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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).	Application 18-07-011
And Related Matter	Application 18-07-012

DISH NETWORK CORPORATION REPLY

TO POST-HEARING BRIEF OF T-MOBILE USA, INC.

(PUBLIC VERSION)

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Pursuant to Rule 13.12 of the Commission's Rules of Practice and Procedure and the ruling of Administrative Law Judge Bemesderfer, DISH Network Corporation ("DISH") submits this Reply to the Post-Hearing Brief of T-Mobile USA, Inc. ("T-Mobile") ("T-Mobile Opening Brief"). T-Mobile has failed to meet its burden to prove that it did not violate Rule 1.1 by making "false, misleading, or omitted statements" related to, among other things, its planned legacy Sprint CDMA Network (the "CDMA network") migration period; its assurances that no former Sprint customer would have a degraded experience during the CDMA migration period; and the spectrum it planned to use for 5G.[1]

In its Opening Brief, T-Mobile yet again attempts to rewrite the history of its commitments to the Commission in an effort to avoid liability for its misrepresentations and for any harms resulting from its decision to prematurely disconnect customers that utilize its CDMA network. Critically, these harms will befall legacy Sprint customers—including Boost customers and, as T-Mobile admitted during the OSC hearing, even its own customers. T-Mobile's decision to continue with the early shutdown contradicts the company's previous assurances, and the Commission's directive that "[t]he legacy Sprint and T-Mobile customer experience shall not be degraded during the customer migration period (2020-2023)."[2] As Administrative Law Judge Bemesderfer noted, "[w]hatever one's definition of service degradation may be, a complete loss of service qualifies."[3]

The extent of T-Mobile's misstatements, omissions, and efforts to mislead the Commission warrant sanctions, including the immediate issuance of an order directing T-Mobile

[1] Assigned Commissioner and Assigned Administrative Law Judge Ruling Directing T-Mobile USA, Inc. to Show Cause Why It Should Not Be Sanctioned By The Commission for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, at 1, 3-5 (Aug. 13, 2021) ("OSC").
[2] D.20-04-008, Ordering Paragraph 6.
[3] RT 5:4-6 (9/20/21 OSC Hearing).

to comply with Ordering Paragraph 6 of Decision No. 20-04-008 to ensure that no legacy Sprint customer suffers service degradation or outages during the three-year customer migration period (2020-2023).

I. LEGAL STANDARD FOR RULE 1.1 AND ORDERS TO SHOW CAUSE

T-Mobile bears the burden of demonstrating that it has not committed a Rule 1.1 violation. It has failed to do so. The Commission should confirm the conclusions in the OSC and impose sanctions on T-Mobile for its multiple Rule 1.1 violations.

A. Rule 1.1 Violations Include Omissions as Well as False Statements and Do Not Require an Intent to Deceive

Rule 1.1 of the Commission's Rules of Practice and Procedure states (emphases added):

> Any person who signs a pleading or brief, enters an appearance 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 or its Administrative Law Judges**; and **never to mislead the Commission or its staff by an artifice or false statement of fact or law**.[4]

The Commission has found violations of Rule 1.1 because of "lack of candor, withholding of information, or failure to correct information or respond fully to data requests."[5] The Commission has also explicitly held that "there is no 'intent' element to a Rule 1.1 violation, either implicitly or explicitly."[6] Irrespective of 'intent,' a party's failure to correct erroneous information provided to the Commission constitutes a "false statement of fact" sufficient to violate Rule 1.1.[7]

[4] Rule 1.1 of the Commission's Rules of Practice and Procedure (emphasis added).
[5] *See, e.g.*, D.13-12-053 at 21 (mimeo); D.01-08-109 at 18 (mimeo).
[6] D.13-12-053 at 22-23; *see also* D.15-12-016 at 27 (mimeo).
[7] *See* D.13-12-053 at 15.

For example, in D.13-12-053, the Commission fined PG&E $14.35 million after holding that PG&E committed a Rule 1.1 violation by failing to notify the Commission of a material error in its inaccurate description of the maximum safe operating pressure of a pipeline.[8] The Commission noted that it had relied upon the erroneous information provided by PG&E to set a safety standard in a prior decision (D.11-12-048).[9] When PG&E submitted an errata almost two years later,[10] the Commission held that PG&E "was not forthright" and faulted PG&E for failing to disclose when or how PG&E became aware of the errors.[11]

Similarly, the Commission has found that the "omission of material information is unreasonable and violates Rule 1.1."[12] In D.19-12-041, the Commission held that "an omission to provide correct information can constitute a Rule 1 violation if the consequence is to mislead the Commission about a matter which is material to a proceeding."[13] Moreover, it is up to the Commission to determine the value of information in a proceeding, not the regulated entity.[14]

In a recent order, the Commission also confirmed that incomplete disclosure may constitute a Rule 1.1 violation. In D.15-04-008, Cal American Water ("Cal-Am") was asked to disclose projects that had been authorized but had not yet been built.[15] Cal-Am identified four such projects in its rate-case papers, but discovery from a party in the proceeding later revealed that the actual number was 62.[16] Cal-Am argued there was no Rule 1.1 violation because it believed the Commission was interested only in projects that would be built in 2013, not planned

[8] D.13-12-052, at 2, 30.
[9] D.13-12-053 at 9.
[10] D.13-12-053 at 9-10 (PG&E submitted the erroneous safe operating pressure in October of 2011 and discovered its error in October of 2012, but did not inform the Commission or parties until July 3, 2013).
[11] D.13-12-053 at 10.
[12] D.19-12-041 at 32.
[13] D.19-12-041 at 36-37. Rule 1.1 is the current version of what previously was known as Rule 1.
[14] *Id*.
[15] D.15-04-008 at 5.
[16] D.15-04-008 at 3.

projects whose schedules had changed because they were running behind.[17] Cal-Am further argued that it had not concealed the existence of the 62 projects because its Strategic Capital Expenditure Plans included the information.[18] The Commission disagreed and found this amounted to a Rule 1.1 violation, holding "Cal-Am has no basis to presume how Commission staff may or may not apprehend, retain, relay, or crosscheck information."[19]

Similarly, in D.19-12-041, a group of small ILECs were found to have violated Rule 1.1 because they failed to prominently disclose certain stock purchase information that was contained in two separate footnotes. The Commission, however, found this disclosure insufficient to overcome a Rule 1.1 violation.[20] It rejected the ILECs' argument that two footnotes were either sufficient disclosure or constructive notice because that argument "attempt[ed] to unreasonably shift the burden of uncovering the data to the Commission."[21]

B. T-Mobile Bears the Burden to Show It Did Not Commit a Rule 1.1 Violation

The Commission set forth allegations and its *prima facie* case regarding T-Mobile's violations of Rule 1.1 in the OSC, citing specific record evidence demonstrating that T-Mobile made "false statements, omissions, and/or misleading assurances" regarding five discrete topics. The OSC further concluded that "it appears that these false statements, omissions and/or misleading assurances and the related time references were intended to induce the Commission to approve the merger."[22]

[17] D.15-04-008 at 7.
[18] D.15-04-008 at 8.
[19] D.15-04-008 at 9.
[20] D.19-12-041 at 32.
[21] D.19-12-041 at 37.
[22] OSC at 7.

After the Commission issues an OSC, the burden of proof is on the respondent to show, by a preponderance of the evidence,[23] "that the violation based on the record evidence is invalid."[24] Preponderance of the evidence is defined in terms of probability of truth, *e.g.*, such evidence, when "weighed with that opposed to it . . . has more convincing force and the greater probability of truth."[25] The preponderance of the evidence standard simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. The Commission is permitted to draw reasonable inferences from the full record, as well as to determine the credibility of witnesses and the weight to be given their testimony, to determine whether the party subject to the OSC made the alleged Rule 1.1 violations. [26]

Despite the serious Rule 1.1 matters set forth in the OSC, and despite bearing the burden to disprove them, T-Mobile's sole OSC hearing witness, Mr. Ray, testified that "[I]'m not sure I know what Rule 1.1 is."[27] Perhaps even more astonishingly, Mr. Ray testified that he had not reviewed T-Mobile's OSC Response to which he was supposed to be able to testify to at the hearing:[28]

> ALJ MASON:So you did not review the response before it was filed with the Commission, correct?

