. Ergen’s confidential trial testimony.¹⁰⁶ Given that only the legacy Sprint network supports CDMA, the fact that the plan contemplated complete migration off the legacy Sprint network [BHCD-TOOO] **REDACTED** [EHCD-TOOO] means it necessarily contemplated being off CDMA by that time.¹⁰⁷ Whether DISH used the acronym “CDMA” when it prepared a business plan showing this complete migration is simply irrelevant to that point.

T-Mobile’s argument about the September 2019 business plan was appropriate, zealous, and assertive advocacy, and it was based on an accurate recitation of the record evidence. DISH may disagree about the degree to which the September 2019 business plan conflicts with Mr.

¹⁰⁴ Hearing Tr. 240:27-241:1 (emphasis added). Given the second sentence of this answer, that “all the conversations were that this would be a three-to-five-year migration period,” we did not understand the initial “No” to mean that T-Mobile’s counsel heard Mr. Blum’s testimony wrong. DISH might seize on that initial word in its responsive brief but certainly we had a reasonable understanding that the complete answer confirmed that Mr. Blum was testifying that a discussion of a migration period less than three years had not taken place during any relevant time period.

¹⁰⁵ See, e.g., Hearing Tr. 262:19-263:6 (cited in DISH’s opposition to the motion to strike at page 18).

¹⁰⁶ See Opposition to Motion to Strike at 18-19. As noted above, in light of DISH’s now change of heart about objecting and in an abundance of caution, T-Mobile has not reproduced those statements here, but is happy to do so if DISH returns to its prior no-objection position or at the Commission’s order.

¹⁰⁷ Hearing Ex. OSC T-Mobile 30 at 745 ([BHCD-TOOO] **REDACTED** [EHCD-TOOO]).

Blum’s testimony, but DISH will have ample opportunity to respond with its own citations to the record and make whatever arguments it wishes on the merits.

b. T-Mobile Did Not Violate a Common-Interest Agreement or the SDNY Protective Order by Introducing the 2019 Business Plan

DISH’s second argument in support of sanctions is that T-Mobile’s disclosure of the September 2019 business plan to the Commission allegedly ran afoul of both a Common Interest Agreement and a protective order. DISH’s argument is without merit, because: (1) it had fair notice and did not object to the use of SDNY case materials; and (ii) the Common Interest Agreement does not apply to that document. In any case, T-Mobile and its counsel acted in good faith at all times and their conduct certainly did not rise to the extremely high bar for imposing sanctions.

i. DISH Had Fair Notice and Did Not Object to the Use of the SDNY Case Materials, Which T-Mobile Designated to DISH as Hearing Exhibits

DISH waived any claim to protection for the SDNY case materials.¹⁰⁸ First, DISH received fair notice that T-Mobile intended to use DISH SDNY case materials and had the opportunity to object before the OSC hearing, because T-Mobile specifically listed three depositions and their attendant exhibits, as well as Mr. Ergen’s confidential trial testimony, as confidential exhibits on T-Mobile’s exhibit list for the OSC hearing.¹⁰⁹ To be clear, this is not about one highly-

¹⁰⁸ The protective order of course permits use of materials with the consent of the protected person. *See* Protective Order E.(11)(c). Even for privileged materials, which are accorded the greatest protection in the law, the failure to promptly object to the disclosure of a document constitutes consent to such disclosure. *See* Cal. Evid. Code § 912 (“Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.”).

¹⁰⁹ Attach. E, Email from S. Toller to ALJ Bemserderfer, ALJ Mason, et al., Re: A.18-07-011 OSC: T-Mobile USA, Inc. Witness List (Sept. 15, 2021); Attach. D, Toller Declaration ¶ 5.

confidential business plan hidden in a sea of non-confidential pages—each one of the confidential exhibits was, on its face, marked as highly confidential under the protective order, and Mr. Blum was well aware of this as he personally attended each of the depositions listed.¹¹⁰ It is inconceivable that neither he nor his counsel reviewed the potential DISH exhibits T-Mobile listed five days before the OSC hearing. In fact, DISH’s counsel specifically acknowledged that T-Mobile had listed these SDNY case materials, questioning only their volume and relevance, and raising no Common Interest Agreement or protective order issues.¹¹¹

ALJ Mason then ordered the parties to meet and confer to reach an exhibit list.¹¹² In response to a request from DISH in that meet and confer, T-Mobile then designated specific portions of the transcripts—and, in doing so, T-Mobile specifically mentioned that those

¹¹⁰ See, e.g., Hearing Ex. OSC T-Mobile 30.

¹¹¹ Attach. F, Email from A. Taff Rice to ALJ Bemserfer, ALJ Mason, S. Toller, et al. Re: A.18-07-011 OSC: T-Mobile USA, Inc. Witness List (Sept. 16, 2021) (“DISH is perplexed by T-Mobile’s proposal to **designate as exhibits voluminous DISH deposition and trial transcripts from the New York anti-trust trial**. We understand the scope of the OSC and hearing relates to whether T-Mobile made ‘false, misleading, or omitted statements’ and whether these ‘false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger.’ We are also concerned about the volume of the transcripts and attachments, which number in the thousands of pages. If the Commission is inclined **to allow T-Mobile to use these New York trial and deposition transcripts as exhibits at the OSC hearing**, DISH requests that T-Mobile identify the specific pages on which they intend to rely so that no one, including your Honors, is required to expend resources reviewing the entirety of the materials at this late date.”) (emphasis added); Attach. D, Toller Declaration ¶ 6.

¹¹² Attach. G, Email from ALJ Mason to A. Taff Rice, S. Toller, et al. Re: A.18-07-011 OSC: T-Mobile Exhibit List (Sept. 16, 2021) (“Please meet and confer either today or tomorrow and try and reach a resolution as to the extent of a potentially lengthy exhibit each side plans to use on Monday. As both sides have identified the subject areas that their respective witnesses will cover in direct testimony, this should not be a difficult task to accomplish. I agree that if there is a 200 page exhibit, yet only 10 pages may be used, those select pages should be identified in advance of Monday’s hearing.”); Attach. D, Toller Declaration ¶ 7.

designations included the exhibits referenced in testimony.¹¹³ Ultimately, DISH dropped its objections on volume in exchange for T-Mobile designating specific transcript excerpts and the related exhibits; DISH's only response was to reserve the right to raise objections on other grounds in the OSC hearing.¹¹⁴ If DISH had further concerns coming out of the meet and confer, including confidentiality concerns, it could have raised those to ALJ Mason following the meet and confer. It did not.

Second, DISH received further fair notice and had the opportunity to object at the OSC hearing and before the document was used because Mr. Gelfand said, "I'm going to ask you about a business plan that was prepared by DISH in 2019. And I want to give your counsel or you an opportunity to object if you believe that these questions are confidential."¹¹⁵ Mr. Blum, recognizing what the document was, did not raise any objections under the protective order or Common Interest Agreement, merely stating that the document would have been confidential.¹¹⁶

¹¹³ Attach. H, Email from S. Toller to A. Taff Rice, et al. Re: Follow up to Meet and Confer (Sept. 17, 2021) ("Anita, Per your request we have done our best to pare down the **SDNY trial deposition testimony**. Seen below are more specific page numbers for the deposition testimony. **Note that the page numbers below also include the exhibits referenced in those pages:** Cullen deposition - pages 168-231 and referenced exhibits; Blum deposition – pages 87-120, 131, 137-153, 156, 255-260 and referenced exhibits; Ergen deposition – pages 19-45, 80–86, 105-121, 157-59, 180-86, 195-96, 197-203, 204-228, 255-281 and referenced exhibits; Ergen's **in camera** testimony – pages 1650-54, 1664-68 and referenced exhibits.") (emphasis added); Attach. D, Toller Declaration ¶ 8.

¹¹⁴ Attach. I, Email from A. Taff Rice to S. Toller, et al. Re: Follow up to Meet and Confer (Sept. 17, 2021) ("At this time we will not object to the designated pages based on volume alone, although DISH reserves its right to raise objections on any other basis."); Attach. D, Toller Declaration ¶ 9.

¹¹⁵ Hearing Tr. 241:2-7.

¹¹⁶ Hearing Tr. 241:2-10 ("Q. All right. I'm going to ask you about a business plan that was prepared by DISH in 2019. And I want to give your counsel or you an opportunity to object if you believe that these questions are confidential. A. If you're referring to business plans that we submitted at any point in time, those would be highly confidential.").

Once in confidential session, Mr. Gelfand specifically identified the exhibit number for DISH's counsel,¹¹⁷ and he then established that the document was Exhibit 16 to Mr. Cullen's SDNY deposition and also referenced in Mr. Ergen's SDNY trial testimony.¹¹⁸ Neither Mr. Blum nor DISH's counsel objected at that point on the basis of the protective order or the Common Interest Agreement.

Third, far from objecting to the use of the document, *both DISH's counsel and Mr. Blum specifically requested* that Mr. Gelfand show the document to Mr. Blum in the OSC hearing. Immediately after Mr. Gelfand had identified the exhibit number and proposed starting the examination with Mr. Blum's recollections without actually showing the document, Ms. Taff-Rice requested that Mr. Blum be shown the document.¹¹⁹ Mr. Gelfand even allowed for the possibility

¹¹⁷ Hearing Tr. 242:24-243:20 ([BHCD-TOOO] REDACTED

[EHCD-TOOO]).

¹¹⁸ Hearing Tr. 247:17-22 ([BHCD-TOOO]

[EHCD-TOOO]; Hearing Tr. 250:20-25 ([BHCD-TOOO]

[EHCD-TOOO]).

¹¹⁹ Hearing Tr. 243:17-28 ([BHCD-TOOO]

[EHCD-TOOO]).

of not using the document: [BHCD-TOOO] “REDACTED

REDACTED”¹²⁰ [EHCD-TOOO] But DISH’s counsel insisted: [BHCD-TOOO] “REDACTED”¹²¹ [EHCD-TOOO]

The document was on T-Mobile’s confidential exhibit list, and in that exchange Ms. Taff-Rice indicated she was looking at the exhibit list.¹²² Even a cursory review of the first page of T-Mobile’s exhibit makes it obvious that it was labeled as subject to the protective order.¹²³ Mr. Gelfand then, before showing the document to Mr. Blum, questioned him about its foundation and use, including its use in a confidential deposition in the SDNY trial that Mr. Blum personally attended, before Mr. Blum, in response to a question, requested to see the document as well.¹²⁴

Fourth, DISH received further fair notice and had an additional opportunity to object at the OSC hearing as the document was shown in confidential session. Mr. Gelfand began his questioning by stating that it was discussed at Mr. Cullen’s deposition, much of which was designated as highly confidential, and by showing the title page of the document, which clearly was labeled as highly confidential and subject to the protective order.¹²⁵ Neither DISH’s counsel nor Mr. Blum objected at that point on the basis of the protective order or the Common Interest

¹²⁰ Hearing Tr. 243:21-23.

¹²¹ Hearing Tr. 243:24-25.

¹²² *Id.*

¹²³ See T-Mobile’s Motion to Strike, Exh. A (containing excerpt of OSC Exhibit No 30 (conspicuously marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECT ORDER” and marked as Exhibit 16 to the deposition of DISH executive Thomas Cullen)).

¹²⁴ Hearing Tr. 248:2-3 ([BHCD-TOOO] REDACTED [EHCD-TOOO]).

¹²⁵ Hearing Ex. OSC T-Mobile 30 at 727; Hearing Tr. 253:10-19 (“Q. Mr. Blum, this was one of these planning documents, or however you want to word it, and it was discussed by Mr. Cullen at his deposition. Mr. Cullen is a senior executive at DISH; correct? A. He is. Q. If you look at the title of this document, it's dated September 6, 2019; correct? A. Correct.”).

Agreement, and ALJ Bemesderfer specifically noted, “Mr. Gelfand, you can make whatever use you care to make of documents that are in evidence in the record including this one.”¹²⁶

Finally, DISH had the further ability to raise any concerns related to the protective order or the Common Interest Agreement at the conclusion of the OSC hearing. DISH objected to the admission of the exhibit without stating the grounds, but certainly did not raise any protective order or Common Interest Agreement issues, and so Exhibit 30 was received into the record pending objection.¹²⁷ DISH raised no concerns regarding the protective order or the Common Interest Agreement until it saw T-Mobile’s Motion to Strike.

ii. Even If DISH Did Not Waive Objections to the Use of the September 2019 Business Plan, Sharing It Did Not Violate the Common Interest Agreement

DISH suggests that T-Mobile’s sharing of the 2019 business plan violated *both* the Common Interest Agreement and the SDNY protective order. To begin with, this is not possible. Either the document was shared confidentially as part of a common defense, which raises one set of issues; or it was produced in discovery under the protective order, which raises a different set of issues.¹²⁸

¹²⁶ Hearing Tr. 264:24-27.

¹²⁷ Hearing Tr. 277:9-278:4 (“ALJ BEMESDERFER: All right. Let’s start with you. Want to move your exhibits into evidence? MS. TOLLER: Yes, your Honor. We would ask that we move into evidence OSC T-Mobile’s 2 through 11, 15, 27, and 30. ALJ BEMESDERFER: Is there objection? MS. TAFF-RICE: No, your Honor. We have no objection to any of those exhibits, except for Exhibit 30. ALJ BEMESDERFER: All right. All of those exhibits will be moved into evidence. The objection to Exhibit 30 will be noted. I’ll rule on it.... (Exhibit No. OSC T-MOBILE 30 was received into evidence.)”).

¹²⁸ If anything, that T-Mobile received the document through both means implies the opposite, that T-Mobile is entitled to use of the document if it is permitted under *either* the SDNY protective order or the Common Interest Agreement.

The version of the document T-Mobile showed during the OSC hearing was produced in discovery by DISH and then provided to T-Mobile by the California Attorney General as part of Mr. Cullen’s deposition, not under the Common Interest Agreement.¹²⁹ The document itself was clearly stamped with the deposition exhibit number and thus would be governed by the protective order, not the Common Interest Agreement. DISH does cite an exchange of emails on July 26, 2019, that related to an earlier version of the plan and occurred [BHCD-TOOO] REDACTED REDACTED [EHCD-TOOO].¹³⁰ But, in any case, a common interest agreement does not shield use of underlying business documents discovered through other sources.

iii. Even If the Commission Concludes that the 2019 Business Plan Should Not Have Been Offered, Sanctions Would Be Inappropriate Because T-Mobile Acted in Good Faith and DISH Has Not Suffered Any Prejudice

T-Mobile’s use of the September 2019 business plan was therefore not in breach of any obligations. However, even in the unlikely event that the Commission concludes there was a technical breach—and DISH has pointed to no precedent for the CPUC sanctioning parties for an alleged violation of a federal court order, which would run against the general principle that agencies only have the authority to enforce their own orders, not those of other agencies¹³¹—it certainly does not warrant sanctions in this case. T-Mobile and its counsel acted in good faith,

¹²⁹ See T-Mobile’s Motion to Strike, Exh. A (containing excerpt of OSC Exhibit No 30 (conspicuously marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECT ORDER” and marked as Exhibit 16 to the deposition of DISH executive Thomas Cullen)).

¹³⁰ DISH Opposition to Motion to Strike at 16 & Ex. 2 at 4.

¹³¹ See, e.g., Rule 1.3 (stating that enforcement investigations are to assess “possible violations of any provision of statutory law or order or rule of the Commission”); Cal. Pub. Utils. Code § 2112 (stating that those who fail to “comply with any part of any order, decision, rule, direction, demand, or requirement of the commission” are subject to penalties).

gave DISH advance notice, and took precautions to protect confidentiality within the Commission’s process.¹³²

Moreover, DISH has suffered no harm as a result of T-Mobile disclosing the September 2019 business plan to the Commission in confidential session.¹³³ Other than DISH and T-Mobile outside counsel, who had already seen the document in the context of the SDNY litigation, the only entity that saw that document was the Commission, which will obviously maintain the information confidentially and not use it for any competitive purpose. That is particularly true where, as is the case here, DISH has expressly disavowed that the plans revealed are its current plans.¹³⁴

Conclusion

The Commission should not find a violation of Rule 1.1 unless there is clear evidence that T-Mobile misled the Commission through an artifice or false statement. T-Mobile did not make a single one of the purportedly false or misleading statements attributed to it in the OSC and was

¹³² Compare D. 21-09-021 at 44 (noting that the Commission has imposed penalties under Rule 1.1 for “bad faith behavior”). Moreover, DISH’s citation to case law involving disqualification, in particular, is mooted by paragraph 7 of the Common Interest Agreement, which provides that [BHCD-TOOO] REDACTED

[EHCD-TOOO]

¹³³ See D.20-05-007 at 23 (finding no Rule 1.1 violation in absence of harm); D.12-10-010 at 4 (same); D. 12-03-011 at 1 (same).

¹³⁴ More specifically, the definition of “Confidential Information” covered by the protective order expressly excludes “any mobile wireless network engineering or economic analysis (or portions thereof) based on non-Party Information that do not disclose or reflect competitively sensitive information of a non-Party.” DISH was a non-Party to the litigation in which the protective order was entered. The September 2019 business plan at issue is an analysis based on engineering and economic information. And the portion that T-Mobile asked about—which shows DISH’s plan in 2019 to fully migrate off the legacy Sprint network by [BHCD-TOOO] REDACTED [EHCD-TOOO]—cannot be competitively sensitive because DISH has affirmatively disavowed that this reflects its current plans.

truthful and candid throughout the Commission's merger proceeding. Therefore, T-Mobile respectfully asks that the Commission find no violation of Rule 1.1 and impose no sanctions on T-Mobile or its counsel.

Respectfully submitted,

/s/ Suzanne Toller

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October 22, 2021

Attachment A

**Re-Direct Testimony of Neville R. Ray
on Behalf of T-Mobile USA, Inc.**

October 22, 2021

ATTACHMENT A

RE-DIRECT TESTIMONY OF NEVILLE R. RAY

ON BEHALF OF T-MOBILE US, INC.

OCTOBER 22, 2021

TABLE OF CONTENTS

I. RULE 1.1.....	1
II. THREE-YEAR TIME PERIOD.....	1
III. IMPACT ON 911 SERVICE.....	2
IV. REASONABLENESS OF NOTICE.....	3
V. REVIEW OF OSC RESPONSE.....	5

1 **I. RULE 1.1**

2 **Q During the Order to Show Cause hearing, you were asked by counsel for DISH if you**
3 **were familiar with Rule 1.1 of the Commission’s Rules of Practice and Procedure, which**
4 **requires persons appearing before the Commission “never to mislead the Commission or its**
5 **staff by an artifice or false statement of fact or law.” Do you believe that you or T-Mobile**
6 **misled the Commission in any way concerning the migration of customers from the legacy**
7 **Sprint CDMA network or on any of the issues raised in the Order to Show Cause?**

8 A. Absolutely not. T-Mobile cooperated fully with the Commission’s merger review process.
9 T-Mobile was candid, truthful, and forthcoming with the Commission throughout that process,
10 including in describing the Company’s plans to rapidly integrate the T-Mobile and Sprint
11 networks, its intent to migrate customers from the legacy Sprint network quickly, T-Mobile’s
12 contractual obligations to DISH with respect to shutting down the legacy Sprint CDMA network,
13 and the parties’ respective obligations concerning the migration of Boost customers from the
14 CDMA network. I am confident that T-Mobile did not mislead the Commission in any way
15 concerning any of the issues raised in the Order to Show Cause.

16 **II. THREE-YEAR TIME PERIOD**

17 **Q DISH counsel suggested that T-Mobile’s option to lease back some of the 800 MHz**
18 **spectrum for an additional two years demonstrates T-Mobile expected the CDMA sunset**
19 **process would take longer than three years. (Hearing Tr. 138:3-21). Why did T-Mobile**
20 **negotiate for the ability to keep a portion of the 800 MHz spectrum licenses for an additional**
21 **two years if it was confident that the network integration would be completed within three**
22 **years?**

1 A. The DOJ Consent Decree's requirement to sell Sprint's 800 MHz spectrum to DISH was
2 not contemplated in our original network plan. That was a change that we had to account for when
3 the Consent Decree was agreed upon. As I've testified before the Commission, the extra two years
4 afforded by the lease back was a prudent way for T-Mobile to have the spectrum available if
5 needed to address unexpected contingencies. It did not alter in any way our planned timeframe
6 for completing the customer migration and network integration process. In particular, Sprint had
7 entered contracts with operators of non-consumer CDMA devices that extended beyond three
8 years. While T-Mobile was hopeful that we would be able to negotiate to end these contracts early,
9 we did not want to be in a situation where complying with the DOJ Final Judgment would force
10 us to breach those contracts. Those contracts were a primary reason we negotiated the extension.
11 In the end, we were able to negotiate an end to Sprint's contracts as we had hoped.

12 **III. IMPACT ON 911 SERVICE**

13 **Q. DISH's counsel asked you whether it was correct CDMA customers without**
14 **compatible handsets or SIM cards would not have the ability to make 911 calls on New Year's**
15 **Day, 2022. You responded that that was correct, but only if DISH allowed it to happen by**
16 **not taking the requisite steps to migrate the Boost customers. (See Hearing Tr. 186:23-**
17 **187:1). The T-Mobile website also states that the ability to make 911 calls depends on**
18 **location. Can you please clarify that answer in light of applicable FCC rules regarding 911**
19 **call completion and specifically confirm whether T-Mobile sunsetting the CDMA network**
20 **will result in *customers in California* losing the ability to call 911?**

21 A. To clarify, customers in California will continue to have the ability to call 911 after the
22 CDMA sunset anywhere within the coverage of the Verizon CDMA network, which is much
23 broader than legacy Sprint's coverage. Although Boost and T-Mobile CDMA customers who have

1 not upgraded their device or changed SIM cards will not be able to make other types of calls, they
2 will nevertheless continue to be able to make 911 calls using Verizon’s CDMA network because
3 FCC rules require that wireless providers transmit all 911 calls that they receive, regardless of
4 whether or not the caller is a subscriber.¹ I understand that Verizon’s CDMA network will remain
5 operational in 2022, that CDMA customers will still be able to use their devices on that network
6 until December 31, 2022, and thus that the Verizon CDMA network will be available to support
7 911 calls by T-Mobile and Boost CDMA device users following the sunset of the legacy Sprint
8 CDMA network.² Because Verizon’s CDMA coverage area in California is much broader than
9 legacy Sprint’s, I am currently not aware of any area where these customers will lose the ability to
10 call 911 when the legacy Sprint CDMA network sunsets.

11 **IV. REASONABLENESS OF NOTICE**

12 **Q. ALJ Bemserfer asked you as an engineer whether a six-month notice issued a day**
13 **after the MNSA was executed would be reasonable. (Hearing Tr. 69:27-70:17) In light of**
14 **your experience as an engineer and with the MetroPCS network migration, was the 15-**
15 **month notice T-Mobile provided to DISH three months after the MNSA was executed**
16 **reasonable and did it provide sufficient time for DISH to migrate all of its customers off the**
17 **CDMA network?**

18 A. Absolutely. As I stated in my testimony, during our negotiation with DISH, we had
19 proposed three months’ notice and DISH had responded that was not reasonable notice. We asked

¹ See 47 C.F.R. § 9.10(b) (stating that Commercial Mobile Radio Service providers “must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority.”).

² See Verizon, *CDMA Network Retirement* (2021), <https://www.verizon.com/support/knowledge-base-218813/>.

1 them what was reasonable notice, and they specified six months. And we agreed to exactly what
2 DISH requested.

3 Apart from the fact that DISH itself defined six months as reasonable notice, the notice we
4 provided DISH was reasonable and more than sufficient to allow DISH to migrate its customers
5 off the CDMA network in a timely fashion. Let me also make this very clear – T-Mobile has
6 handled all of the major network changes required to migrate customers from the legacy Sprint
7 network to the new T-Mobile 4G/5G network. DISH, for its part, simply has to get new SIM cards
8 or compatible devices into the hands of Boost’s customers. This is entirely consistent with DISH’s
9 obligations under the MNSA, which make clear that DISH is responsible for the migration of its
10 own customers.³

11 We provided DISH with fifteen months’ advance notice. That is a fact. If DISH fails to
12 live up to its responsibility to migrate its customers, that does not make T-Mobile’s notice
13 unreasonable. But, in any case, DISH still has time to complete its migration if it gets to work. In
14 our MetroPCS acquisition, two months out from the CDMA network sunset, T-Mobile still had
15 more customers to migrate than DISH does today. And we completed the MetroPCS migration
16 successfully. The only thing holding DISH back is that they don’t seem to be willing to spend the
17 money.

18 We’ve gone to great lengths to live up to our end of the bargain and cooperate with DISH
19 during this migration process and we are still willing to assist DISH effectuate a timely migration.
20 The fifteen months’ notice DISH received was more than reasonable.

21

³ See MNSA § 2.2(c) (“As between the Parties, DISH is solely responsible for the migration of Legacy Network Subscribers to the T-Mobile Network by providing customers with a VoLTE capable device and migrating them to the T-Mobile Network before Legacy Network shutdown in each applicable Market.”).

1 **V. REVIEW OF OSC RESPONSE**

2 **Q. Mr. Ray, during the hearing ALJ Mason asked you if you reviewed T-Mobile's**
3 **Response to the OSC before it was filed. You responded that you were not sure what**
4 **response was being referred to. (Hearing Tr, 129:1-5). A copy of T-Mobile's Response to**
5 **the OSC is attached hereto as Attachment A-1. Will you please look at that response and**
6 **confirm whether you did review it before it was filed?**

7 **A. Now that I see the response, I can confirm that I reviewed it before it was filed.**

ATTACHMENT A-1
T-MOBILE RESPONSE TO OSC



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED
09/13/21
04:59 PM

In the Matter of the Joint Application of
Sprint Communications Company L.P. (U-
5112) 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

**RESPONSE OF T-MOBILE USA, INC. TO ADMINISTRATIVE LAW JUDGE'S
RULING ON ORDER TO SHOW CAUSE**

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Attorneys for T-Mobile USA, Inc.

September 13, 2021

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) 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).

And Related Matter.

Application 18-07-011

Application 18-07-012

**RESPONSE OF T-MOBILE USA, INC. TO ADMINISTRATIVE LAW JUDGE’S
RULING ON ORDER TO SHOW CAUSE**

Pursuant to the Administrative Law Judge’s September 2, 2021 Ruling, T-Mobile USA, Inc. (“T-Mobile”), respectfully makes this Response to the August 13, 2021 Order to Show Cause (the “OSC”) issued by ALJ Bemserderfer and Assigned Commissioner Rechtschaffen.

Introduction

The OSC incorrectly alleges that T-Mobile may have violated Rule 1.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”) by making several allegedly false or misleading statements to the Commission relating to the legacy Sprint code division multiple access (“CDMA”) network during the course of the Commission’s nearly two-year evaluation of the T-Mobile/Sprint merger. T-Mobile unequivocally denies that it made any false or misleading statements or otherwise violated Rule 1.1. T-Mobile did not even make many of the statements attributed to it in the OSC, and those statements the OSC properly attributes to T-Mobile were truthful and accurate. T-Mobile welcomes the opportunity to address the allegations in the OSC and the Commission’s questions at the September 20, 2021 hearing on this matter.

T-Mobile was open, truthful, and candid throughout the proceedings, which involved more than 50 filings, six days of testimony, and thousands of pages of record materials. T-Mobile demonstrated that the merger would allow for the rapid and successful integration of the Sprint and T-Mobile networks, leading to significant benefits for consumers in California and throughout the country.¹ And, as Mr. Ray will explain at the hearing, the new T-Mobile is now delivering on that promise. Since the close of the merger, through hard work and over ten billion dollars in investments, T-Mobile has been integrating the networks successfully and delivering on the public interest benefits found by this Commission in its April 16, 2020 decision approving the merger (the “Merger Decision”).

Over a year after the Commission completed its review of the merger, and some six months after receiving formal notice from T-Mobile of its planned date to sunset the Sprint CDMA network, DISH Network Corporation (“DISH”) filed a Petition for Modification (“Petition”) of the Commission’s Merger Decision. In the Petition, DISH claimed that T-Mobile had somehow promised in its testimony before the Commission not to sunset the legacy Sprint CDMA network until 2023. This is simply not true. In fact, DISH participated as a party to the merger proceeding, but it never asked for such a promise before the Commission or elsewhere, and no such promise was made.