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[23] *See, e.g.,* D.16-01-014 at 60; OII & OSC Re: Long Distance Direct, Inc. (I.99-06-037) at 3 (June 24, 1999).
[24] D.21-09-021 at 48.
[25] D.21-09-021 at 21.
[26] *See, e.g.*, *Lorimore v. State Personnel Board* 232 Cal. App. 2d 183, 198 (1965).
[27] RT 127:1-2 (9/20/21 OSC Hearing).
[28] Exhibit 1 (E-mail from S. Toller to ALJs Bemesderfer and Mason, et al., Sept. 13, 2021, 3:47 p.m. ["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."]). T-Mobile's Response was marked as exhibit OSCD-1 and made available to Mr. Ray prior to the hearing. T-Mobile now tries to rehabilitate Mr. Ray by submitting improper written "re-direct" contradicting Mr. Ray's testimony at the hearing and claiming that Mr. Ray now recalls reviewing the OSC Response. *See* Attachment A to Opening Brief at 5:1-7. This tactic improperly prevented counsel for DISH from cross-examining Mr. Ray on the Response.

> THE WITNESS: I'm not even sure what response that we're referring to specifically.[29]

It is therefore not surprising that, for all the reasons set forth below, Mr. Ray and T-Mobile have failed to show by a preponderance of the evidence that T-Mobile did not mislead the Commission, nor did he or T-Mobile take any steps to correct misimpressions the Commission had about T-Mobile's prior statements—even after they knew those statements were false.

It is, and always was, T-Mobile's obligation to provide straightforward and complete testimony and information to the Commission. The Opening Brief, like the rest of T-Mobile's response to the OSC, fails to meet this obligation. Other than to gaslight the Commission by arguing that it did not actually make the misleading statements that it clearly made, T-Mobile tries to stitch together disparate shreds of record evidence buried in footnotes and voluminous documents in order to argue that T-Mobile did not obfuscate its true intentions. Having proffered a witness who was repeatedly unable to answer questions, T-Mobile now attempts to manipulate the record by submitting written "re-direct" testimony. None of these efforts succeed in transforming T-Mobile's misleading testimony and omissions into something other than a Rule 1.1 violation.

II. T-MOBILE REPEATEDLY VIOLATED RULE 1.1 BEFORE, DURING AND AFTER THE SEPTEMBER 2021 OSC HEARING

T-Mobile's principal defense against the OSC is that it never said the precise words set out in the OSC.[30] This defense is both legally and factually incorrect. Contrary to its contention that "T-Mobile did not make any of the five statements set forth on page 8 of the OSC," T-Mobile did so—in fact, it made one of the statements more than a dozen times.

[29] RT 129:1-6 (9/20/21 OSC Hearing).
[30] T-Mobile Opening Brief at 4.

T-Mobile argues "it would be unfair" to sanction it for violation of Rule 1.1 for statements that weren't clearly false, but merely ambiguous.[31] But, the statements identified in the OSC were not ambiguous, they were outright misleading. Indeed, as the OSC explained, based on T-Mobile's prior testimony, the Commission believed it had been misled. T-Mobile's belated attempt, both at the OSC Hearing and in its Opening Brief, to qualify its testimony with so-called, years-after-the-fact "context," or random unrelated record citations, further confirms that T-Mobile knew its prior testimony was not accurate when made, and either omitted relevant information or failed to update the Commission once it discovered the inaccuracies. All of the conduct identified in detail below violates Rule 1.1.

A. The Three-Year CDMA Migration Period

1. T-Mobile Repeatedly Committed to a Timeline of Three Years, Not "Six Months"

T-Mobile's current position is that Mr. Ray's repeated representations to the Commission that it intended to implement a three-year CDMA migration timeline actually meant a period less than (and possibly much less than) three years.[32] T-Mobile even goes so far as to claim that it "never said" DISH would "have up to three years in which to complete Boost customer migration."[33] That position is not tenable, persuasive or credible. Mr. Ray testified **14 different times** about a three-year CDMA migration period. Below, we review each of those representations again:

(1) Q: "New T-Mobile will be divesting the 800-megahertz spectrum after **three years** for which New T-Mobile plan to use to support LTE and CDMA service for Sprint customers

[31] T-Mobile Opening Brief at 5.
[32] *See* T-Mobile Opening Brief at 19-20.
[33] *Id*. at 19.

during the migration process; is this correct?
A: Yes."[34]

(2) "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**…"[35]

(3) "I would also reiterate that T-Mobile intends to maintain the 800 MHz spectrum for **three years** to support CDMA service during our migration process and that we have an option to lease 4 MHz of spectrum for additional time if required."[36]

(4) "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."[37]

(5) "I mean why that last four megahertz is important, that's the service or the spectrum that supports primarily today that CDMA voice service, and that's the piece that we want to make sure is protected its needs as we move through the first **three-year period**."[38]

(6) "T-Mobile expects that all Sprint customers are likely to be completely migrated within **three years**."[39]

(7) and (8) "And then the 800 megahertz spectrum, we've structured an arrangement whereby after **three years** we would sell the 800 megahertz spectrum to DISH, but we have the right to retain a portion of that spectrum for a period of time, four megahertz, I believe it's for another two years after the first **three-year period**."[40]

(9) "Why we want to use it for that **three years** is during the migration process of Sprint and Boost customers off of the legacy Sprint network and the Sprint services and onto the New T-Mobile network…"[41]

(10) "So our intent is to -- that's why we put **three years** there. If we determine we need longer, we have the right. We negotiated that through the PFJ with the DOJ and with DISH so that we could retain a portion of that 800 megahertz for up to five years."[42]

(11) "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**."[43]

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[34] Testimony of Neville Ray, CPUC Additional Evidentiary Hearing Tr. at 1378:13-19 (Dec. 5, 2019) (emphasis added) ("Ray Testimony").
[35] Supplemental Testimony of Neville Ray on Behalf of Joint Applicants at 13:15-17 (Nov 7, 2019) (emphasis added) ("Supplemental Ray Testimony").
[36] *Id.* at 21:6-8 (emphasis added).
[37] *Id.* at 13:14-15 (emphasis added).
[38] OSC-TMO-33 at 1375:11-17 (emphasis added) ("Ray Testimony").
[39] Supplemental Ray Testimony at 47:5-6 (emphasis added).
[40] Ray Testimony at 1374:15-22 (emphasis added).
[41] *Id.* at 1374:28-1375:3 (emphasis added).
[42] *Id.* at 1375:4-10 (emphasis added).
[43] *Id.* at 1375:18-21 (emphasis added).

(12) "We have to make sure we maintain coverage and sufficient capacity. But you can start to decommission certain cell sites well ahead of the **three-year period**. It's paced on the migration of the customer base."[44]

(13) and (14) "That's why we've always said it's a **three-year integration program**. You know, sites 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."[45]

Just a few days after he testified at the Commission's December 2019 hearing, Mr. Ray affirmed T-Mobile's three-year CDMA migration timeline in sworn trial testimony that he gave live in the Southern District of New York. When asked about the CDMA migration process, Mr. Ray reiterated that T-Mobile will "**give three years** and [] work through this and do much of the same things that we did with Metro [PCS]."[46]

Notably, T-Mobile also explained to the Commission that it could lease back a portion of the 800 MHz spectrum from DISH for up to two additional years in case the customer migration wasn't completed in three years. The lease-back right meant T-Mobile could extend the CDMA migration period for an additional two years, giving T-Mobile a potential five-year migration period. In its 2019 post-hearing brief to the Commission, T-Mobile described Mr. Ray's testimony and T-Mobile's timeline as "clear": "[T]he evidence is clear that New T-Mobile planned and still does plan to use the 800 MHz spectrum exclusively to support former Sprint customers during the **3-year** migration period."[47] T-Mobile further explained Mr. Ray's testimony as it related to the two-year lease-back: "if New T-Mobile needs the 800 MHz spectrum for a longer period of time after [] … DISH has acquired the 800 MHz spectrum, New

[44] *Id.* at 1383:28-1384:5 (emphasis added).
[45] *Id.* at 1382:17-23 (emphasis added).
[46] OSCD-7 (Neville Ray Testimony, *State of New York, et al. v Deutsche Telekom AG, et al.*) at 1206:15-17 (Dec. 13, 2019) (emphasis added).
[47] Joint Applicants' Post-December 2019 Hearing Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032, at 33-34 (Dec. 20, 2019) (emphasis added).