Nevertheless, based on the flawed premise that T-Mobile did make such a promise, and referencing a handful of isolated statements from the record taken out of context, the OSC orders T-Mobile to show cause why it should not be sanctioned under Rule 1.1 for alleged false or misleading statements or omissions. The record shows, however, that T-Mobile did not make any

¹ See Hearing Ex. Jt. Appl. 28C, Supplemental Testimony of N. Ray at 5:6-11, 21:19-24 (Dec. 4, 2019) (“Ray Supplemental Testimony”); Hearing Ex. Jt. Appl. 3C, Rebuttal Testimony of N. Ray at 31:6-23, 36:17-29, 46:6-12 (Feb. 4, 2019) (“Ray Rebuttal Testimony”).

false or misleading statements or omissions to the Commission. It did not even make the statements set forth on page 8 of the OSC, on which it is ordered to show cause. In some instances, it said the opposite of what is alleged in the OSC. For example:

- The OSC alleges that T-Mobile said it would make the CDMA network available to divested Boost customers until they were migrated to DISH's LTE or 5G service. T-Mobile never said this and in fact told the Commission that any record statements about maintaining CDMA did not apply to divested Boost customers.
- The OSC alleges that T-Mobile said maintaining CDMA did not require PCS spectrum and that PCS spectrum would not be used for 5G. That is not true. T-Mobile disclosed to the Commission both that PCS spectrum was used for CDMA and that it would be used for 5G.
- The OSC alleges that T-Mobile said all former Sprint customers would have a seamless migration, but again ignores that T-Mobile limited those statements to non-divested customers. And that is for good reason, as DISH contractually agreed that it was responsible for migrating its Boost customers. T-Mobile can only control its own actions and cannot be responsible for what DISH has contractually agreed to do.
- The OSC alleges that T-Mobile said DISH would have up to three years to complete its Boost customer migration, but T-Mobile did not say this. T-Mobile's statements about a three-year migration period referred to an outer bound for T-Mobile to complete its network migration. T-Mobile was candid that its plan was to complete this work *within* three years, not take the full three years to do so.

The record before the Commission, when viewed in its entirety, makes clear that T-Mobile never promised to maintain CDMA for three years. For example, when T-Mobile

agreed to divest the Boost customers to DISH as part of the Final Judgment with the United States Department of Justice (“DOJ”), DISH negotiated for reasonable notice of at least six months before the CDMA network’s shutdown, not an obligation to maintain the CDMA network for three years.² In all the negotiations and discussions with the DOJ, neither DISH nor the DOJ raised the issue of a requirement that T-Mobile maintain the CDMA network for any extended period of time.

The record also includes the Federal Communication Commission’s (“FCC”) order approving the merger (the “FCC Merger Order”), in which the FCC rejected calls from some commenters to mandate that T-Mobile maintain the CDMA network for a minimum period of time. The FCC found that it is not in the public interest to require T-Mobile to “devote [its] limited resources to maintaining an outdated technology when those resources could instead be directed to bringing to American consumers faster, higher-quality and more reliable services.”³

Put simply, T-Mobile never told this Commission that it would give DISH a minimum of three full years to migrate its Boost customers to the T-Mobile network, and it would be incorrect and fundamentally unfair to infer such a representation in hindsight by stripping T-Mobile’s prior statements of relevant context. Nor is there a basis to find that T-Mobile made any of the alleged false statements set forth on page 8 of the OSC. T-Mobile stands by the statements it actually did

² See Ray Supplemental Testimony, Confidential Attach. G, Annex 1 to Ex. C of Asset Purchase Agreement, Master Network Service Agreement § 2.2(c) at Attach.-215 (“MNSA”). T-Mobile gave 15 months’ notice. See T-Mobile USA, Inc.’s Response to DISH Network Corp.’s Petition to Modify D.20-04-008 at Attach. B (June 1, 2021) (“T-Mobile Response to DISH Petition”) (Letter from D. Thygesen, Vice President – Wholesale and Platform Operations, T-Mobile (Oct. 2, 2020)).

³ Hearing Ex. Jt. Appl. 19, Attach. 3, FCC Order Granting Transfer of Control of the Licenses, Authorizations, and Spectrum Leases Held by Sprint and its Subsidiaries to T-Mobile at 151 (“FCC Merger Order”); see also *In re Application of T-Mobile US, Inc. et al.*, WT Docket No. 18-197, Mem. Opinion & Order, Declaratory Ruling, & Order of Proposed Modification, 34 FCC Rcd. 10578, 10728 ¶ 339 (2019).

make to the Commission, and respectfully asks the Commission to find that it did not violate Rule 1.1.

Argument

The alleged statements at issue in this proceeding are set forth on page 8 of the OSC, which orders T-Mobile “to show cause why it should not be sanctioned by the Commission for a Violation of Rule 1.1 for its false, misleading or omitted statements indicating that”:

1. “[T-Mobile’s] CDMA network would be available to its Boost customers until they were migrated to DISH’s LTE or 5G services”;
2. “[M]aintaining 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. “[A]ll former Sprint customers would have a seamless, undegraded experience during the migration period (2020-2023)”;
5. “DISH would have up to three years in which to complete [the] Boost customer migration.”

After a brief discussion of applicable legal principles, T-Mobile summarizes some of the evidence it will present at the hearing to demonstrate that T-Mobile did not violate Rule 1.1.

I. Legal Standard

Rule 1.1 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 Commission or its staff by an artifice or false statement of fact or law.*⁴

To find a violation of the last clause of Rule 1.1, the Commission must find both that it was misled about something and that it was due to a party's "artifice or false statement of fact or law."

Several principles should guide the Commission as it considers whether T-Mobile violated Rule 1.1 here. First, because T-Mobile is entitled to fair notice of the allegations against it, T-Mobile will rely on the OSC as defining the universe of facts and issues that T-Mobile must address at the hearing.⁵ T-Mobile will therefore address the five specific points on which it has been ordered to show cause on page 8 of the OSC and the underlying evidence cited in the OSC.

Second, T-Mobile did not specifically make any of the five statements set forth on page 8 of the OSC. The OSC appears to acknowledge this.⁶ Thus, this is an unusual case in which an OSC orders a party to show cause why it should not be sanctioned for statements it did not actually make. The Commission should be very reluctant to find a Rule 1.1 violation unless it finds that statements that were actually made by T-Mobile were false.⁷ This is not such a case.

Third, the Commission cannot find that a statement was false merely because it now believes that a statement made over 18 months ago was ambiguous or could have been more clear.⁸ It would be unfair to sanction T-Mobile for perceived ambiguity or a lack of clarity that appears

⁴ CAL. CODE REGS. tit. 20, § 1.1 ("Rule 1.1") (emphasis added).

⁵ See, e.g., *Today's Fresh Start, Inc. v. Los Angeles Cty Office of Ed.*, 57 Cal. 4th 197, 212 (2013) (stating that parties must be given "notice of the case against [them] and opportunity to meet it") (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)).

⁶ See OSC at 8 (referring to allegedly false, misleading, or omitted statements "indicating that" five specific points were made).

⁷ See, e.g., D.01-11-017 at 6 (neglecting to find a Rule 1 violation where statements were "not clearly false," but "at best unclear").

⁸ See, e.g., *id.*

only with the benefit of hindsight, especially for topics that were not the focus of the underlying proceedings. To hold otherwise would place an impossible burden on any party appearing in front of the Commission to anticipate every conceivable issue that might be raised years after the fact.

Fourth, in evaluating the evidence cited in the OSC and considering whether the itemized statements on page 8 of the OSC can fairly be inferred from statements actually made by T-Mobile, the Commission must consider the entire context of the record that bears on those subjects. This of course includes portions of the record that contradict the assertions in the OSC.⁹ At the September 20 hearing, T-Mobile will point the Commission to such other record evidence, some of which is described below.

Finally, in evaluating statements about forward-looking plans or intentions, the issue is not whether those statements ultimately proved accurate. The issue is whether the statements accurately described the party's plans or intentions at the time they were made.¹⁰

With these basic legal principles in mind, the remainder of this Response summarizes some of the arguments and evidence that T-Mobile will present at the hearing to show that it did not violate Rule 1.1 on any of the five points listed on page 8 of the OSC.

II. T-Mobile Never Said That It Would Maintain the CDMA Network Until DISH's Boost Customers Were Migrated to DISH's LTE or 5G Services

The OSC alleges that T-Mobile made "false, misleading, or omitted statements indicating that ... its CDMA network would be available to its Boost customers until they were migrated to

⁹ *See, e.g.*, D.17-06-009, at 15 (finding no violation of Rule 1 where party failed to respond completely to an inquiry but the relevant information had been provided elsewhere in the record).

¹⁰ *See, e.g.*, D.98-12-018, at 4, 14 (declining to find a Rule 1.1 violation where statements appearing untrue in hindsight were, in context, related to forward-looking plans that had evolved and changed over time).

DISH's LTE or 5G services.”¹¹ This allegation is plainly incorrect because T-Mobile made no representations, and the OSC cites none, that CDMA would remain available for as long as it takes DISH to build its own LTE or 5G network. Even DISH does not make such a claim. Such a claim would be nonsensical since DISH has no plans to build an LTE network and its 5G network would take longer than three years to complete in any event.

Insofar as the OSC may have intended to allege that T-Mobile stated that the legacy Sprint CDMA network would be available to Boost customers until they were migrated to *T-Mobile's* LTE or 5G network, T-Mobile did not make that statement either. In fact, T-Mobile told the Commission that it would not make such a representation about maintaining CDMA for DISH's Boost customers. Mr. Ray was asked as part of his Supplemental Testimony how the divestiture of the Boost customers impacted his prior testimony that “T-Mobile will not terminate the CDMA network in any market without migrating users from the network first.”¹² In response, Mr. Ray testified that his “prior testimony would now have to be modified to include only Sprint CDMA customers *who are not divested.*”¹³

¹¹ OSC at 8. *See also id.* at 1.

¹² Ray Supplemental Testimony at 20:22-20:24.

¹³ *Id.* at 20:27-21:1 (emphasis added). *See also id.* at 20:22-21:6 (“Q. You also stated in your prior testimony that ‘...T-Mobile will not terminate the CDMA network in any market without migrating users from the network first.’ How do the FCC and DOJ Commitments impact that testimony? A. These commitments did not exist at the time I provided that testimony and thus my prior testimony did not account for the divestiture of the Sprint prepaid business. In light of these commitments, my prior testimony would now have to be modified to include only Sprint CDMA customers who are not divested. As I noted above, the migration of the Sprint's prepaid customers (not including Assurance Wireless) will be DISH's responsibility although T-Mobile has a number of obligations to facilitate that process as I describe above. Additionally, I suspect that DISH will have every incentive to complete the migration before the CDMA network is terminated in order to continue to provide the divested Sprint prepaid customers with service under the MVNO arrangement.”)

The OSC asserts that in its December 2019 post-hearing brief, T-Mobile represented “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.’”¹⁴ But the quoted language – half of a sentence in a paragraph about the divestiture of 800 MHz spectrum – omits key context confirming that T-Mobile did not state that it would in all circumstances maintain the CDMA network until DISH finished migrating Boost customers. The complete statement refutes the OSC’s allegation:

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. Thus, it is clear that, if anything, the potential divestiture of the 800 MHz spectrum is designed to ensure that 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

The first part of the quoted sentence, which is omitted in the OSC, makes clear that the divestiture of 800 MHz spectrum “is designed” to ensure that service is maintained. This qualified statement about the design of the divestiture was correct and cannot fairly be characterized as a representation that T-Mobile would in all cases operate a CDMA network until DISH migrated every Boost customer.

In addition, the preceding sentence from that same post-hearing brief points to T-Mobile’s specific contractual obligations to DISH concerning customer migration, which were described in greater detail later in the brief. Under the heading “DISH Plans to Timely Migrate the Divested Sprint Prepaid Customers onto the New T-Mobile Network,” T-Mobile explained, among other things, that it was obliged to cooperate in good faith with DISH to migrate customers and to

¹⁴ OSC at 5 (quoting Joint Applicants Post-December 2019 Brief at 35 (Dec. 20, 2019)) (emphasis added in OSC).

¹⁵ Joint Applicants’ Post-December 2019 Brief at 35.

provide DISH with at least six months' notice before shutting down the CDMA network.¹⁶ This is exactly what T-Mobile has done. These contractual obligations, together with DISH's own stated plan to migrate its Boost customers "in any event before the legacy Sprint network is shut-down,"¹⁷ confirm that, if anything, the structure of the 800 MHz divestiture was, as T-Mobile represented, designed to ensure that service to customers would be maintained until they were migrated. *For that design to succeed in the real world, however, DISH had to live up to its own obligation to upgrade its customers' devices.*

T-Mobile also gave other testimony at the December 2019 hearing to make clear that T-Mobile could not take responsibility for DISH's migration of its Boost customers so long as T-Mobile cooperated in good faith and provided at least six months' notice of the CDMA network's shutdown:

Q. How will migration of Sprint prepaid customers be handled after the divestiture?

A. My Rebuttal Testimony regarding the migration of Sprint's prepaid customer base provided that they would be "migrated in exactly the same fashion and on the same timeframe as Sprint postpaid customers." At that time the DOJ Commitments did not exist. In light of those commitments, I can no longer offer testimony as to how DISH will address the post-divestiture migration of legacy Sprint prepaid (excluding Assurance) customers to the New T-Mobile. DISH will be responsible for its customers' handset upgrades and compatibility after the divestiture. I would note, however, that we are [BHC-AEO] obligated to cooperate in good faith with DISH with respect to the migration of those subscribers to the New T-Mobile network. We are also required to provide DISH with at least six-month advance notice before we shut down the legacy network. [EHC-AEO].¹⁸

¹⁶ *Id.* at 46.

¹⁷ *Id.* (quoting Hearing Ex. DISH-3, Blum Testimony at 3).

¹⁸ Ray Supplemental Testimony at 19:15-25. While the last part of Mr. Ray's testimony was marked highly confidential at the time of the proceedings, this information has since been publicly disclosed.

T-Mobile fulfilled its obligations. It prepared the network for migration. It cooperated in good faith. It gave 15 months' notice, not six. T-Mobile was clear, candid, and truthful about this topic at the December 2019 hearing.

Based on the foregoing, there is no reason to find that T-Mobile misled the Commission through an artifice or false statement as it relates to whether the legacy Sprint CDMA network would be available to Boost customers until they were migrated to T-Mobile's (or DISH's) LTE or 5G network.

III. T-Mobile Made No False Statement About the Use of Sprint's PCS Spectrum for CDMA

The OSC alleges that T-Mobile made "false, misleading, or omitted statements indicating that ... maintaining service to the CDMA network did not require use of Sprint PCS spectrum."¹⁹ The OSC's assertion is incorrect, and the OSC ignores other statements in the record that contradict this allegation. For example, even though the use of PCS spectrum for CDMA was not at issue in this proceeding, T-Mobile submitted evidence into the record that Sprint *did* use PCS, as well as 800 MHz, spectrum to support its CDMA network:

- T-Mobile included in Attachment E to Mr. Ray's Supplemental Testimony a spreadsheet of Sprint sites showing that thousands of Sprint sites used PCS spectrum to provide CDMA.²⁰
- Mr. Sievert's testimony included the Declaration of John C. Saw from T-Mobile's and Sprint's Public Interest Statement, which was submitted to the FCC. In that declaration, Mr. Saw, then the Chief Technology Officer for Sprint, stated that, "[u]ntil

¹⁹ OSC at 8.

²⁰ Ray Supplemental Testimony, Confidential Attach. E. The first page of the spreadsheet included in Confidential Attachment E, redacted to remove confidential information, is attached hereto as Exhibit A.

VoLTE is deployed, voice traffic will continue to be served on our 3G CDMA network in the 800 MHz and 1.9 GHz bands.”²¹ The 1.9 GHz spectrum referenced in that declaration is Sprint’s PCS spectrum and is also referenced in the record as 1900 MHz spectrum.²²

- Mr. Sievert’s testimony also included the Reply Declaration of John C. Saw from T-Mobile’s and Sprint’s Joint Opposition, which was submitted to the FCC. In his Reply Declaration, Mr. Saw stated that “Sprint must continue to devote its 800 MHz and 1.9 GHz spectrum to our 4G LTE and 3G CDMA networks.”²³

The OSC cites to a chart in Mr. Ray’s Supplemental Testimony, which was presented to show how the combination of complementary spectrum would lead to a faster buildout of 5G than either company could accomplish on its own, to suggest that T-Mobile did not “reveal that PCS spectrum was used to provide CDMA service to Boost customers.”²⁴ As T-Mobile will explain at the hearing, however, that chart was created based on Sprint’s pre-merger standalone plan to transition its PCS spectrum from CDMA to LTE before the end of 2020, and it accurately represented those plans. Sprint did not ultimately complete that planned transition before the merger. After the merger closed, T-Mobile identified some impediments that made it infeasible to immediately transition all of the PCS spectrum from Sprint’s CDMA network before the end of 2020. But the chart was accurate both when created and when included in Mr. Ray’s Supplemental Testimony.

²¹ Hearing Ex. Jt. Appl. 2-C, Rebuttal Testimony of G. Michael Sievert (“Sievert Rebuttal Testimony”), Confidential Attach. 2A at 246 (Decl. of John C. Saw) (Jan. 29, 2019).

²² See Joint Applicants’ Post-Hearing Opening Brief at 20 (Apr. 26, 2019) (referring to Sprint’s “1900 MHz PCS” spectrum).

²³ Sievert Rebuttal Testimony, Confidential Attach. 2B at 194 (Reply Decl. of John C. Saw).

²⁴ OSC at 3 (citing Ray Supplemental Testimony at 9:7-12).

Based on the foregoing, there is no basis to conclude that T-Mobile misled the Commission through an artifice or false statement as it relates to Sprint's use of its PCS spectrum for its CDMA network.

IV. T-Mobile Repeatedly Stated That PCS Spectrum Would Be Used in Its 5G Buildout

The OSC alleges that T-Mobile made “false, misleading or omitted statements indicating that ... PCS spectrum would not be used for T-Mobile's 5G build-out.”²⁵ To the contrary, T-Mobile repeatedly stated to the Commission that it planned to use PCS spectrum, including Sprint's PCS spectrum, for 5G. For example:

- Mr. Ray's Supplemental Testimony clearly stated: “The spectrum refarming table from my Rebuttal Testimony (copied below) shows that New T-Mobile will deploy 5G using the following five types of spectrum ... (ii) PCS.”²⁶
- In Mr. Ray's Rebuttal Testimony, Mr. Ray was asked to “please explain the characteristics of each type of spectrum, and why each spectrum band is critical to New T-Mobile's 5G network[.]” In his response explaining why mid-band spectrum is critical to T-Mobile's 5G network, Mr. Ray included “Sprint's 2.5 GHz and 1900 MHz spectrum,” the latter referring to Sprint's PCS spectrum.²⁷
- In Attachment C to Mr. Ray's Rebuttal Testimony, T-Mobile provided a set of slides titled “Overview of the Network Model,” which referenced the types of spectrum New T-Mobile would use for 5G, including Sprint's PCS spectrum.²⁸

²⁵ *Id.* at 8.

²⁶ Ray Supplemental Testimony at 10:15-19. *See also id.* at 12:3-8.

²⁷ Ray Rebuttal Testimony at 13:3-4, 13:12-15.

²⁸ *Id.*, Confidential Attach. C at 18. A copy of slide 18 is attached hereto as Exhibit B.

- In T-Mobile’s April 26, 2019 brief filed with the Commission, T-Mobile stated that, “by aggregating T-Mobile’s and Sprint’s legacy LTE customers on the AWS band, New T-Mobile will be able to deploy a much larger contiguous block of PCS spectrum to 5G use.”²⁹
- In the Public Interest Statement filed with the FCC, which is in the record of these proceedings, T-Mobile said that, “New T-Mobile, on the other hand, would be able to deploy 5G on Sprint’s PCS spectrum.”³⁰

The OSC also states that “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 customers but now indicates a significant need for PCS spectrum for both CDMA service and its 5G build-out.”³¹ This sentence appears to suggest three alleged misrepresentations. As to the first, discussed in this section, T-Mobile consistently noted the role that PCS spectrum would play in its 5G deployment, such that the first part of this allegation is not correct. As to the second, T-Mobile did state that it planned to use 800 MHz spectrum for CDMA during the migration period.³² That was true then and remains true today. As to the third, discussed in Section III, T-Mobile did indicate that Sprint used PCS spectrum for CDMA. There is nothing improper to be gleaned from the fact that PCS spectrum has been used for CDMA and will be used for 5G going forward, both of which were disclosed by T-Mobile during the proceedings.

Relatedly, the OSC states that “T-Mobile generally stated that the MVNO agreement with DISH [*i.e.*, the MNSA] would have no adverse impact on T-Mobile’s existing and 5G networks

²⁹ Joint Applicants’ Post-Hearing Opening Brief at 24.

³⁰ Sievert Rebuttal Testimony, Confidential Attach. A at 25 (Public Interest Statement).

³¹ OSC at 6.

³² Ray Supplemental Testimony at 10:19-22.

but now claims that maintaining the CDMA network would delay the 5G buildout.”³³ But this is not evidence of a false statement. T-Mobile’s references to the MNSA in statements before the Commission necessarily incorporated all the terms of the MNSA. One of those terms requires DISH to ensure that its Boost customers receive device upgrades so they can be migrated.³⁴ Nothing in the MNSA requires T-Mobile to maintain the legacy Sprint CDMA network for any set period of time, only that T-Mobile provide DISH with at least six months’ notice for migration, which it did.³⁵ At the time of T-Mobile’s testimony, T-Mobile fully expected DISH to live up to its contractual responsibility to migrate its Boost customers, and it cannot be the case that *DISH’s* failure to do so makes *T-Mobile* liable under Rule 1.1.

In sum, at the time of T-Mobile’s post-divestiture testimony, T-Mobile’s plan was (and remains) for the migration to be rapid and completed within three years. Nothing in or required by the MNSA is inconsistent with this plan. Indeed, because DISH was contractually responsible for the migration of its Boost customers from the CDMA network to T-Mobile’s LTE and 5G networks, the MNSA would help, not hinder, 5G deployment. T-Mobile’s testimony was not false or misleading.

Based on the foregoing, there is no basis to conclude that T-Mobile misled the Commission through an artifice or false statement as it relates to T-Mobile’s plans to use PCS spectrum in its 5G buildout.

³³ OSC at 6-7.

³⁴ See Ray Supplemental Testimony at 19:21-22 (“DISH will be responsible for its customers’ handset upgrades and compatibility after the divestiture.”). See also MNSA, Annex 1 § 2.2(c) (“As between the Parties, DISH is solely responsible for the migration of Legacy Network Subscribers to the T-Mobile Network by providing customers with a VoLTE capable device and migrating them to the T-Mobile Network before Legacy Network shutdown in each applicable Market.”).

³⁵ MNSA, Annex 1 § 2.2(c).

V. T-Mobile’s Statements About the Customer Migration Experience Excluded Boost Customers, as Their Migration Is DISH’s Obligation

The OSC alleges that T-Mobile made “false, misleading or omitted statements indicating that ... all former Sprint customers would have a seamless, undegraded experience during the migration period (2020-2023).”³⁶ This allegation ignores that T-Mobile told the Commission that DISH bore the ultimate responsibility for migrating its Boost customers and that T-Mobile could not assume responsibility for DISH fulfilling its obligation to upgrade Boost customers’ devices and move them over when the network was ready to receive them.

In testimony submitted in advance of the February 2019 hearing, Mr. Ray testified that the migration process for Sprint customers would be accomplished “without any customer disruption.”³⁷ That statement of intention was true when made. Following that testimony, however, T-Mobile agreed to divest certain of those customers, spectrum, and assets to DISH,³⁸ and the Assigned Commissioner asked T-Mobile to update its testimony to address the impact of that divestiture agreement.³⁹ T-Mobile, through Mr. Ray, then provided updated testimony during the December 2019 hearing that is directly on point: “I can no longer offer testimony as to how DISH will address the post-divestiture migration of legacy Sprint prepaid (excluding Assurance) customers to the New T-Mobile. DISH will be responsible for its customers’ handset upgrades

³⁶ OSC at 8. *See also id.* at 2 (formulating the alleged statement as “all former Sprint customers would have a seamless upgrade experience during the migration period”).

³⁷ Ray Rebuttal Testimony at 49:22-24.

³⁸ Ray Supplemental Testimony at 2:10-19.

³⁹ *See* Amended Scoping Ruling at 3 (Oct. 24, 2019).

and compatibility after the divestiture.”⁴⁰ The MNSA was equally clear that DISH would be solely responsible for the migration of its customers.⁴¹

The OSC also alleges that “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.’”⁴² In addition to the explicit qualification above – that the Boost customer migration to compatible handsets was DISH’s obligation – the quoted language read in full makes clear that this was an expression of T-Mobile’s *intent* to structure the transition process to avoid a degraded customer experience:

[S]ites will start to free up and start – the decommissioning process will start within the three years, but the lion’s share of the activity would be once we’ve successfully migrated the customers. *Obviously the intent there is 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.*⁴³

The italicized language in Mr. Ray’s quote, which was omitted in the OSC, makes clear that T-Mobile’s *intent* was to ensure that Sprint and Boost customers do not experience degraded service in connection with the migration. That genuinely was T-Mobile’s intent at that time, and it was premised on DISH’s contractual promise to upgrade its customers’ devices. This forward-looking statement of intent was true when made and plainly must be read in light of Mr. Ray’s further testimony that it is now DISH’s responsibility under the MNSA to move DISH’s Boost customers over to T-Mobile’s network.

⁴⁰ Ray Supplemental Testimony at 19:16-22. *See also id.* at 18:26-28 (“As to the prepaid Sprint customers that are divested to DISH, the retail terms and conditions of service post-divestiture will be a matter for DISH, not new T-Mobile.”).

⁴¹ MNSA, Annex 1 § 2.2(c).

⁴² OSC at 5 (citing December 2019 testimony).

⁴³ Hearing Tr. at 1382:19-1383:1 (emphasis added).

There is simply no basis to find a violation of Rule 1.1 for statements of intent that were true when made, especially when accompanied by unequivocal testimony that DISH was responsible for getting compatible handsets in the hands of its Boost customers.

VI. T-Mobile Did Not Represent that DISH Would Have Three Years to Migrate Its Customers from Sprint’s Legacy CDMA Network

The OSC alleges that T-Mobile made “false, misleading or omitted statements indicating that ... DISH would have up to three years in which to complete [the] Boost customer migration.”⁴⁴ As with the other points discussed above, T-Mobile never made this statement. Instead, the OSC appears to draw an inference from T-Mobile’s “repeated references to a three-year customer migration period” during the Commission’s proceedings.⁴⁵ To draw that inference, though, the OSC ignores repeated statements that T-Mobile expected to complete its migration in less than three years.

Any assessment of what was intended by T-Mobile’s references to a three-year migration period must take into account all of the statements T-Mobile made to the Commission about this topic. T-Mobile’s stated goal was always to complete the integration of the Sprint and T-Mobile networks, and to realize the benefits of the merger, quickly.⁴⁶ While T-Mobile wanted to make sure it had sufficient time to complete the integration and therefore planned for a potential three-year migration period, this was a conservative prediction of when the benefits of integrating the networks would be realized – it was never intended as a fixed or minimum length of time during

⁴⁴ OSC at 8.

⁴⁵ *Id.* at 7.

⁴⁶ *See* Ray Rebuttal Testimony at 46:6-9 (noting that “New T-Mobile’s network and customer migration will be timely and efficient” and that T-Mobile intended to implement “an aggressive technology migration program for the combined company that will allow for a smooth and rapid expansion”).

which T-Mobile would maintain antiquated CDMA technology.⁴⁷ And T-Mobile never represented as much to the Commission.

T-Mobile made clear during the Commission's proceedings that it planned to migrate customers from both Sprint's CDMA and LTE networks quickly, not to wait to do so until the end of the three-year period. For example, Mr. Ray testified:

The divestiture commitments give us three years of continued use of the 800 MHz spectrum from the time we divest Sprint's pre-paid assets to DISH. New T-Mobile planned and still does plan to use that spectrum exclusively to support former Sprint customers during the anticipated 3-year migration period and *to complete the migration of Sprint customers before this deadline.*⁴⁸

He also testified that “[t]his migration plan involves: (1) accommodating Sprint's existing LTE customers in California on the existing T-Mobile network *as rapidly as possible after closing*, and (2) utilizing the freed up spectrum resources for 5G *as soon as practical thereafter.*”⁴⁹

Nor would waiting the full three years make sense. It would be impractical and decidedly not in the public interest to wait until the last day of the third year to complete the customer migration. And it is certainly not in the interest of Boost customers to force them to continue to use antiquated technology like CDMA longer than necessary when they could instead migrate to a better network.⁵⁰ In the FCC Merger Order, the FCC itself recognized “that it is not in the public interest to require a company to devote their limited resources to maintaining an outdated

⁴⁷ See, e.g., T-Mobile Response to DISH Petition at 14 (collecting record citations signaling T-Mobile's intent to complete CDMA migration in less than three years).

⁴⁸ Ray Supplemental Testimony at 13:14-18 (emphasis added).