T-Mobile has the option to lease back from DISH up to 4 megahertz of spectrum as needed for up to two (2) years following its divestiture."[48]

So there would be no doubt, T-Mobile explained that the purpose of this three-to-five year migration period was to ensure that service would be maintained to migrate **both** T-Mobile and DISH customers:

> 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.[49]

Thus, even though T-Mobile now asserts that it meant to indicate that the CDMA customer migration period would be up to, but possibly much less than, three years, T-Mobile clearly committed that the CDMA network would not be shut down until all customers had been migrated. T-Mobile acknowledged during the OSC hearing that there are **[BHC-AEO]** [redacted] **[EHC-AEO]** California Boost customers[50] in addition to T-Mobile customers[51] remaining on the CDMA network.

2. The Commission and Multiple Third Parties Understood T-Mobile's Assurances that the Migration Period Would Be Three Years

T-Mobile's claim that it "never made th[e] statement" that "DISH would have up to three years" to migrate its Boost customers,[52] is belied further by the fact that many others—including the Commission, DISH, TURN, and the Public Advocates Office ("PAO")—all understood that T-Mobile did "ma[ke] that statement." T-Mobile's Opening Brief fails to address this point.

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[48] *Id.* at 34.
[49] *Id.* at 35 (emphasis added).
[50] RT 39:6-18.
[51] RT 191:10-20.
[52] T-Mobile Opening Brief at 19.

Mr. Blum from DISH testified at the December 2019 hearing to DISH's understanding of T-Mobile's three-year CDMA migration period:

> Q: So is it fair to say that the 800 megahertz spectrum was not included in these commitments because you will not be acquiring it until 2023 or later?
>
> A: No. Because it's not our spectrum yet. As part of the consent decree, we have the option to acquire it. And it is additional spectrum. It's low-band spectrum. But one of the issues with it today that Sprint has to deal with it's using old technology, the CDMA technology. So it's not ready for 5G, but it's something that in **three years** from now when Sprint has cleared the CDMA technology we have the right to acquire . . . ."[53]

TURN, another participant in the December 2019 hearing, understood that Mr. Ray testified to at least a three-year CDMA migration period. TURN described that understanding in a filing submitted in response to DISH's Petition for Modification, noting that:

> In testimony, T-Mobile's President of Technology indicated that **the three year period** could be extended if necessary, and made no mention of reducing the time frame for migration. Per T-Mobile's representations to the Commission, **the three year transition period was a floor, not a ceiling**.[54]

PAO staff, who likewise participated in the December 2019 hearing, understood that the CDMA migration period was "at least three years." According to PAO:

> DISH recently filed a petition for modification of the decision for the T-Mobile/Sprint merger, complaining of T-Mobile's plans to shut down its 3G CDMA network, upon which its Boost customers are dependent. This was an abrupt change from T-Mobile's agreement to keep their network operational for DISH/Boost prepaid customers **for at least three years**, as part of the T-Mobile/Sprint merger.[55]

Perhaps the most compelling evidence of the effect of Mr. Ray's testimony about T-Mobile's three-year CDMA migration period is that the Commission included an explicit

[53] RT 1605:27-1606:10 (12/6/2019 Hearing) (emphasis added).
[54] OSCD-8 (Response of The Utility Reform Network ("TURN") to the Petition of DISH Network Corporation to Modify D.20-04-008) at 2 (May 28, 2021) (emphases added).
[55] OSCD-9 (Public Advocates Office Reply Brief on Application for Approval of Transfer of Control Over Tracfone Wireless, Inc.) at 30 (June 11, 2021) (emphasis added).

condition in Ordering Paragraph 6 of D.20-04-008 approving the merger: "The legacy Sprint and T-Mobile customer experience shall not be degraded during the **customer migration period (2020-2023)** . . . ."[56]

The OSC notes that Mr. Ray's repeated references to a three-year migration period misled the Commission into believing that T-Mobile committed to a three-year migration period, with a shutdown to occur only after all consumers were migrated.[57] As Commissioner Rechtschaffen underscored in his questioning at the September 20, 2021 OSC hearing, Mr. Ray never stated in his prior testimony that T-Mobile would shut down the CDMA network while customers were still being served on it:

> Q. [RECHTSCHAFFEN] Did you ever identify in the hearings that a potential result of the divestiture was that T-Mobile could shut down the CDMA network while DISH customers were still using it?
>
> A. [RAY] I don't believe we ever really discussed that topic, Commissioner, directly. Obviously, as I tried to relate my testimony, that there's always the circumstance where some -- you know, a very small number of customers may get disconnected when there's a legacy network shut down. But that's what – that's what this industry does. That's what telcos do.[58]

3. The Migration Timeline in T-Mobile's Prior Testimony Was Not Ambiguous

In the face of these clear statements, T-Mobile seeks to recast the timeline contained in its prior sworn testimony by arguing that its repeated reference to a three-year timeline really meant something less, indeed as little as "six months."[59] But this argument ignores the multiple times that Mr. Ray and T-Mobile discussed a three-year – not "within three years" – migration period[60]

[56] D.20-04-008, Ordering Paragraph 6 (emphasis added).
[57] OSC at 1, 5, 7, 8.
[58] RT 208:15-209:1 (9/20/21 OSC Hearing).
[59] *See* T-Mobile Opening Brief at 19-24.
[60] *Supra*, § II.A.1.

and the fact that T-Mobile never articulated a shorter migration period.[61] T-Mobile adopts a part of an observation that Judge Bemesderfer made during the OSC hearing: that "within three years" could mean "less than three years" or "not more than three years."[62] But Judge Bemesderfer's full remarks noted that "in context, I think it frequently reads as if it's not more than three years."[63] In other words, there is no ambiguity, and a reasonable observer of T-Mobile's many references to "three years," not some lesser amount of time, would understand that T-Mobile was committing to a full three-year migration period. Mr. Ray admitted at the OSC hearing that he had never testified in 2019 to a shorter CDMA migration period such as the eighteen-month period T-Mobile announced in October 2020.[64]

Even if any of T-Mobile's testimony was "subject to multiple interpretations" (which it is not), there is no basis for T-Mobile to argue that any such ambiguity "should be resolved in T-Mobile's favor."[65] To the extent that T-Mobile had a "plan" in 2019 to sunset the CDMA network on January 1, 2022, it never shared that supposed plan with the Commission. Instead, T-Mobile and Mr. Ray repeatedly described a "three-year" migration period—never one of any shorter length, let alone the abbreviated timeline it now seeks to impose on the many customers that still rely on the CDMA network.[66]

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[61] *See* RT 158:17-25.
[62] *See* T-Mobile Opening Brief at 20.
[63] RT 224:5-7.
[64] RT 158:17-25.
[65] RT 223:21-224:9 (9/20/21 OSC Hearing).
[66] T-Mobile cites testimony from the February 2019 hearing as support for the contention that it "submitted evidence showing that it planned to . . . complete the migration of Sprint customers off the legacy Sprint network . . . by the end of 2021." T-Mobile Opening Brief at 21 n. 62. Again, T-Mobile misstates what the actual words said. The cited testimony actually says that "in 2021," integration of T-Mobile and Sprint's wireless network was "anticipated to be *largely* complete." *See id* (emphasis added). In any event, this statement was superseded by Mr. Ray and T-Mobile's numerous false statements in November and December 2019 that the CDMA network would be maintained for three years. The suggestion that the Commission was supposed to divine from the February 2019 statement that the repeated reference to "three years" in December 2019 does not actually mean three years is not credible.

Crediting T-Mobile's argument would effectively gut Rule 1.1 by encouraging parties before the Commission to obfuscate, omit and mislead in connection with what are otherwise seemingly clear commitments. While T-Mobile cites D.01-11-017 to argue that a statement which is "not clearly false" but "at best unclear" may not violate Rule 1.1,[67] the Commission there warned parties to "ensure" that "future" statements to the Commission "are clear and not misleading in order to avoid the imposition of sanctions under Rule 1.1."[68] T-Mobile did just the opposite here, over the course of multiple Commission appearances spanning many months.[69]

4. T-Mobile Failed to Clarify Its Position about its Migration Timing—Even After the Commission's Merger Approval Order Incorporated Its Three-Year Timeline, and Even After Admitting It Had This Plan in Mind in December 2019

Prior to 2021, T-Mobile never alerted the Commission that its CDMA migration period might be less than three years. Yet, in its May 28, 2021 Response to DISH's Petition for Modification, T-Mobile called its January 2022 CDMA shutdown date "a critical component of a detailed network transition plan **years in the making**."[70] "Years" indicates that T-Mobile likely knew sometime before December 2019 that it planned to shut the CDMA network down in January 2022. But, T-Mobile **never once** provided this date to the Commission during its merger review.