⁴⁹ Ray Rebuttal Testimony at 46:10-12 (emphasis added). See also *id.* at 46:23-47:10; Hearing Tr. at 1375:4-1376:1.

⁵⁰ See T-Mobile Response to DISH Petition, Attach. C at 1 ¶ 5 (Decl. of A. Kapoor in Support of T-Mobile's Response to DISH's Petition to Modify) (noting that “CDMA is an obsolete technology that does not deliver an adequate level of service compared to LTE (4G) or 5G to meet customers' needs”).

technology when those resources could instead be directed to bringing to American consumers faster, higher-quality and more reliable services.”⁵¹

As for the amount of time DISH would have to migrate its Boost customers, T-Mobile never stated that “DISH would have up to three years in which to complete [the] Boost customer migration” or that it would not sunset the CDMA network before 2023.⁵² T-Mobile was forthcoming with DISH about the migration timetable. Per the terms of the MNSA, T-Mobile agreed to provide reasonable advance notice of at least six months to DISH before shutting down the CDMA network.⁵³ And T-Mobile clearly explained to the Commission the extent of T-Mobile’s limited contractual obligations to DISH with respect to the shutdown of Sprint’s legacy CDMA network.⁵⁴ T-Mobile more than fulfilled its end of the agreement by providing notice in October 2020, 15 months in advance of the anticipated shutdown of the CDMA network.

The record is clear that T-Mobile and DISH agreed to a notice provision as part of the MNSA, that DISH did not ask for any minimum period of time beyond the notice period, and that the FCC declined to require T-Mobile to maintain the legacy Sprint CDMA network for a minimum period of time because such a requirement would not be in the public interest. The Commission should not credit an incorrect inference that DISH would have three years to migrate its Boost customers based on general references by T-Mobile to a three-year migration process over direct evidence that establishes otherwise.

⁵¹ FCC Merger Order ¶ 339.

⁵² OSC at 2.

⁵³ See MNSA, Annex 1 § 2.2(c) (“T-Mobile will provide DISH with reasonable advanced notice at least six months prior to the shutdown of the Legacy Network (CDMA network) in any market.”).

⁵⁴ See Joint Applicants’ Post-December 2019 Brief at 46-47. See also Ray Supplemental Testimony at 19:21-25.

T-Mobile was clear during the Commission’s proceedings that, per the terms of the MNSA, it was DISH’s responsibility to migrate its Boost customers.⁵⁵ While T-Mobile took on the extensive and complicated work to prepare the network for the migration of millions of Sprint and Boost customers to T-Mobile’s network, ultimately DISH had to provide its Boost customers with compatible devices. Mr. Ray made clear to the Commission after T-Mobile agreed to divest Boost to DISH that he could “no longer offer testimony as to how DISH will address the post-divestiture migration of legacy Sprint prepaid (excluding Assurance) customers to the New T-Mobile. DISH will be responsible for its customers’ handset upgrades and compatibility after the divestiture.”⁵⁶

Based on the foregoing, there is no basis to conclude that T-Mobile misled the Commission with respect to the amount of time that DISH would have to complete the migration of its Boost customers. And it would be improper to find a violation of Rule 1.1 based on an incorrect inference that is contradicted by explicit and direct testimony. T-Mobile has done what it said it would do.

Conclusion

The Commission should not find a violation of Rule 1.1 unless there is clear evidence that T-Mobile misled the Commission through an artifice or false statement. Based on the foregoing and other information to be presented at the hearing, T-Mobile respectfully asks that the Commission find no violation of Rule 1.1 and impose no sanctions on T-Mobile.

⁵⁵ See Ray Supplemental Testimony at 19:16-22. See also *id.* at 20:22-21:3 (“Q. You also stated in your prior testimony that ‘...T-Mobile will not terminate the CDMA network in any market without migrating users from the network first.’ How do the FCC and DOJ Commitments impact that testimony? A. These commitments did not exist at the time I provided that testimony and thus my prior testimony did not account for the divestiture of the Sprint prepaid business. In light of these commitments, my prior testimony would now have to be modified to include only Sprint CDMA customers who are not divested. As I noted above, the migration of the Sprint’s prepaid customers (not including Assurance Wireless) will be DISH’s responsibility although T-Mobile has a number of obligations to facilitate that process as I describe above.”); MNSA, Annex 1 § 2.2(c).

⁵⁶ Ray Supplemental Testimony at 19:16-22.

Respectfully submitted this 13th day of September 2021.

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/s/ Suzanne Toller

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Attorneys for T-Mobile USA, Inc.

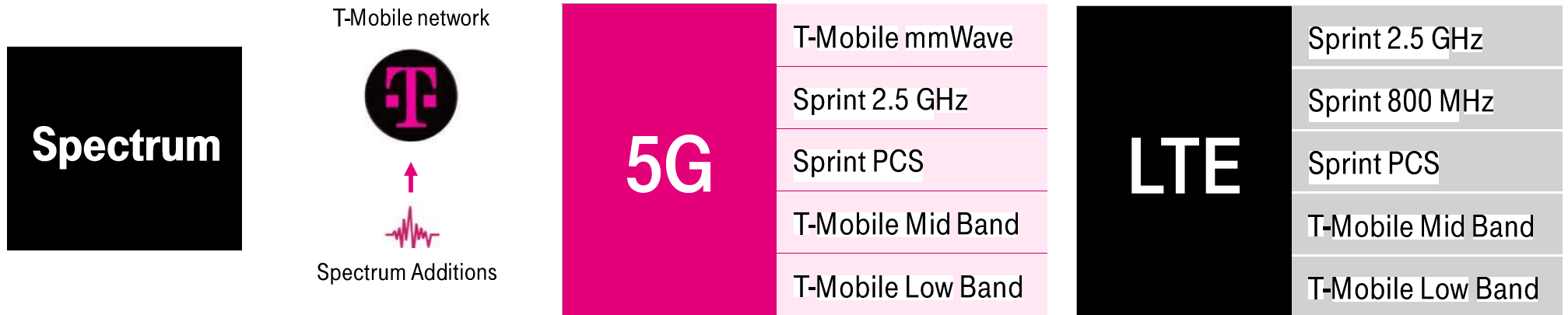
September 13, 2021

EXHIBIT A

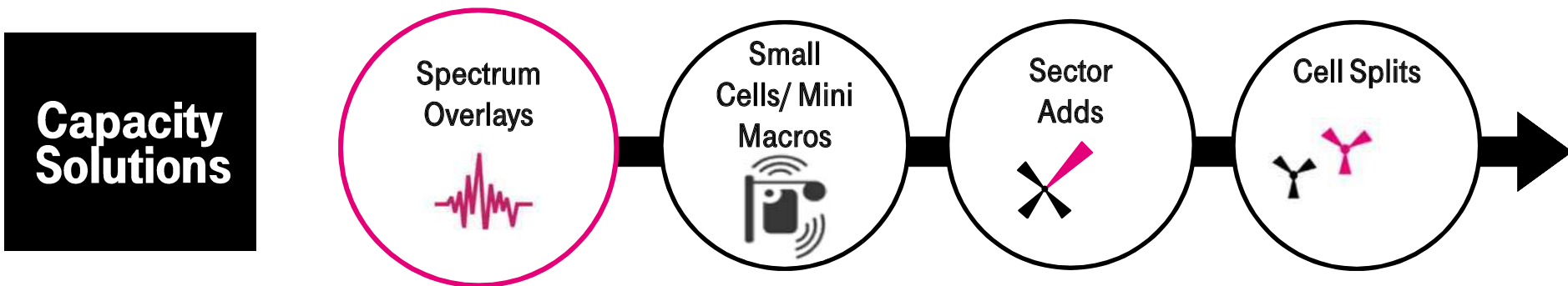
EXHIBIT B

Spectrum & Capacity Solutions

The resulting spectrum is the combination of the holdings from both companies.



Planned Capacity solutions during integration are considered in the base capacity.



Attachment B

Declaration of Neville Ray

DECLARATION OF NEVILLE R. RAY

I, Neville R. Ray, have reviewed the responses to the questions posed in my re-direct testimony and declare under penalty of perjury under the laws of the State of California that the responses to the questions posed are true and correct to the best of my knowledge, information and belief.

Executed this 22nd day of October 2021 at Bellevue, Washington.

/s/ Neville R. Ray

Neville R. Ray

Attachment C

**Email from A. Taff Rice to ALJ
Bemesderfer, ALJ Mason, S. Toller, et al. Re:
A1807011, A1807012 T-Mobile OSC Ruling:
Reply to Response to Motion to Strike**

October 14, 2021

From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Thursday, October 14, 2021 11:54 AM
To: Toller, Suzanne; Bemesderfer, Karl J. (karl.bemesderfer@cpuc.ca.gov); Mason, Robert
Cc: RKoss@AdamsBroadwell.com; ttf@cpuc.ca.gov; CMailoux@turn.org;
Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org;
Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg@cpuc.ca.gov;
Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; stacy.lee@cpuc.ca.gov;
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Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John; pj1585@att.com;
ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com;
nicole.gordon@doj.ca.gov; ajc@cpuc.ca.gov; aj1@cpuc.ca.gov; cr5@cpuc.ca.gov; cu2
@cpuc.ca.gov; wit@cpuc.ca.gov; eo2@cpuc.ca.gov; pod@cpuc.ca.gov; eg2
@cpuc.ca.gov; kjb@cpuc.ca.gov; min@cpuc.ca.gov; wow@cpuc.ca.gov; rd4
@cpuc.ca.gov; rk4@cpuc.ca.gov; sjy@cpuc.ca.gov; RCosta@turn.org; BLui@MoFo.com;
Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com;
nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David; Sundaresan, Thaila;
SFOCPUCDockets; Susan.Walters@CETfund.org; eb@calcable.org;
JKinney@CalCable.org; d@currax.com
Subject: Re: A1807011, A1807012 T-Mobile OSC Ruling: Reply to Response to Motion to Strike

[EXTERNAL]

Judge Bemesderfer and Judge Mason:

DISH respectfully requests that the Commission deny T-Mobile's request for leave to file a reply to DISH's response to T-Mobile's Motion to Strike, as the request is based on a number of false assertions and misrepresentations, including the ones identified below. DISH submits that T-Mobile has ample opportunity to respond to any issues it wishes -- including those raised by its own Motion -- in its post-hearing brief.

First, and most fundamentally, the main focus of DISH's sanction request is not T-Mobile's contractual and ethical lapse in using the September 6, 2019 model in contravention of the Protective Order. Rather, it is Mr. Gelfand's knowing misrepresentation that the model purportedly showed DISH had conversations with T-Mobile about the CDMA timeline during negotiations. As we explained in our response:

T-Mobile's attorney, Mr. Gelfand, knew with absolute certainty that the September 6, 2019 model did not reflect any discussions between DISH and T-Mobile during their prior negotiations. He knew that the business plan was provided only to T-Mobile's counsel, not T-Mobile business personnel, and only for the purpose of collaborating during the antitrust trial in New York regarding the proposed merger of T-Mobile and Sprint. (See DISH Response at pages 14-15)

Indeed, as DISH explained, the September 6, 2019 model was not about, nor did it reference, T-Mobile's CDMA transition. It was created to outline the expected path of DISH's ability to be competitive as a new entrant and facilities-based carrier. This model was based upon a series of assumptions made at that time before DISH purchased what later became the divested businesses. And T-Mobile's CDMA transition was not even one of these documented assumptions. (See DISH Response at pages 18-19)

Second, prior to the hearing, T-Mobile never specifically identified the September 6, 2019 model as an exhibit. The September model was one of many New York trial exhibits – this one from a deposition of Tom Cullen that alone totaled over 700 pages. DISH raised concerns about the “volume of the transcripts and

attachments, which number in the thousands of pages” that T-Mobile apparently intended to use during the hearing. (e-mail from A. Taff-Rice, September 16, 2021) Judge Mason agreed that “if there is a 200 page exhibit, yet only 10 pages may be used, those select pages should be identified in advance of Monday’s hearing.” (e-mail from Judge Mason, September 16, 2021). Despite Judge Mason’s directive, T-Mobile identified 63 pages of the Cullen deposition transcript and 24 related exhibits which totaled 700+ pages. T-Mobile relied on a single page.

Third, the September 6, 2019 model was not included on the spreadsheet of exhibits provided to DISH on Sunday evening, so it appears that T-Mobile must have uploaded the Cullen transcript/September model and hundreds of superfluous pages.

Fourth, DISH did indeed object when Mr. Gelfand sought to question Mr. Blum about the September 6, 2019 model at the OSC hearing.

Finally, Ms. Toller's email tellingly does not dispute that the Protective Order and an additional agreement both prohibited the use of the September 6, 2019 model in the OSC proceeding without the express consent of DISH. That has obviously not been obtained. T-Mobile had an obligation, including under a court order, to seek DISH's consent prior to attempting to use the model at the hearing and in their Motion to Strike. They failed to do that. And, the fact that the model was discussed during a confidential session does not obviate this obligation.

Thank you for your honors’ consideration of this request.

Anita

On 10/13/2021 5:53 PM, Toller, Suzanne wrote:

ALJs Bemmesderfer and Mason:

Pursuant to Rule 11.1(f), T-Mobile respectfully seeks leave to file a reply to DISH’s response to T-Mobile’s Motion to Strike. There are several issues DISH raised in response to our Motion that require a reply, including DISH’s unfounded allegation that T-Mobile improperly used DISH’s confidential business plan and its request for sanctions. Among other things, our reply will explain how an exhibit list that included the business plan was provided to Ms. Taff Rice five days before the hearing; that a copy of the business plan was provided to Ms. Taff Rice and the ALJs via a separate, secure confidential mechanism over the weekend before the hearing; that Mr. Gelfand flagged the confidentiality issue and afforded DISH an opportunity to take a position on confidentiality before he questioned Mr. Blum about the document, that DISH asserted no objection under the protective order it now relies on after the fact, and that the questioning about this document occurred in closed session. T-Mobile followed appropriate procedures to protect any confidentiality claimed by DISH.

We recognize that under the Commission Rules the reply would not be due until November 1, 2021, but we will endeavor to get it on file as quickly as possible once we have submitted our post-hearing brief this Friday. Much thanks in advance for your consideration of this request.