This underscores that T-Mobile knew that the Commission had been misled because Ordering Paragraph 6 incorporated a three-year CDMA migration period. Yet, T-Mobile took

[67] T-Mobile Opening Brief at 21 n.60.
[68] D.01-11-017 at 6.
[69] T-Mobile claims that finding a violation on this record "would have a chilling effect on government petitioning." T-Mobile Opening Brief at 5. Quite the contrary, it would promote the obvious purpose of Rule 1.1, encouraging parties to be forthright and honest before the Commission.
[70] T-Mobile USA, Inc.'s Response to Dish Network Corporation's Petition to Modify D.20-04-008 ("Response to PFM") at 23 (emphasis added).

no steps to correct the record.[71] This, by itself, violates Rule 1.1.[72] If, as Mr. Ray now says, he knew at the time of his December 2019 testimony that the CDMA network would be shut down "hopefully within a two-year period,"[73] there can be no justification for testifying repeatedly at the same time regarding a planned three-to-five CDMA migration period.[74]

The Opening Brief asserts that there is no duty to "update" information entered into the record in Commission proceedings unless a carrier explicitly promises to do so.[75] But, Commission precedent makes clear the obligation for a party to correct errors, particularly when the Commission has relied on the erroneous information in an order. As discussed below, the decisions cited by T-Mobile do not demonstrate otherwise. This argument appears, once again, to be a purposeful misuse of words by T-Mobile to create a misleading impression. The cited cases all involve updates to the record in rate cases, which by nature involve refinement of cost projections during the course of a proceeding. An update, of course, is completely different from correcting an error or omission.

For example, in D.82-12-055,[76] Commission staff asserted that Southern California Edison ("SCE") should have updated a prior study on cogeneration potential in its service area

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[71] Nor did T-Mobile correct the record when the Commission issued D.20-04-008 in April 2020 establishing a three-year migration period for legacy Sprint customers. T-Mobile did not file an application for rehearing alerting the Commission that the three-year customer migration period in Ordering Paragraph 6 was inconsistent with the record or its intentions. T-Mobile took no steps of any kind to notify the Commission that it had not intended to commit to keep the CDMA network operational for three years, or that Ordering Paragraph 6 was not consistent with its "plan" that was "years in the making" to shut down CDMA in less time.

[72] *See* D.13-12-053 at 13-14.

[73] RT 207:24-25.

[74] DISH also notes that while T-Mobile first provided notice to DISH in October 2020 that it intended to shut down the CDMA network on January 1, 2022, no notice was provided to the Commission about the new shutdown timeline until DISH filed its Petition for Modification in April 2021.

[75] T-Mobile Opening Brief, at 6 and n.12 ("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).").

[76] Issued Dec. 13, 1982.

for a subsequent rate case years earlier.[77] D.82-12-055 held that SCE was not under an obligation to update its study, particularly because Edison was never advised that the results of its assessment of cogeneration potential were inadequate.[78] Ironically, this case disproves T-Mobile's argument. Although SCE was not required to update a study, it did correct an error it found after D.82-12-055 was issued. Within two weeks, SCE notified Commission staff (apparently *sua sponte*) that certain pages in the rate Appendix F of D. 82-12-055 contained mathematical and other errors. [79] The Commission issued an order correcting those errors.[80]

T-Mobile also relies on D.85-08-006 to support its argument that carriers are not required to "update" data submitted to the Commission. Its reliance is misplaced. D.85-08-006 was a rate case in which PG&E had submitted data on March snowpack to calculate the rates for gas based on the likely availability of hydro power. [81] Staff had relied on the snow pack data, but subsequently, PG&E sought to provide new data including the fact that a major supplier had filed a rate case at the Federal Energy Regulatory Commission.[82] The Commission declined to allow PG&E to submit additional data, noting that such data could result in a potential fall or winter rate increase, while the data based on snow pack indicate possible further rate decreases.[83] The order also noted that PG&E has been over collecting approximately $20 million per month pending a decision in the proceeding, which militated against allowing new data that could delay the completion of the proceeding. [84] There was no argument that the snow pack data was

[77] D.82-12-055, 1982 Cal. PUC LEXIS 1209, at *198 (Dec. 13, 1982).
[78] D.82-12-055, 1982 Cal. PUC LEXIS 1209, at *199 (Dec. 13, 1982).
[79] D.82-12-115, 1982 Cal. PUC LEXIS 1184 (issued Dec. 28, 1982).
[80] D.82-12-115, 1982 Cal. PUC LEXIS 1184 (issued Dec. 28, 1982).
[81] D.85-08-006, 1985 Cal. PUC LEXIS 646, at *22 (Aug. 7, 1985).
[82] D.85-08-006, at *19.
[83] D.85-08-006, at *20.
[84] D.85-08-006, at *20.

inaccurate; rather PG&E simply asked to use other data. Thus, this case has nothing to do with correcting errors and does not support T-Mobile's argument.

Finally, T-Mobile incorrectly relies on another PG&E rate case. In D.90-04-021, the Division of Ratepayer Advocates ("DRA")[85] presented an exhibit for the first time in the hearing room as the witness took the stand. [86] It updated two months of data and for the first time promoted a new gas price forecasting methodology. [87] The Commission disallowed the new exhibit on the basis that the result was an insignificant difference in the bottom line Southwest spot gas price, the late admission of the exhibit was unfair and that "the record is not served by such 'on the stand' testimony.[88] Similar to the other two cases on which T-Mobile relies, D.90-04-021 does not support an argument that carriers are under no obligation to correct record errors or omissions.

Thus, T-Mobile's failure to correct the record is particularly concerning where – as here – it knew of the error both prior to and after the Commission relied on that error or omission in an issued order and yet decided to stay silent.

5. T-Mobile's Attempt to Explain Its Rule 1.1 Violations by Pointing to the MNSA's Notice Provision Fails

T-Mobile argues that the Commission was wrong to conclude from Mr. Ray's prior sworn testimony that T-Mobile would maintain the CDMA network for three years because there was an independent agreement between DISH and T-Mobile that "required T-Mobile to give DISH six months' notice of CDMA shutdown."[89] This characterization itself is incorrect as a

[85] This was the former name of the Public Advocates Office.
[86] D.90-04-021, at *14.
[87] D.90-04-021, at *14.
[88] D.90-04-021, at *14.
[89] RT 16:25-27 (9/20/21 OSC Hearing); *see also* T-Mobile Opening Brief at 22.

matter of contract law but, more important for the Commission's purposes, it is inconsistent with T-Mobile's prior testimony.

T-Mobile did not cite this agreement as dictating the timing of its CDMA network shutdown during the Commission's merger review. "Six months" notice of a CDMA network shutdown was referenced only one time before, in Mr. Ray's November 2019 pre-written Supplemental Testimony,[90] and **not a single time** during his testimony on December 5, 2019. T-Mobile now argues that the Commission should have understood this single prior reference to "six months' notice" somehow overrode the litany of references in Mr. Ray's testimony to a "three-year" migration period. At the OSC hearing, however, Mr. Ray referenced the (alleged) six months' notice provision 16 times,[91] apparently attempting to give the impression that this one provision of one T-Mobile-DISH agreement somehow had put the Commission on notice that the CDMA network could be shut down shortly after merger approval and while customers were still being served on it. This is not credible, nor is it correct.

The Master Network Services Agreement ("MNSA") between DISH and T-Mobile, in fact, does not provide for "six months' notice" of a full CDMA network shutdown. Rather, it requires "**reasonable** advanced notice of **at least** six months" for any market where T-Mobile intends to discontinue its service.[92] That is an important distinction, as Judge Bemesderfer recognized:

> [W]ould a six-month notice issued a day after . . . the agreement was signed . . . have been reasonable notice? . . . . [W]hile I appreciate Mr. Ray's testimony that there are maybe micro markets in which the notice given one day after the agreement was signed might

[90] OSC-TMO-3 at 19:23-25 ("We are also required to provide DISH with at least six-month advance notice before we shut down the legacy network.").
[91] RT 66:13, 66:21, 66:27, 67:5, 67:6-7, 67:11, 67:15, 68:18, 69:5-6, 78:21, 79:27, 84:19, 86:9 (9/20/21 OSC Hearing). Mr. Ray even testified about "six months' notice" at the OSC hearing when he was not asked about it. *See, e.g.*, RT 144:14-25,151:9-22, 159:12-160:3 (9/20/21 OSC Hearing).
[92] OSC-TMO-2 (emphasis added).

> conceivably be thought of as reasonable, I am highly skeptical that the Department of Justice would share that view.[93]

And, of course, whatever DISH and T-Mobile may have contractually agreed between themselves does *not* change what T-Mobile told the Commission during the merger review (and never modified after the merger was approved): that T-Mobile would provide for a three-year migration period before the CDMA network was shut down.[94]

6. T-Mobile's Argument Regarding the Forward-Looking Nature of Its Plans Is Contradictory and Not Supported by Precedent

After arguing at length that it never said it would maintain the CDMA network for three years, T-Mobile makes the contradictory argument that it should not be held accountable for discussing its forward-looking plans or intentions (by which it presumably means all those references to a "three year" migration period) if those plans "ultimately proved inaccurate."[95]

To support this topsy-turvy "alternative" position, T-Mobile relies on D.98-123-018. But the facts of that case are so different that it lends no support to T-Mobile's argument. There, Pacific Bell filed an application with the Commission for its subsidiary, Pacific Bell Information Services ("PBIS"), to begin providing electronic publishing services.[96] After the application was filed, the electronic publishing services business was transferred from PBIS to a different

[93] RT 69:27-71:25 (9/20/21 OSC Hearing).
[94] T-Mobile also offers new explanations for why the parties agreed upon "six-months." *See* Attachment A to T-Mobile Opening Brief at 2:6-11. Aside from the fact that Mr. Ray's new testimony is incorrect, it is also meaningless. This information was never provided to the Commission until now—to the extent it is material, it should have been disclosed in 2019, not omitted.
[95] Response of T-Mobile USA, Inc. to Administrative Law Judge's Ruling on Order to Show Cause ("T-Mobile OSC Response") at 7; T-Mobile Opening Brief at 5-6 ("[I]n 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.").
[96] D.98-12-018, at *2

subsidiary, but neither the transfer nor the new entity was mentioned in the application nor described in any detail in the prepared testimony.[97]

The Commission declined to find a Rule 1.1 violation primarily because Pacific Bell was willing to withdraw its application, and it was unclear whether the Commission had jurisdiction over PBIS or the other subsidiary that wished to offer electronic publishing.[98] Thus, unlike here, the failure to correct erroneous information did not result in the Commission's basing any order on an erroneous representation. This stands in direct contrast to this case, where "[t]he Commission relied on the specific false statements, omissions, and/or misleading assurances T-Mobile gave regarding . . . its repeated references to a three-year customer migration period without a degraded experience in framing D.20-04-008."[99]

7. Since the OSC Hearing, T-Mobile Has Made New Misleading Statements Regarding the CDMA Shutdown.

On the same day it filed the Opening Brief, T-Mobile submitted an "Update" to its Opposition to DISH's Petition for Modification, stating that T-Mobile "announced that it will delay the sunset of its CDMA network by three months, to March 31, 2022."[100] DISH will respond more comprehensively to the substance of the "Update" in the Commission's Petition for Modification proceeding, but notes that three additional months falls far short of T-Mobile's three-year timeline to the Commission and is not nearly sufficient to protect consumers at risk of being disenfranchised by T-Mobile's arbitrary timelines.

This announcement is only relevant to the OSC insofar as it serves as yet another example of T-Mobile providing misleading statements to the Commission that directly contradict

[97] D.98-12-018, at *4.
[98] D.98-12-018, at *1, 10.
[99] OSC at 7.
[100] Update to T-Mobile's Response to DISH's Petition to Modify D.20-04-008 (Oct. 22, 2021).

prior statements the company has made in an effort to justify a new position. For example, in its Opposition to DISH's Petition for Modification, T-Mobile proclaimed that "delaying" a shutdown of the CDMA network in California could not be done without enormous cost and burden to T-Mobile and its 5G rollout.[101] T-Mobile asserted that it would cost **[BHCTMO-AEO]** [redacted] **[EHCTMO-AEO]** to maintain the CDMA network. T-Mobile also noted that any delay in decommissioning the CDMA network will adversely impact its 5G deployment:

> [S]unsetting the CDMA network in the January 2022 timeframe is not an event occurring in isolation from T-Mobile's overall 5G network build. Rather, it is a critical component of a detailed network transition plan years in the making that will shift the resources, network infrastructure, and spectrum needed to keep the CDMA network operational towards enhancing and accelerating T-Mobile's 5G deployment. Many of the towers currently carrying CDMA equipment need to be upgraded to support 5G. Delaying the removal of the CDMA equipment in California means that T-Mobile may have to delay installation of new 5G equipment (because, for example, there may not be space on the tower and in the equipment shelter for both 5G and CDMA equipment); this in turn potentially impacts T-Mobile's ability to deliver the world leading 5G network that its commitments are designed to ensure.[102]

In stark contrast, in its public release on October 22, 2021, T-Mobile stated that its decision to delay the CDMA network shutdown by three months "**has no material financial impact to our business and the rapid pace of our 5G buildout will continue**."[103] T-Mobile's latest story is that a network shutdown decision that was supposedly "years in the making," that was "critical" to capturing merger synergies, and the delay of which would impose significant cost and burden on T-Mobile and its ability to deploy 5G will, in fact, have "no material

[101] Response to PFM at 22.
[102] Response to PFM at 23.
[103] T-Mobile, *Update On Our CDMA Network Transition Plans* (Oct. 22, 2021), https://www.t-mobile.com/news/business/update-on-our-cdma-network-transition-plans (emphasis added).

financial impact" on T-Mobile's business or deployment.[104] T-Mobile seems incapable of getting its story straight.

B. PCS Spectrum

In the OSC, the Commission also found that T-Mobile "omitted and/or provided misleading information regarding the fact that [] PCS spectrum was used to provide service to Boost customers on the CDMA network."[105] The OSC correctly observed that nowhere in Mr. Ray's November 2019 Supplemental Testimony did "T-Mobile ever reveal that PCS spectrum was used to provide CDMA service to Boost customers."[106] Mr. Ray's testimony at the OSC hearing confirmed the Commission's conclusion.

1. T-Mobile Has Continued to Contradict Its Own Explanations about the PCS Omission

Prior to the OSC hearing, T-Mobile flip-flopped in its explanations as to why the spectrum refarming chart provided in Mr. Ray's Supplemental Testimony did not show that PCS was used to provide CDMA service. T-Mobile first stated in its May 28, 2021 Response to DISH's Petition for Modification that the chart "**inadvertently** did not show PCS spectrum as being used for CDMA."[107] T-Mobile made this assertion despite the fact that it submitted this chart not only in November 2019, but also in February 2019 as part of Mr. Ray's Rebuttal Testimony. Further, although Mr. Ray submitted "corrections" to each set of written testimony, and provided live testimony twice,[108] neither he nor T-Mobile ever informed the Commission that the chart was incorrect.

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[104] *Id*.
[105] OSC at 2; *see also id*. at 8 ("T-Mobile is ordered to show cause why it should not be sanctioned . . . for its false, misleading or omitted statements indicating that . . . maintaining service to the CDMA network did not require use of Sprint PCS spectrum").
[106] OSC at 3 (citing OSC-TMO-23 at 9:7-12:8).
[107] T-Mobile Response to PFM at 24 n.74 (emphasis added).
[108] *See* OSC-TMO-25; OSC-TMO-33.

When called on its inconsistent representations to the Commission in the OSC in August 2021, T-Mobile changed its tune, arguing then that "the chart was **accurate** both when created and when included in Mr. Ray's Supplemental Testimony."[109] This, according to T-Mobile's second version of its explanation, was because the refarming chart was created based on a "pre-merger" plan to transition "PCS spectrum form CDMA to LTE before the end of 2020."[110] But, either the chart was incorrect when submitted (even if "inadvertently") or it was "accurate" – it cannot have been both.