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
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Attachment D

**Declaration of Suzanne Toller In Support of
Post-Hearing Brief of T-Mobile USA, Inc. on
the Order to Show Cause**

October 22, 2021

**DECLARATION OF SUZANNE TOLLER IN SUPPORT OF POST-HEARING BRIEF
OF T-MOBILE USA, INC. ON THE ORDER TO SHOW CAUSE**

I, Suzanne Toller, hereby declare as follows:

1. I am a partner at Davis Wright Tremaine LLP. I serve as counsel to T-Mobile USA, Inc. (“T-Mobile”) in pending proceedings before the California Public Utilities Commission, A.18-07-011 and A.18-07-012.
2. In anticipation of the September 20, 2021 hearing (“hearing”) related to the Order to Show Cause (“OSC”), I exchanged emails with counsel for DISH Network Corp. (“DISH”), Ms. Anita Taff-Rice, as well as ALJ Bemserderfer and ALJ Mason regarding the exhibits that T-Mobile intended to use at the OSC hearing and T-Mobile’s witness list. There was also email correspondence subsequent to the hearing regarding T-Mobile’s Motion to Strike.
3. Several of these emails are cited in T-Mobile’s Post-Hearing Brief.
4. Attachment C is a true and correct copy of an email dated October 14, 2021, from Ms. Taff-Rice to ALJ Bemserderfer, ALJ Mason, and myself requesting the Commission to deny T-Mobile’s request for leave to file a reply to DISH’s Response to T-Mobile’s Motion to Strike.
5. Attachment E is a true and correct copy of an email dated September 15, 2021, that I wrote to ALJ Bemserderfer, ALJ Mason, and Ms. Taff-Rice providing T-Mobile’s exhibit list.
6. Attachment F is a true and correct copy of an email dated September 16, 2021, from Ms. Taff-Rice to ALJ Bemserderfer, ALJ Mason, and myself regarding T-Mobile’s designation of DISH’s deposition testimony and trial transcripts from the Southern District of New York (“SDNY”) antitrust trial, *New York et al. v. Deutsche Telekom AG, et al.*, No. 1:19-cv-5434 (SDNY).
7. Attachment G is a true and correct copy of an email dated September 16, 2021, from ALJ Mason to Ms. Taff-Rice, ALJ Bemserderfer, and myself directing Ms. Taff-Rice and I to meet and confer to reach a resolution on the length of T-Mobile’s exhibits related to the SDNY antitrust trial.
8. Attachment H is a true and correct copy of an email dated September 17, 2021, that I wrote to Ms. Taff-Rice specifying the page numbers and exhibits from the SDNY trial deposition testimony that T-Mobile would reference at the hearing as exhibits.
9. Attachment I is a true and correct copy of an email dated September 17, 2021, from Ms. Taff-Rice regarding T-Mobile’s specification of the page numbers and exhibits from the SDNY trial deposition testimony that would T-Mobile would reference at the hearing as exhibits.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 22, 2021.

/s/ Suzanne Toller
Suzanne Toller

Attachment E

**Email from S. Toller to ALJ Bemmesderfer,
ALJ Mason, et al. Re: A.18-07-011 OSC T-
Mobile USA, Inc. Witness List**

September 15, 2021

From: Toller, Suzanne
Sent: Wednesday, September 15, 2021 7:46 PM
To: Bemserderfer, Karl J.; Mason, Robert
Cc: England, Karin; RKoss@AdamsBroadwell.com; Foss, Travis; CMailoux@turn.org; Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk); susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John; Anita Taff-Rice; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam; Johnson, Ana Maria; Klutey, Andrew; Reed, Cameron; Ungson, Chris; Witteman, Chris; Odell, Eileen; Podolinsky, Elizabeth; Gallardo, Enrique; Donovan, James; Perez-Green, Joanna; Minkus, Michael J.; Pangilinan, Michaela; Ledesma Rodriguez, Raisa; Kaur, Ravneet; Goldberg, Sandy; Simon, Sean A.; Yun, Sindy J.; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David; Sundaresan, Thaila; SFOCPUCDockets; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff; Bernhardt, Linden (lbernhardt@cgsh.com); Gelfand, David I.; 'anita@icommlaw.com'
Subject: RE: [EXTERNAL] RE: A.18-07-011 OSC: T-Mobile USA, Inc. Witness List
Attachments: A.18-07-011 - T-Mobile Exhibit List - 9.15.21.docx

ALJs Bemserderfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, please see attached T-Mobile's document list for the September 20, 2021 OSC hearing. Out of an abundance of caution and consistent with the request of DISH's counsel, we have included in the document list exhibits and other documents (e.g. pleadings, hearing transcripts) that are in the record of A.18-07-011 which T-Mobile will potentially reference during the hearing, along with a few documents not in the record. To minimize confusion, we do not intend to mark the documents that are already in the record as new exhibits. However, we will proceed in whichever manner is most convenient to your honors.

We have endeavored to make the document list as complete as possible. However, our hearing preparations are still underway, so we may seek to add one or more exhibits. In addition, please note that a few of the new potential exhibits are very lengthy (e.g. the DISH deposition and trial transcripts). We do not plan to admit the entirety of these documents; instead, depending on the scope of the DISH witness testimony, we may mark some portions of these documents as exhibits.

Also, I have three procedural matters to raise with your honors:

1. We would appreciate the opportunity to share exhibits on the Web Ex screen so that your honors and the witnesses can more easily locate relevant information and all parties can follow along. We have co-counsel prepared to share her screen with the documents, if so permitted. We intend to share only the public version of any documents on the screen. Please let us know if you will permit exhibits to be shared on the screen.

2. It is likely that there will be discussion of some material during the hearing that is confidential to T-Mobile and/or DISH. We would appreciate clarity on how the Commission plans to handle this process. My understanding is that in other virtual hearings when confidential information has been discussed, the public Web Ex is closed and a separate

confidential Web Ex link is provided to handle the discussion of confidential matter, with only designated individuals permitted to attend. We are working on a list of those able to access the confidential portion of the hearing.

3. Will there be an opportunity for a brief test with CPUC IT staff on Friday to check Web Ex audio/video/sharing capabilities to ensure the hearing proceeds smoothly?

Best regards,
Suzanne

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
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Anchorage | Bellevue | Los Angeles | New York | Portland | **San Francisco** | Seattle | Washington, D.C.

Disclaimer: This message may contain confidential communications protected by the attorney client privilege. If you received this message in error, please delete it and notify the sender.

From: Anita Taff-Rice <anita@icommlaw.com>

Sent: Tuesday, September 14, 2021 4:53 PM

To: Toller, Suzanne <suzannetoller@dwt.com>; Bemederfer, Karl J. <karl.bemederfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>

Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachele@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judykau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Bernhardt, Linden (lbernhardt@cgsh.com) <lbernhardt@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>

Subject: Re: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

Judge Bemesderfer, Judge Mason, and Parties,

Pursuant to the ALJ Ruling, DISH is designating only one witness, Mr. Jeff Blum. He will be prepared to testify about the issues identified in the Order to Show Cause and T-Mobile's response, as well as the basis for DISH's expectation that T-Mobile committed to maintain operation of the CDMA network for at least three years.

DISH is also happy to provide paper copies of Mr. Blum's testimony from the December 2019 hearing.

Thanks, Anita

On 9/14/2021 9:28 AM, Toller, Suzanne wrote:

ALJs Bemesderfer and Mason – We will transmit Mr. Ray's testimony to you via kiteworks this morning. (Some pieces are too large to email.) Additionally we plan to deliver hard copies of the testimony to your attention to the CPUC by 3 pm today. Regards.

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>
Sent: Tuesday, September 14, 2021 8:47 AM
To: Toller, Suzanne <suzannetoller@dwt.com>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailloux@turn.org; Rachele@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@WarrenNews.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@EventDriven.com; Pau, Judy <judypau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>

SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>

Subject: RE: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

Dear Ms. Toller:

Please send me copies of the same material you are sending to Judge Mason.

Karl J. Bemesderfer
Administrative Law Judge
California Public Utilities Commission
415-703-1199

From: Toller, Suzanne <suzannetoller@dwt.com>

Sent: Monday, September 13, 2021 3:47 PM

To: Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>

Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judypau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>

Subject: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

ALJs Bemesderfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, T-Mobile plans to call one witness, Mr. Neville Ray, at the OSC hearing. Among other items, Mr. Ray will be available to answer questions about the factual

content of T-Mobile's Response to the OSC, which was filed earlier today. Counsel will be available to address any legal issues/arguments in the Response.

In addition, while Mr. Ray's pre-filed and hearing testimony from the underlying merger proceeding are in the record, if your honors need copies of those documents for reference during the hearing, please let us know and we can provide copies.

Best regards,

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: England, Karin <KarinEngland@dwt.com>

Sent: Monday, September 13, 2021 3:34 PM

To: RKoss@AdamsBroadwell.com; tff@cpuc.ca.gov; CMailoux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VincentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg@cpuc.ca.gov; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; stacy.lee@cpuc.ca.gov; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judypau@dwt.com>; lswyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; ajc@cpuc.ca.gov; aj1@cpuc.ca.gov; aku@cpuc.ca.gov; cr5@cpuc.ca.gov; cu2@cpuc.ca.gov; wit@cpuc.ca.gov; eo2@cpuc.ca.gov; pod@cpuc.ca.gov; eg2@cpuc.ca.gov; jd8@cpuc.ca.gov; j06@cpuc.ca.gov; min@cpuc.ca.gov; wow@cpuc.ca.gov; rd4@cpuc.ca.gov; rk4@cpuc.ca.gov; rim@cpuc.ca.gov; sg8@cpuc.ca.gov; svn@cpuc.ca.gov; sjy@cpuc.ca.gov; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Toller, Suzanne <suzannetoller@dwt.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; karl.bemesderfer@cpuc.ca.gov; clifford.rechtschaffen@cpuc.ca.gov

Subject: A.18-07-011 et al. Response of T-Mobile USA, Inc. to ALJ's Ruling on OSC

To All Parties on Service List No. A.18-07-011 et al.:

Attached in searchable PDF/A format is a copy of the **RESPONSE OF T-MOBILE USA, INC. TO ADMINISTRATIVE LAW JUDGE'S RULING ON ORDER TO SHOW CAUSE** that is being served by email to parties on the CPUC service list for A.18-07-011, et al. who have provided the Commission with email addresses.

If you have any problems opening the attachments, I can be reached at (415) 276-6509.

Please note that DWT does not maintain the official service lists for CPUC proceedings. If you would no longer like to receive documents regarding the docket shown above, please contact the CPUC Process Office directly via email at Process_Office@cpuc.ca.gov or by phone at 415-703-2021 to remove yourself from the official service list.

E-file confirmation No. 0000170927

Karin England | Davis Wright Tremaine LLP

Legal Secretary

505 Montgomery Street, Suite 800 | San Francisco, CA 94111

Tel: (415) 276-6509 | Fax: (415) 276-6599

Email: karinengland@dwt.com | Website: www.dwt.com

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--

iCommLaw

1547 Palos Verdes #298

Walnut Creek, CA 94597

(415) 699-7885

Attachment F

**Email from A. Taff Rice to ALJ
Bemesderfer, ALJ Mason, S. Toller, et al. Re:
A.18-07-011 OSC T-Mobile USA, Inc.
Witness List**

September 16, 2021

From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Thursday, September 16, 2021 11:56 AM
To: Toller, Suzanne; Bemederfer, Karl J.; Mason, Robert
Cc: England, Karin; RKoss@AdamsBroadwell.com; Foss, Travis; CMailoux@turn.org; Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk); susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam; Johnson, Ana Maria; Klutey, Andrew; Reed, Cameron; Ungson, Chris; Witteman, Chris; Odell, Eileen; Podolinsky, Elizabeth; Gallardo, Enrique; Donovan, James; Perez-Green, Joanna; Minkus, Michael J.; Pangilinan, Michaela; Ledesma Rodriguez, Raisa; Kaur, Ravneet; Goldberg, Sandy; Simon, Sean A.; Yun, Sindy J.; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David; Sundaresan, Thaila; SFOCPUCDockets; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff; Bernhardt, Linden (lbernhardt@cgsh.com); Gelfand, David I.
Subject: Re: [EXTERNAL] RE: A.18-07-011 OSC: T-Mobile USA, Inc. Witness List

[EXTERNAL]

Judge Bemederfer and Judge Mason,

DISH is perplexed by T-Mobile's proposal to designate as exhibits voluminous DISH deposition and trial transcripts from the New York anti-trust trial. We understand the scope of the OSC and hearing relates to whether T-Mobile made "false, misleading, or omitted statements" and whether these "false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger."

We are also concerned about the volume of the transcripts and attachments, which number in the thousands of pages. If the Commission is inclined to allow T-Mobile to use these New York trial and deposition transcripts as exhibits at the OSC hearing, DISH requests that T-Mobile identify the specific pages on which they intend to rely so that no one, including your Honors, is required to expend resources reviewing the entirety of the materials at this late date.

Anita

On 9/15/2021 4:46 PM, Toller, Suzanne wrote:

ALJs Bemederfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, please see attached T-Mobile's document list for the September 20, 2021 OSC hearing. Out of an abundance of caution and consistent with the request of DISH's counsel, we have included in the document list exhibits and other documents (e.g. pleadings, hearing transcripts) that are in the record of A.18-07-011 which T-Mobile will potentially reference

during the hearing, along with a few documents not in the record. To minimize confusion, we do not intend to mark the documents that are already in the record as new exhibits. However, we will proceed in whichever manner is most convenient to your honors.

We have endeavored to make the document list as complete as possible. However, our hearing preparations are still underway, so we may seek to add one or more exhibits. In addition, please note that a few of the new potential exhibits are very lengthy (e.g. the DISH deposition and trial transcripts). We do not plan to admit the entirety of these documents; instead, depending on the scope of the DISH witness testimony, we may mark some portions of these documents as exhibits.

Also, I have three procedural matters to raise with your honors:

1. We would appreciate the opportunity to share exhibits on the Web Ex screen so that your honors and the witnesses can more easily locate relevant information and all parties can follow along. We have co-counsel prepared to share her screen with the documents, if so permitted. We intend to share only the public version of any documents on the screen. Please let us know if you will permit exhibits to be shared on the screen.
2. It is likely that there will be discussion of some material during the hearing that is confidential to T-Mobile and/or DISH. We would appreciate clarity on how the Commission plans to handle this process. My understanding is that in other virtual hearings when confidential information has been discussed, the public Web Ex is closed and a separate confidential Web Ex link is provided to handle the discussion of confidential matter, with only designated individuals permitted to attend. We are working on a list of those able to access the confidential portion of the hearing.
3. Will there be an opportunity for a brief test with CPUC IT staff on Friday to check Web Ex audio/video/sharing capabilities to ensure the hearing proceeds smoothly?