Further, T-Mobile took no steps to notify the Commission of this error until it responded to DISH's Petition for Modification. And not until cross-examination at the OSC hearing did Mr. Ray admit that he learned **[CONF. HRG TR***[redacted]***END CONF. HRG TR]**[111] This admission constitutes yet another ground for the Commission to sanction T-Mobile under Rule 1.1.

2. T-Mobile Once Again Failed to Correct Its Misstatements to the Commission

Mr. Ray's testimony at the OSC hearing made clear that, at the time he submitted the spectrum refarming chart to the Commission in 2019, he already knew that Sprint was using PCS spectrum for CDMA, even though that usage was not reflected in the chart.[112] Although the erroneous chart was featured prominently in his written testimony, Mr. Ray claimed at the OSC hearing that the use of PCS spectrum for CDMA was adequately disclosed to the Commission by referencing "a page from a large spreadsheet that was included as [an] Attachment" to the

[109] T-Mobile OSC Response at 12 (emphasis added).
[110] T-Mobile OSC Response at 12.
[111] RT 57:26-58:25; 59:12-60:11 (9/20/21 OSC Hearing).
[112] *See* RT 93:10-14 (9/20/2021 OSC Hearing) ("Q. You said it was incorrect in the allegation in the OSC, No. 2. Why do you say that? A. Because PCS spectrum was being used to provide CDMA service.").

Supplemental Testimony.[113] The Opening Brief relies on this supposed "disclosure" as well.[114] But this vast and complicated spreadsheet was never emphasized in any of Mr. Ray's written testimony, let alone explained in either his written or live testimony—rather, a reference to it was buried in a footnote providing support to an entirely different point.[115]

Similarly, T-Mobile's argument that it had disclosed elsewhere that PCS spectrum was used for CDMA also fails. T-Mobile points to vague statements made in two declarations from John Saw that it submitted to the FCC and attached to Michael Sievert's pre-filed written testimony at the Commission.[116] Mr. Sievert did not mention the John Saw declarations during his testimony and the John Saw declarations (which themselves concerned topics other than what T-Mobiles cites them for now) were among the hundreds of pages of attachments to Mr. Sievert's testimony. Thus, T-Mobile's argument essentially is that the Commission should have pored over hundreds of pages of materials to find an obscure reference to declarations that were prepared for the FCC in order to discover that the spectrum chart in Mr. Ray's testimony was incorrect (despite the fact that these same declarations apparently did not alert Mr. Ray himself that the spectrum chart was inaccurate). Moreover, to the extent T-Mobile had any doubt about the accuracy of the chart when it was first submitted in February 2019, that doubt was erased when T-Mobile submitted the same chart again in November 2019 as part of Mr. Ray's Supplemental Testimony.

[113] RT 94:1-97:21 (9/20/21 OSC Hearing).
[114] T-Mobile Opening Brief at 12-14.
[115] *See* OSC-TMO-3 at 17:15-20 n.40. As to the Declaration of John Saw (OSC-TMO-6), the supposed disclosure is buried in the middle of a paragraph in the middle of the declaration; it too was never emphasized or explained, but instead attached as an exhibit to another person's declaration.
[116] T-Mobile Opening Brief at 12-13; *see also* T-Mobile OSC Response at 12 (citing Sievert Rebuttal Testimony, Confidential Attach. 2B at 194).

Mr. Ray's and T-Mobile's references to data buried in a gigantic, unrelated submission provides no defense to T-Mobile. This argument is a post-hoc rationale and improperly attempts to "unreasonably shift the burden of uncovering the data to the Commission"[117] in contravention of Commission precedent. The PCS spectrum chart was misleading, and T-Mobile knew it at least as early as April 2020, but never corrected it. That is yet another violation of Rule 1.1.

C. Degradation of Former Sprint Customers

The OSC also alleges that T-Mobile provided "false, misleading or omitted statements indicat[ing] that… all former Sprint customers would have a seamless, undegraded experience during the migration period (2020-2023)."[118] Remarkably, T-Mobile contends that it "did not make such a statement about former Sprint customers who were divested to DISH,"[119] despite the fact—as cited in the OSC—that Mr. Ray testified in 2019 that T-Mobile would "make sure that no Sprint customer during that migration process, **be they a Boost customer or a Sprint customer**, or however they are str[iped], suffers anything approaching a degraded experience."[120] As ALJ Bemesderfer noted during the OSC, "[w]hatever one's definition of service degradation may be, a complete loss of service qualifies."[121]

1. T-Mobile Confirmed It Undertook to Protect All Legacy Sprint Customers

T-Mobile's primary defense to this element of the OSC is that Mr. Ray "made clear during the December 2019 hearing that prior statements in the record about maintaining CDMA and ensuring that Sprint customers were migrated before shutdown did not apply to the divested

[117] *See* D.19-12-041 at 37.
[118] OSC at 8.
[119] T-Mobile Opening Brief at 16.
[120] RT 1382:34-1383:1 (12/9/19 Hearing).
[121] RT 5:4-6 (9/20/21 OSC Hearing).

Boost customers."[122] However, when asked at the OSC hearing if its migration plan post-divestiture-announcement was "intended and designed to make sure that all those customers got migrated just fine before the shutdown within the three years migrated," Mr. Ray responded "[t]hat was clearly the intent, yes."[123]

In a further attempt to avoid Mr. Ray's straightforward assurance, T-Mobile now contends that, because integrating T-Mobile and Sprint is a "multi-step process," the second step of which is customer migration, "migration work would need to take place well within the three years."[124] But this is a new argument not supported by T-Mobile's prior testimony. T-Mobile only cites testimony from the OSC Hearing. While T-Mobile argues this "context" somehow qualifies Mr. Ray's prior testimony, the fact is that this "context" was never provided until just now. If this testimony was important, it should have been provided at the time. Thus, even if true (which it is not), T-Mobile's new argument merely confirms that T-Mobile made material omissions or misleading statements in 2019.

2. T-Mobile Confirmed Its Own Customers Will Be Harmed

In response to DISH's Petition for Modification, throughout the OSC hearing, and in its Opening Brief, T-Mobile has continually asserted that "Boost customers are only at risk of losing service if DISH chooses to evade its contractual obligation to supply them with upgraded handsets or SIM cards."[125] T-Mobile highlighted prior testimony in which Mr. Ray was asked how the Boost divestiture impacted his prior testimony that "'T-Mobile will not terminate the CDMA network in any market without migrating users from the network first.' In response, Mr.

[122] RT 15:10-15 (9/20/21 OSC Hearing); *see also* T-Mobile Opening Brief at 16-17.
[123] RT 114:16-20 (9/20/21 OSC Hearing).
[124] T-Mobile Opening Brief at 17-18.
[125] Response to PFM at 28; *see also* T-Mobile Opening Brief at 24-26.

Ray testified that his 'prior testimony would now have to be modified to include only Sprint CDMA customers who are not divested.'"[126]

Setting aside T-Mobile's prior statements regarding its intention with respect to migrating Boost customers, T-Mobile has repeatedly confirmed and endorsed its obligation to ensure at least its own customers will not be disenfranchised when the CDMA network is shut down. Yet, during the OSC, Mr. Ray also admitted that statement, too, was false when made, as he noted there will always be the chance that customers that are disconnected in a technology transition:

> Obviously, as I tried to relate my testimony, that there's always the circumstance where some -- you know, a very small number of customers may get disconnected when there's a legacy network shut down . . . . You have to retire technology. You do everything you can to reach out to the customers, assuming whatever the technology is that you're providing, and ensure that before you retire, you do everything you can to reach them and provide them with new and compatible equipment. And this is no different. So it's not reasonable to believe there's an absolute kind of binary solution here.[127]

This new revelation not only undermines T-Mobile's assertions regarding its own Sprint customer migration, but the OSC hearing revealed that once the CDMA network is shut down, **both** T-Mobile's **and** Boost's CDMA customers "will no longer have the ability to make 911 calls," as a result of T-Mobile shutting down the CDMA network.[128] The ability to call for help during an emergency is critical to protecting public safety, yet the fact that CDMA customers will lose that ability once the CDMA network is shut down surfaced for the first time during the cross-examination of Mr. Ray, when he was confronted with a page from T-Mobile's own website stating that:

> On January 1st of 2022, Sprint's older 3G (CDMA) network will be retired. If you are still using a device that is dependent on Sprint's

[126] T-Mobile OSC Response at 9.
[127] RT 208:22-209:12 (9/20/21 OSC Hearing).
[128] RT 188:16-24 (9/20/2021 Hearing).

> 3G (CDMA) network or that does not support VoLTE, you will need the upgrade to a more modern device no later than the end of 2021 to continue getting service, including the ability to make 911 calls, depending on your location.[129]

Despite telling its own CDMA customers that they might lose the ability to place calls for help to 911, T-Mobile never notified the Commission and likely never would have but for the OSC hearing. T-Mobile's omission of this information further undermines its own prior statements in which it touted its ability to carry out its own customer migration, but claimed that DISH was not trying hard enough to migrate CDMA customers before its network shutdown.[130] T-Mobile's attempt to cast blame on DISH for the consumer harms of T-Mobile's decision to prematurely shut down its CDMA network is even more incredible given Mr. Ray's admission that T-Mobile has not moved all of its own customers from the CDMA network[131] and his cavalier statement that "customers may get disconnected when there's a legacy network shut down. . . . [T]hat's what this industry does. That's what telcos do."[132]

In response to this glaring omission, T-Mobile attempts to change its story yet again in the Opening Brief. Despite testifying about the inability of certain CDMA customers to make 911 calls post-shutdown, Mr. Ray and T-Mobile now claim that these customers **will** be able to make 911 calls – if **Verizon** has a CDMA network operational at the location from which the customer is calling.[133] The Opening Brief, however, provides no actual evidence of this. Rather, it cites (1) a vague, self-serving statement from Mr. Ray in new written "re-direct" testimony[134]

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[129] RT 189:2-190:14 (9/20/2021 Hearing); OSCD-11.
[130] *See, e.g.*, T-Mobile Response to PFM at 25-32.
[131] RT 191:10-17.
[132] RT 208:25-209:1 (9/20/2021 Hearing).
[133] *See* Attachment A to T-Mobile Opening Brief at 2:13-22.
[134] T-Mobile provides no cite for its assertion that the written "re-direct" was filed "pursuant to leave granted by the assigned ALJs." T-Mobile Opening Brief, at 1. DISH thoroughly reviewed the hearing transcript and can locate no authorization for T-Mobile to proffer written "re-direct" and is unaware of

that he "understand[s] Verizon's CDMA network will remain operational in 2022" and that it is "broader than legacy Sprint's coverage," and (2) an FCC rule suggesting that Verizon should handle these calls.[135] This new argument and testimony contradicts prior testimony, comes from a witness who admittedly lacks personal knowledge of these matters, appears to be based entirely on hearsay, and fails to explain what "broader" means (or what it is based upon). It is yet another instance of T-Mobile misleading the Commission in violation of Rule 1.1.

III. T-MOBILE'S CONDUCT DURING THE OSC AND IN ITS MOTION TO STRIKE WARRANT FURTHER SANCTIONS

A. T-Mobile Attempted to Mislead the Commission About Whether an Early CDMA Transition Was the Subject of Discussions Between the Companies

In its Opening Brief, T-Mobile again tries to mislead the Commission in order to prove that it did not try to mislead the Commission previously by submitting one from a series of highly confidential business models.[136] In T-Mobile's current telling, all it was trying to establish by using DISH's highly confidential September 6, 2019 model ("Sept. Model") was three narrow propositions—that the model "exist[ed]," that it showed "complete migration off of Sprint's legacy network [**BHC-AEO]** [redacted] **[EHC-AEO]** and that it was "disclosed to T-Mobile—albeit T-Mobile's counsel."[137]

But, as explained below, an early CDMA transition was not one of the documented assumptions in the model. Besides that, to be relevant in any way, the content of the Sept. Model would have to show that an early CDMA transition was the subject of **any** business discussions between the two companies. The Sept. Model does no such thing.

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any prior instance in which a party was authorized to submit written "re-direct" after the conclusion of the evidentiary hearing.

[135] T-Mobile Opening Brief at 10, Attachment A at 2:21-3:10.

[136] OSCTMO-30. DISH notes that this exhibit has not been admitted into evidence and the DISH continues its objection to admission.

[137] T-Mobile Opening Brief at 33.

Indeed, it is these non-existent discussions that T-Mobile, misleadingly, attempted to use to impeach Mr. Blum. T-Mobile counsel Mr. Gelfand asked DISH's witness, Jeff Blum: "[d]id I hear you testify that you never discussed with T-Mobile the possibility of a migration that would occur in less than three years?"[138]

It was Mr. Blum's answer—"[n]o"—that Mr. Gelfand set out to disprove during the remainder of his cross-examination. And that was also the proposition that T-Mobile claimed to have tried to prove in its Motion to Strike: "Mr. Blum testified that DISH never discussed with T-Mobile even the possibility of migrating customers from the Sprint network in less than three years."[139] According to the Motion to Strike, that was untrue because the financial model supposedly showing a faster migration "had been provided to T-Mobile."[140] What T-Mobile conveniently omitted from its Motion was that the model had been provided *only* to T-Mobile litigation counsel, subject to a strict prohibition on showing it to any business personnel at T-Mobile. The reason for the omission is evident—T-Mobile was trying to show that the model somehow demonstrated business discussions. It did not, for reasons that DISH has explained.

What T-Mobile was really trying to show in its Motion to Strike was broader than it now claims in another respect, too. Even if an early migration from the CDMA network had been the subject of business discussions between the companies (which it was not), it would be of little consequence unless the discussions were about an early migration from the network due to an early shutdown of that network by T-Mobile. The model, of course, does not discuss an early migration, let alone an early shutdown. This is because the model had nothing to do with the

[138] RT 240:23-26.
[139] T-Mobile USA, Inc.'s Motion to Strike September 20, 2021Order to Show Cause Hearing Testimony of Jeffrey Blum at 2 (Oct. 6, 2021) ("Motion to Strike"); *see also* Motion to Strike at 5 ("[Mr. Blum] claimed that before October 2, 2020, T-Mobile and DISH never discussed the possibility of migrating customers from the Sprint network in less than three years.").
[140] Motion to Strike at 2.

CDMA shutdown, and everything to do with the effort by DISH to show the speed with which DISH sought to build its own facilities-based network.

B. T-Mobile Attempts to Escape Liability for Misusing a Highly Confidential Document by Claiming it Was Not Subject to a Confidentiality Agreement

T-Mobile then exacerbates its own position by another false statement. After DISH responded that it had shared the Sept. Model with T-Mobile's *lawyers*, and faced with the fact that the T-Mobile lawyers with access to the Sept. Model could not properly share it with anyone else at T-Mobile, T-Mobile now performs a 180-degree turn for purposes of addressing DISH's **[BHC-AEO]** [redacted] **[EHC-AEO]**. T-Mobile claims that the Sept. Model was *not* shared with T-Mobile after all, that T-Mobile instead "discovered [it] through other sources," when Plaintiffs marked it as an exhibit in Mr. Cullen's deposition, and that *ergo*, T-Mobile is free of its obligations under the **[BHC-AEO]** [redacted] **[EHC-AEO]**, which supposedly does not apply.[141]

This new position directly contradicts a central tenet of T-Mobile's advocacy in this matter. Mr. Gelfand asked Mr. Blum: **[BHC-AEO]** [redacted] **[EHC-AEO]**[142] And indeed, T-Mobile appears to admit this truth elsewhere in its brief, stating that the model "was disclosed to T-Mobile—albeit T-Mobile's counsel."[143] That statement cannot possibly mean that it was the plaintiff states,

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[141] T-Mobile Br. at 41. T-Mobile's devil-may-care attitude towards its confidentiality obligations is also illustrated by its placing the **[BHC-AEO]** [redacted] **[EHC-AEO]** in the public version of its post-hearing brief. Under the agreement, **[BHC-AEO]** [redacted] **[EHC – AEO]**. DISH treated it as such by redacting all references to the **[BHC-AEO]** [redacted] **[EHC-AEO]** from the public version of its opposition to T-Mobile's Motion to Strike and continues to honor its confidentiality commitment in this Reply by redacting references to it herein..

[142] Tr. 248:4-13.