Best regards,
Suzanne

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
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Stacy.Lee@cpuc.ca.gov; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judykau@dwt.com>; lseywyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Bernhardt, Linden (lbernhardt@cgsh.com) <lbernhardt@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>

Subject: Re: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

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DISH is also happy to provide paper copies of Mr. Blum's testimony from the December 2019 hearing.

Thanks, Anita

On 9/14/2021 9:28 AM, Toller, Suzanne wrote:

ALJs Bemserderfer and Mason – We will transmit Mr. Ray's testimony to you via kiteworks this morning. (Some pieces are too large to email.) Additionally we plan to deliver hard copies of the testimony to your attention to the CPUC by 3 pm today. Regards.

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
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Sent: Tuesday, September 14, 2021 8:47 AM
To: Toller, Suzanne <suzannetoller@dwt.com>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachele@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judykau@dwt.com>; Iselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>
Subject: RE: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

Dear Ms. Toller:

Please send me copies of the same material you are sending to Judge Mason.

Karl J. Bemesderfer
Administrative Law Judge
California Public Utilities Commission
415-703-1199

From: Toller, Suzanne <suzannetoller@dwt.com>
Sent: Monday, September 13, 2021 3:47 PM
To: Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judykau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>
Subject: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

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ALJs Bemesderfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, T-Mobile plans to call one witness, Mr. Neville Ray, at the OSC hearing. Among other items, Mr. Ray will be available to answer questions about the factual content of T-Mobile's Response to the OSC, which was filed earlier today. Counsel will be available to address any legal issues/arguments in the Response.

In addition, while Mr. Ray's pre-filed and hearing testimony from the underlying merger proceeding are in the record, if your honors need copies of those documents for reference during the hearing, please let us know and we can provide copies.

Best regards,

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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Sent: Monday, September 13, 2021 3:34 PM
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Rachelle@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net;
VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg@cpuc.ca.gov; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com;
stacy.lee@cpuc.ca.gov; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com;
Pau, Judy <judypau@dwt.com>; lswyn@econtech.com; ASethian@QuadGroup.com;
stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com;
Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org;
jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com;
nicole.gordon@doj.ca.gov; ajc@cpuc.ca.gov; aj1@cpuc.ca.gov; aku@cpuc.ca.gov;
cr5@cpuc.ca.gov; cu2@cpuc.ca.gov; wit@cpuc.ca.gov; eo2@cpuc.ca.gov;
pod@cpuc.ca.gov; eg2@cpuc.ca.gov; jd8@cpuc.ca.gov; i06@cpuc.ca.gov;
min@cpuc.ca.gov; wow@cpuc.ca.gov; rd4@cpuc.ca.gov; rk4@cpuc.ca.gov;
rim@cpuc.ca.gov; sg8@cpuc.ca.gov; svn@cpuc.ca.gov; sjy@cpuc.ca.gov;
RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com;
Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang,
David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>;
SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Toller, Suzanne
<suzannetoller@dwt.com>; Susan.Walters@CETfund.org; eb@calcable.org;
JKinney@CalCable.org; karl.bemesderfer@cpuc.ca.gov;
clifford.rechtschaffen@cpuc.ca.gov
Subject: A.18-07-011 et al. Response of T-Mobile USA, Inc. to ALJ's Ruling on OSC

To All Parties on Service List No. A.18-07-011 et al.:

Attached in searchable PDF/A format is a copy of the **RESPONSE OF T-MOBILE USA, INC. TO ADMINISTRATIVE LAW JUDGE'S RULING ON ORDER TO SHOW CAUSE** that is being served by email to parties on the CPUC service list for A.18-07-011, et al. who have provided the Commission with email addresses.

If you have any problems opening the attachments, I can be reached at (415) 276-6509.

Please note that DWT does not maintain the official service lists for CPUC proceedings. If you would no longer like to receive documents regarding the docket shown above, please contact the CPUC Process Office directly via email at

Process_Office@cpuc.ca.gov or by phone at 415-703-2021 to remove yourself from the official service list.

E-file confirmation No. 0000170927

Karin England | Davis Wright Tremaine LLP
Legal Secretary
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
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(415) 699-7885

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1547 Palos Verdes #298
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Attachment G

**Email from ALJ Mason to A. Taff Rice, S.
Toller, et al. Re: A.18-07-011 OSC T-Mobile
Exhibit List**

September 16, 2021

From: Mason, Robert <robert.mason@cpuc.ca.gov>
Sent: Thursday, September 16, 2021 5:34 PM
To: Anita Taff-Rice; Toller, Suzanne; Bemederfer, Karl J.; Donovan, James
Cc: England, Karin; RKoss@AdamsBroadwell.com; Foss, Travis; CMailoux@turn.org; Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk); susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam; Johnson, Ana Maria; Klutey, Andrew; Reed, Cameron; Ungson, Chris; Witteman, Chris; Odell, Eileen; Podolinsky, Elizabeth; Gallardo, Enrique; Donovan, James; Perez-Green, Joanna; Minkus, Michael J.; Pangilinan, Michaela; Ledesma Rodriguez, Raisa; Kaur, Ravneet; Goldberg, Sandy; Simon, Sean A.; Yun, Sindy J.; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David; Sundaresan, Thaila; SFOCPUCDockets; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff; Bernhardt, Linden (lbernhardt@cgsh.com); Gelfand, David I.
Subject: RE: [EXTERNAL] Re: A.18-07-011 OSC: T-Mobile Exhibit List

[EXTERNAL]

Ms. Taff-Rice and Ms. Toller,

1. Please meet and confer either today or tomorrow and try and reach a resolution as to the extent of a potentially lengthy exhibit each side plans to use on Monday. As both sides have identified the subject areas that their respective witnesses will cover in direct testimony, this should not be a difficult task to accomplish. I agree that if there is a 200 page exhibit, yet only 10 pages may be used, those select pages should be identified in advance of Monday's hearing.
2. Mr. James Donovan of the Administrative Law Judge Division's Technical Support will be reaching out to each of you regarding the exhibit list, use of exhibits, and preserving bandwidth.

Robert M. Mason III
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Thursday, September 16, 2021 12:28 PM
To: Toller, Suzanne <suzannetoller@dwt.com>; Bemederfer, Karl J. <karl.bemederfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org;

Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judypau@dwt.com>; Iselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Bernhardt, Linden (lbernhardt@cgsh.com) <lbernhardt@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>

Subject: [EXTERNAL] Re: A.18-07-011 OSC: T-Mobile Exhibit List

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Judge Mason and Judge Bemederfer,

Respectfully, DISH submits that the issue of its participation in the OSC hearing as a real party in interest has already been settled. Therefore, we believe that the parties should focus on preparing for an efficient hearing that addresses the issues raised in the OSC, rather than once again trying to prevent DISH from providing information relevant to the scope of the hearing.

T-Mobile's position puts your Honors and all of the parties at a disadvantage. If thousands of pages of transcripts and attachments that are not already in the Commission record are offered as exhibits, your Honors and the parties will need to obtain copies and review them in advance of the OSC or risk being unable to respond meaningfully during the hearing time provided. We also note that many of these materials are highly confidential, which creates a logistical problem for the efficiency of the hearing.

If T-Mobile wishes to utilize excerpts of transcripts from the New York anti-trust case, DISH simply asks that T-Mobile identify the relevant page numbers so that your Honors and the parties may prepare without the need to review the entirety of the voluminous materials.

DISH will be providing its exhibit list later this afternoon as requested.

Anita

On 9/16/2021 11:22 AM, Toller, Suzanne wrote:

Judge Mason and Judge Bemederfer,

We agree with Ms. Taff Rice's description of the narrow scope of this proceeding, and that narrow scope is why T-Mobile objected to DISH presenting a witness at the hearing. Specifically we do not believe that DISH has any information to provide which is

relevant to the determination of whether T-Mobile made false or misleading statements to the Commission under Rule 1.1. We maintain that objection.

Since however DISH has been permitted to present a witness, we must have available to us prior statements that DISH made in connection with the merger so that we can excerpt portions of those statements as needed during the cross examination of DISH's witness, Jeff Blum. As conveyed to your honors yesterday, it is not our intent to admit the entirety of the transcripts or for your honors to review them in their entirety. We simply need them available in the event we need to discuss select excerpts, depending on the scope of Mr. Blum's testimony. If DISH will withdraw their witness, we will withdraw the exhibits.

Best Regards,

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Thursday, September 16, 2021 8:56 AM
To: Toller, Suzanne <suzannetoller@dwt.com>; Bemederfer, Karl J. <karl.bemederfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachele@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judydypau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pi1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Bernhardt, Linden (<lbernhardt@cgsh.com>) <lbernhardt@cgsh.com>;

[EXTERNAL]

Judge Bemserfer and Judge Mason,

DISH is perplexed by T-Mobile's proposal to designate as exhibits voluminous DISH deposition and trial transcripts from the New York anti-trust trial. We understand the scope of the OSC and hearing relates to whether T-Mobile made "false, misleading, or omitted statements" and whether these "false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger."

We are also concerned about the volume of the transcripts and attachments, which number in the thousands of pages. If the Commission is inclined to allow T-Mobile to use these New York trial and deposition transcripts as exhibits at the OSC hearing, DISH requests that T-Mobile identify the specific pages on which they intend to rely so that no one, including your Honors, is required to expend resources reviewing the entirety of the materials at this late date.

Anita

On 9/15/2021 4:46 PM, Toller, Suzanne wrote:

ALJs Bemserfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, please see attached T-Mobile's document list for the September 20, 2021 OSC hearing. Out of an abundance of caution and consistent with the request of DISH's counsel, we have included in the document list exhibits and other documents (e.g. pleadings, hearing transcripts) that are in the record of A.18-07-011 which T-Mobile will potentially reference during the hearing, along with a few documents not in the record. To minimize confusion, we do not intend to mark the documents that are already in the record as new exhibits. However, we will proceed in whichever manner is most convenient to your honors.

We have endeavored to make the document list as complete as possible. However, our hearing preparations are still underway, so we may seek to add one or more exhibits. In addition, please note that a few of the new potential exhibits are very lengthy (e.g. the DISH deposition and trial transcripts). We do not plan to admit the entirety of these documents; instead, depending on the scope of the DISH witness testimony, we may mark some portions of these documents as exhibits.

Also, I have three procedural matters to raise with your honors:

1. We would appreciate the opportunity to share exhibits on the Web Ex screen so that your honors and the witnesses can more easily locate relevant information and all parties can follow along. We have co-counsel prepared to share her screen with the documents, if so permitted. We intend to share only the public version of any documents on the screen. Please let us know if you will permit exhibits to be shared on the screen.

2. It is likely that there will be discussion of some material during the hearing that is confidential to T-Mobile and/or DISH. We would appreciate clarity on how the Commission plans to handle this process. My understanding is that in other virtual hearings when confidential information has been discussed, the public Web Ex is closed and a separate confidential Web Ex link is provided to handle the discussion of confidential matter, with only designated individuals permitted to attend. We are working on a list of those able to access the confidential portion of the hearing.

3. Will there be an opportunity for a brief test with CPUC IT staff on Friday to check Web Ex audio/video/sharing capabilities to ensure the hearing proceeds smoothly?

Best regards,
Suzanne

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
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Sent: Tuesday, September 14, 2021 4:53 PM
To: Toller, Suzanne <suzannetoller@dwt.com>; Bemederfer, Karl J. <karl.bemederfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachelle@ChongLaw.net; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judypau@dwt.com>; lselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa

Raisa.Ledesma@cpuc.ca.gov; Kaur, Ravneet Ravneet.Kaur@cpuc.ca.gov; Goldberg, Sandy Sandy.Goldberg@cpuc.ca.gov; Simon, Sean A. sean.simon@cpuc.ca.gov; Yun, Sindy J. sindy.yun@cpuc.ca.gov; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David DavidHuang@dwt.com; Sundaresan, Thaila ThailaSundaresan@dwt.com; SFOCPUCDockets SFOCPUCDockets@DWT.com; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff Cliff.Rechtschaffen@cpuc.ca.gov; Bernhardt, Linden (lbernhardt@cgsh.com) lbernhardt@cgsh.com; Gelfand, David I. dgelfand@cgsh.com

Subject: Re: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

Judge Bemesderfer, Judge Mason, and Parties,

Pursuant to the ALJ Ruling, DISH is designating only one witness, Mr. Jeff Blum. He will be prepared to testify about the issues identified in the Order to Show Cause and T-Mobile's response, as well as the basis for DISH's expectation that T-Mobile committed to maintain operation of the CDMA network for at least three years.

DISH is also happy to provide paper copies of Mr. Blum's testimony from the December 2019 hearing.

Thanks, Anita

On 9/14/2021 9:28 AM, Toller, Suzanne wrote:

ALJs Bemesderfer and Mason – We will transmit Mr. Ray's testimony to you via kiteworks this morning. (Some pieces are too large to email.) Additionally we plan to deliver hard copies of the testimony to your attention to the CPUC by 3 pm today. Regards.

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: Bemesderfer, Karl J. karl.bemesderfer@cpuc.ca.gov
Sent: Tuesday, September 14, 2021 8:47 AM
To: Toller, Suzanne suzannetoller@dwt.com; Mason, Robert

[<robert.mason@cpuc.ca.gov>](mailto:robert.mason@cpuc.ca.gov)

Cc: England, Karin [<KarinEngland@dwt.com>](mailto:KarinEngland@dwt.com);
RKoss@AdamsBroadwell.com; Foss, Travis [<travis.foss@cpuc.ca.gov>](mailto:travis.foss@cpuc.ca.gov);
CMailoux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com;
LMB@wblaw.net; VinhcentL@Greenlining.org;
Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg
[<AppRhg@cpuc.ca.gov>](mailto:AppRhg@cpuc.ca.gov); Lyndall.Nipps@dish.com;
mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk)
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Jeffrey.Blum@dish.com; Nelson, John [<JohnNelson@dwt.com>](mailto:JohnNelson@dwt.com);
pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com;
SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam
[<adam.clark@cpuc.ca.gov>](mailto:adam.clark@cpuc.ca.gov); Johnson, Ana Maria
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[<James.Donovan@cpuc.ca.gov>](mailto:James.Donovan@cpuc.ca.gov); Perez-Green, Joanna [<Joanna.Perez-Green@cpuc.ca.gov>](mailto:Joanna.Perez-Green@cpuc.ca.gov); Minkus, Michael J.
[<Michael.Minkus@cpuc.ca.gov>](mailto:Michael.Minkus@cpuc.ca.gov); Pangilinan, Michaela
[<michaela.pangilinan@cpuc.ca.gov>](mailto:michaela.pangilinan@cpuc.ca.gov); Ledesma Rodriguez, Raisa
[<Raisa.Ledesma@cpuc.ca.gov>](mailto:Raisa.Ledesma@cpuc.ca.gov); Kaur, Ravneet
[<Ravneet.Kaur@cpuc.ca.gov>](mailto:Ravneet.Kaur@cpuc.ca.gov); Mason, Robert
[<robert.mason@cpuc.ca.gov>](mailto:robert.mason@cpuc.ca.gov); Goldberg, Sandy
[<Sandy.Goldberg@cpuc.ca.gov>](mailto:Sandy.Goldberg@cpuc.ca.gov); Simon, Sean A.
[<sean.simon@cpuc.ca.gov>](mailto:sean.simon@cpuc.ca.gov); Yun, Sindy J. [<sindy.yun@cpuc.ca.gov>](mailto:sindy.yun@cpuc.ca.gov);
RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com;
Marg@Tobiaslo.com; Andy.Umana@att.com;
nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David
[<DavidHuang@dwt.com>](mailto:DavidHuang@dwt.com); Sundaresan, Thaila
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eb@calcable.org; JKinney@CalCable.org; Rechtschaffen, Cliff
[<Cliff.Rechtschaffen@cpuc.ca.gov>](mailto:Cliff.Rechtschaffen@cpuc.ca.gov)

Subject: RE: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

[EXTERNAL]

Dear Ms. Toller:

Please send me copies of the same material you are sending to Judge Mason.

Karl J. Bemserfer
Administrative Law Judge

From: Toller, Suzanne <suzannetoller@dwt.com>
Sent: Monday, September 13, 2021 3:47 PM
To: Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>
Cc: England, Karin <KarinEngland@dwt.com>; RKoss@AdamsBroadwell.com; Foss, Travis <travis.foss@cpuc.ca.gov>; CMailoux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com; LMB@wblaw.net; VinhcentL@Greenlining.org; Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com; AppRhg <AppRhg@cpuc.ca.gov>; Lyndall.Nipps@dish.com; mark.dinunzio@cox.com; Lee, Stacy (Judicial Clerk) <Stacy.Lee@cpuc.ca.gov>; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy <judypau@dwt.com>; Iselwyn@econtech.com; ASethian@QuadGroup.com; stephen.h.kukta@sprint.com; Hadass.Kogan@Dish.com; Jeffrey.Blum@dish.com; Nelson, John <JohnNelson@dwt.com>; pj1585@att.com; ASalas@turn.org; jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com; nicole.gordon@doj.ca.gov; Clark, Adam <adam.clark@cpuc.ca.gov>; Johnson, Ana Maria <anamaria.johnson@cpuc.ca.gov>; Klutey, Andrew <Andrew.Klutey@cpuc.ca.gov>; Reed, Cameron <Cameron.Reed@cpuc.ca.gov>; Ungson, Chris <chris.ungson@cpuc.ca.gov>; Witteman, Chris <Chris.Witteman@cpuc.ca.gov>; Odell, Eileen <Eileen.Odell@cpuc.ca.gov>; Podolinsky, Elizabeth <elizabeth.podolinsky@cpuc.ca.gov>; Gallardo, Enrique <Enrique.Gallardo@cpuc.ca.gov>; Donovan, James <James.Donovan@cpuc.ca.gov>; Perez-Green, Joanna <Joanna.Perez-Green@cpuc.ca.gov>; Minkus, Michael J. <Michael.Minkus@cpuc.ca.gov>; Pangilinan, Michaela <michaela.pangilinan@cpuc.ca.gov>; Ledesma Rodriguez, Raisa <Raisa.Ledesma@cpuc.ca.gov>; Kaur, Ravneet <Ravneet.Kaur@cpuc.ca.gov>; Mason, Robert <robert.mason@cpuc.ca.gov>; Goldberg, Sandy <Sandy.Goldberg@cpuc.ca.gov>; Simon, Sean A. <sean.simon@cpuc.ca.gov>; Yun, Sindy J. <sindy.yun@cpuc.ca.gov>; RCosta@turn.org; BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com; Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila <ThailaSundaresan@dwt.com>; SFOCPUCDockets <SFOCPUCDockets@DWT.com>; Susan.Walters@CETfund.org; eb@calcable.org; JKinney@CalCable.org; Bemesderfer, Karl J. <karl.bemesderfer@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>
Subject: [EXTERNAL] RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

ALJs Bemederfer and Mason:

Pursuant to ALJ Mason's September 2, 2021 Ruling, T-Mobile plans to call one witness, Mr. Neville Ray, at the OSC hearing. Among other items, Mr. Ray will be available to answer questions about the factual content of T-Mobile's Response to the OSC, which was filed earlier today. Counsel will be available to address any legal issues/arguments in the Response.

In addition, while Mr. Ray's pre-filed and hearing testimony from the underlying merger proceeding are in the record, if your honors need copies of those documents for reference during the hearing, please let us know and we can provide copies.

Best regards,

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: England, Karin <KarinEngland@dwt.com>
Sent: Monday, September 13, 2021 3:34 PM
To: RKoss@AdamsBroadwell.com; ttf@cpuc.ca.gov;
CMailloux@turn.org; Rachelle@ChongLaw.net; Anita@iCommlaw.com;
LMB@wblaw.net; VinhcentL@Greenlining.org;
Kristin.Jacobson@DLAPiper.com; ABender@Warren-News.com;
AppRhg@cpuc.ca.gov; Lyndall.Nipps@dish.com;
mark.dinunzio@cox.com; stacy.lee@cpuc.ca.gov; susan.lipper@t-mobile.com; EdnEditorial@Event-Driven.com; Pau, Judy
<judydypau@dwt.com>; lswyn@econtech.com;
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jesus.g.roman@verizon.com; SteveBlum@TellusVenture.com;
nicole.gordon@doj.ca.gov; ajc@cpuc.ca.gov; aj1@cpuc.ca.gov;
aku@cpuc.ca.gov; cr5@cpuc.ca.gov; cu2@cpuc.ca.gov;
wit@cpuc.ca.gov; eo2@cpuc.ca.gov; pod@cpuc.ca.gov;
eg2@cpuc.ca.gov; jd8@cpuc.ca.gov; j06@cpuc.ca.gov;
min@cpuc.ca.gov; wow@cpuc.ca.gov; rd4@cpuc.ca.gov;

rk4@cpuc.ca.gov; rim@cpuc.ca.gov; sg8@cpuc.ca.gov;
svn@cpuc.ca.gov; sjy@cpuc.ca.gov; RCosta@turn.org;
BLui@MoFo.com; Jane.Whang@Verizon.com; Marg@Tobiaslo.com;
Andy.Umana@att.com; nelsonya.causby@att.com; Tracy@media-alliance.org; Huang, David <DavidHuang@dwt.com>; Sundaresan, Thaila
<ThailaSundaresan@dwt.com>; SFOCPUCDockets
<SFOCPUCDockets@DWT.com>; Toller, Suzanne
<suzannetoller@dwt.com>; Susan.Walters@CETfund.org;
eb@calcable.org; JKinney@CalCable.org;
karl.bemesderfer@cpuc.ca.gov; clifford.rechtschaffen@cpuc.ca.gov
Subject: A.18-07-011 et al. Response of T-Mobile USA, Inc. to ALJ's
Ruling on OSC

To All Parties on Service List No. A.18-07-011 et al.:

Attached in searchable PDF/A format is a copy of the **RESPONSE OF T-MOBILE USA, INC. TO ADMINISTRATIVE LAW JUDGE'S RULING ON ORDER TO SHOW CAUSE** that is being served by email to parties on the CPUC service list for A.18-07-011, et al. who have provided the Commission with email addresses.

If you have any problems opening the attachments, I can be reached at (415) 276-6509.

Please note that DWT does not maintain the official service lists for CPUC proceedings. If you would no longer like to receive documents regarding the docket shown above, please contact the CPUC Process Office directly via email at Process_Office@cpuc.ca.gov or by phone at 415-703-2021 to remove yourself from the official service list.

E-file confirmation No. 0000170927

Karin England | Davis Wright Tremaine LLP
Legal Secretary
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6509 | Fax: (415) 276-6599
Email: karinengland@dwt.com | Website: www.dwt.com

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--

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Walnut Creek, CA 94597

(415) 699-7885

Attachment H

Email from S. Toller to A. Taff Rice, et al.

Re: Follow up to Meet and Confer

September 17, 2021

From: Toller, Suzanne
Sent: Friday, September 17, 2021 5:29 PM
To: Anita Taff-Rice
Cc: Culley, Daniel P.; Sundaresan, Thaila
Subject: RE: Follow up to Meet and Confer

Anita,

Per your request we have done our best to pare down the SDNY trial deposition testimony. Seen below are more specific page numbers for the deposition testimony. Note that the page numbers below also include the exhibits referenced in those pages:

Cullen deposition - pages 168–231 and referenced exhibits

Blum deposition – pages 87–120, 131, 137–153, 156, 255–260 and referenced exhibits

Ergen deposition – pages 19–45, 80–86, 105–121, 157–59, 180–86, 195–96, 197–203, 204–228, 255–281 and referenced exhibits

Ergen’s in camera testimony – pages 1650–54, 1664–68 and referenced exhibits

As discussed, we reserve the right to reference other portions of the trial transcript and trial deposition testimony for impeachment purposes, if needed.

Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Friday, September 17, 2021 2:17 PM
To: Sundaresan, Thaila <ThailaSundaresan@dwt.com>; Toller, Suzanne <suzannetoller@dwt.com>; Culley, Daniel P. <dculley@cgsh.com>
Subject: Follow up to Meet and Confer

[EXTERNAL]

All,

Just following up on our meet and confer this morning. Have you been able to identify specific pages of the deposition transcripts and Ergen in camera transcript that T-Mobile wants to use as exhibits during the OSC hearing on Monday?

Anita

On 9/17/2021 10:00 AM, Sundaresan, Thaila wrote:

Sundaresan, Thaila has invited you to Meet and confer

Title: Meet and confer

Location: <https://dwt.zoom.us/j/88026518811?pwd=SHlaS0duYmhmQ29STk5laml4UFZ4Zz09>

When: Friday, September 17, 2021 10:30 AM – 11:30 AM

Organizer: Sundaresan, Thaila <ThailaSundaresan@dwt.com>

[Davis Wright Tremaine] <<https://www.dwt.com/>> Hi there, Thaila Sundaresan is inviting you to a scheduled Zoom meeting. Join Zoom Meeting <<https://dwt.zoom.us/j/88026518811?pwd=SHlaS0duYmhmQ29STk5laml4UFZ4Zz09>>
Mobile one-tap: US: +16699006833,,88026518811#,,,1#,,034628# or +13462487799,,88026518811#,,,1#,,034628# Meeting URL: <https://dwt.zoom.us/j/88026518811?pwd=SHlaS0duYmhmQ29STk5laml4UFZ4Zz09> Meeting ID: 880 2651 8811 Password: 034628 Join by Telephone For higher quality, dial a number based on your current location. Dial: US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or 888 788 0099 (Toll Free) or 877 853 5247 (Toll Free) Meeting ID: 880 2651 8811 Password: 034628 International numbers <<https://dwt.zoom.us/u/knk8dUvze>> Join from an H.323/SIP room system H.323: [162.255.37.11](tel:162.255.37.11) (US West) [162.255.36.11](tel:162.255.36.11) (US East) [103.122.166.55](tel:103.122.166.55) (Australia Sydney) [103.122.167.55](tel:103.122.167.55) (Australia Melbourne) [69.174.57.160](tel:69.174.57.160) (Canada Toronto) [65.39.152.160](tel:65.39.152.160) (Canada Vancouver) Meeting ID: 880 2651 8811 Password: 034628 SIP: 88026518811@zoomcrc.com <<mailto:88026518811@zoomcrc.com>> Password: 034628 [DWT.COM](https://www.dwt.com) <<https://www.dwt.com>>

Attachments:

Comment:

Toller, Suzanne <suzannetoller@dwt.com>

Attendees: Anita Taff-Rice <anita@icommlaw.com>

Culley, Daniel P. <dculley@cgsh.com>

Related Link:

--
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1547 Palos Verdes #298
Walnut Creek, CA 94597
(415) 699-7885

Attachment I

**Email from A. Taff Rice to S. Toller, et al.
Re: Follow up to Meet and Confer**

September 17, 2021

From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Friday, September 17, 2021 6:10 PM
To: Toller, Suzanne
Cc: Culley, Daniel P.; Sundaresan, Thaila
Subject: Re: Follow up to Meet and Confer

[EXTERNAL]

Suzanne,

At this time we will not object to the designated pages based on volume alone, although DISH reserves its right to raise objections on any other basis. DISH notes, however, that we have limited hearing time and the number of designated transcript pages, coupled with the overall number of exhibits, remains a concern.

Can you please give me an estimate of the amount of time you anticipate for Mr. Ray's direct?

Anita

On 9/17/2021 2:28 PM, Toller, Suzanne wrote:

Anita,

Per your request we have done our best to pare down the SDNY trial deposition testimony. Seen below are more specific page numbers for the deposition testimony. Note that the page numbers below also include the exhibits referenced in those pages:

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Blum deposition – pages 87–120, 131, 137–153, 156, 255–260 and referenced exhibits

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Suzanne Toller | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6536 | Fax: (415) 276-6599 | Mobile: (415) 806-6536
Email: suzannetoller@dwt.com | Website: www.dwt.com

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From: Anita Taff-Rice <anita@icommlaw.com>
Sent: Friday, September 17, 2021 2:17 PM
To: Sundaresan, Thaila <ThailaSundaresan@dwt.com>; Toller, Suzanne <suzannetoller@dwt.com>;
Culley, Daniel P. <dculley@cgsh.com>
Subject: Follow up to Meet and Confer

[EXTERNAL]

All,

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Anita

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Sundaresan, Thaila has invited you to Meet and confer

Title: Meet and confer
Location: <https://dwt.zoom.us/j/88026518811?pwd=SHlaS0duYmhmQ29STk5laml4UFZ4Zz09>
When: Friday, September 17, 2021 10:30 AM – 11:30 AM
Organizer: Sundaresan, Thaila <ThailaSundaresan@dwt.com>
Description: [Davis Wright Tremaine] <<https://www.dwt.com/>> Hi there, Thaila Sundaresan is inviting you to a scheduled Zoom meeting. Join Zoom Meeting <<https://dwt.zoom.us/j/88026518811?pwd=SHlaS0duYmhmQ29STk5laml4UFZ4Zz09>>
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