[143] Post Hearing Br. at 33.

rather than DISH, that made the disclosure. T-Mobile cannot escape its obligations under the [**BHC-AEO]** [redacted] **[EHC-AEO]** by negating the truth.

C. T-Mobile Does not Dispute It Violated the Court Protective Order

T-Mobile next argues that it is not possible that its use of the Sept. Model was subject to two different confidentiality obligations.[144] This is not true: a document that was both shared with T-Mobile under the **[BHC-AEO]** [redacted] **[EHC-AEO]** and produced in discovery is subject to both documents.[145] On its face, the **[BHC-AEO]** [redacted]

[EHC-AEO]

But, even if T-Mobile could successfully show that the document is somehow not subject to two different confidentiality obligations, T-Mobile's own logic leads to the conclusion that use of the Sept. Model was precluded by "a different set of issues"—*i.e,*. under the S.D.N.Y. Protective Order.[147] What does T-Mobile say about the use of the Sept. Model in violation of the Protective Order? Nothing. And there is nothing that T-Mobile *could* say. The Court Protective Order explicitly limited the use of materials subject to the Court Protective Order to the federal court proceeding:

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[144] T-Mobile Opening Brief at 40.
[145] *HSH Nordbank AG New York Branch v. Swerdlow*, 259 F.R.D. 64, 73 (S.D.N.Y. 2009) (permitting pursuant to a discovery protective order the claw-back of inadvertently disclosed communications subject to a common interest privilege); *Jackson v. Dow Chem. Co. Inc.,* 214 A.D.2d 827, 828 (1995) (finding no abuse of discretion where court granted defendant's confidentiality order and granted defendant's protective order to prevent discovery of trade secrets).
[146] **BHC-AEO]** [redacted] **[EHC-AEO]** ¶ 3.
[147] T-Mobile Opening Brief at 40.

> All information, documents, data, and other materials (including but not limited to Confidential Information and Highly Confidential Information) produced by a Party or a non-Party as part of this proceeding shall be used solely for the conduct of this Action ***and shall not be used for any business, commercial, competitive, personal, or other purpose***.[148]

Courts across the nation have been steadfast in confirming that such protective orders are "one-use" orders—they allow use of documents subject to them only in the proceeding in which they were entered. Indeed, courts have generally refused to allow a second use of documents subject to protective orders in another proceeding even when asked.[149] Needless to say, T-Mobile never made such a request to the federal court.

D. T-Mobile's Obligations Not to Use the Model May Not Be Waived by Silence

T-Mobile also argues that DISH blessed T-Mobile's breach of its obligations by means of a silent waiver. No such waiver was issued here. Under the Court Protective Order, use of the model required DISH's affirmative "**consent**."[150] A "[w]aiver is an intentional relinquishment of a known right and should not be lightly presumed[.]"[151] Such intention "must be unmistakably

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[148] Amended Interim Protective Order, *New York v. Deutsche Telekom AG*, (S.D.N.Y. 2020) (No. 19-cv-05434), ECF No. 185, ¶ § E(7) (emphasis added) ("Court Protective Order").

[149] *See Wolters Kluwer Fin. Servs. Inc. v. Scivantage*, No. 07 CV 2352 (HB), 2007 WL 1498114, at *8 (S.D.N.Y. May 23, 2007) ("Regarding Plaintiff's efforts to move this Court to modify the Protective Order to use protected material in other litigation, Plaintiff's efforts are undercut by Plaintiff's apparent previous use of protected material in Massachusetts on an 'emergency' basis, in part to seek the Massachusetts Court's modification of the Protective Order, before this Court had the opportunity to rule upon the issue of the Protective Order."); *In re Biovail Corp. Sec. Litig.*, 247 F.R.D. 69, 70 (S.D.N.Y. 2007) (restraining defendants from using protected material in separate state complaint); *On Command Video Corp. v. LodgeNet Ent. Corp.*, 976 F. Supp. 917, 922 (N.D. Cal. 1997) ("The purpose of the Order is to limit the use of confidential information to this case. By using such information to file a separate lawsuit in another forum, plaintiff violated the plain terms of the Protective Order."); *AT&T Corp. v. Sprint Corp*., 407 F.3d 560, 562 (2d Cir. 2005) ("It is presumptively unfair for courts to modify protective orders which assure confidentiality and upon which the parties have reasonably relied. Once a court enters a protective order and the parties rely on that order, it cannot be modified absent a showing of improvidence in the grant of the order or some extraordinary circumstance or compelling need.").

[150] Court Protective Order § E(11)(c) (requiring consent of a protected party).

[151] *Gilbert Frank Corp. v. Fed. Ins. Co.,* 70 N.Y.2d 966, 968 (N.Y. 1988) (citing 5 Williston, Contracts §§ 696, 697 (3d ed.)).

manifested, and is not to be inferred from a doubtful or equivocal act[.]"[152] Fundamentally, "mere silence or inaction . . . are insufficient to establish an intent to waive a known right."[153] Rather, for a waiver even be possible, the silence or inaction generally has to be "coupled with knowledge by the party charged with a waiver that the contract's terms have not been strictly met, and detrimental reliance by the other, for such a length of time as to manifest an intention to relinquish the known right."[154]

This is not what happened here. First, DISH never consented to use of the Sept. Model, as the Court Protective Order requires. Second, what T-Mobile calls "fair notice" was an apparent exercise in obfuscation. T-Mobile did not specifically identify the Sept. Model as an exhibit (despite being directed to do so by Judge Mason) in advance of the hearing. Instead, it made a blanket designation in its proposed exhibit list, filed on September 15, 2021,[155] that included deposition transcripts from multiple witnesses (with *all* exhibits), the entirety of the New York trial transcript, DISH's Q4 2020 earnings call transcript, the DOJ's final judgment, various briefs from the New York proceeding, and materials from the FCC's review of the

[152] *Navillus Tile, Inc. v. Turner Const. Co*., 2 A.D.3d 209, 211 (N.Y. App. Div. 2003) (internal citation omitted).
[153] *Echostar Satellite L.L.C. v. ESPN, Inc*., 79 A.D.3d 614, 618, (2010) (internal citation omitted); *See also Peck v. Peck*, 232 A.D.2d 540, 540 (1996) ("Although a party may waive his or her rights under an agreement or decree, waiver is not created by negligence, oversight, or thoughtlessness, and cannot be inferred from mere silence. Waiver requires proof of a voluntary and intentional relinquishment of a known and otherwise enforceable right.") (internal citation omitted); *In re HS 45 John LLC*, 585 B.R. 64, 76-77 (Bankr. S.D.N.Y. 2018) (rejecting implicit waiver of contractual rights by remaining silent in the face of repeated statements in court); *Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of New Jersey, Inc.*, 448 F.3d 573, 585 (2d Cir. 2006) ("Because waiver of a contract right must be proved to be intentional, the defense of waiver requires a 'clear manifestation of an intent by plaintiff to relinquish her known right' and 'mere silence, oversight or thoughtlessness in failing to object' to a breach of the contract will not support a finding of waiver.") (citing *Courtney–Clarke v. Rizzoli Intern. Publications, Inc.*, 251 A.D.2d 13 (N.Y. App. Div. 1998)).
[154] 13 Williston on Contracts § 39:35 (4th ed.).
[155] This violated Judge Mason's direction and the Commission's rule. *See* email from Judge Mason Sept. 16, 2021 and CPUC Rules of Practice and Procedure Rule 13.7 ("Documentary exhibits shall be limited to those portions of the document that are relevant and material to the proceeding.").

merger, including the entirety of the FCC's order. These documents combined totaled many thousands of pages.[156]

Asked for more clarity regarding the omnibus designation by Administrative Law Judge Mason, T-Mobile offered little. An email message sent by T-Mobile on September 17, 2021 still did not specifically identify the model as an exhibit, instead referencing page numbers from three depositions and trial testimony with a vague reference to "referenced exhibits."[157] A spreadsheet exhibit list shared with DISH the evening before the hearing still only included vague references such as "Cullen Deposition Testimony (Including Exhibits)" or "Blum Deposition Testimony (Including Exhibits)."[158] And, T-Mobile did not include a link to these materials so that DISH could see which exhibits T-Mobile was referencing.

When T-Mobile finally provided links to confidential exhibits on Monday September 20, 2021, the date of the hearing, the links included many thousands of pages, burying the model in transcripts and exhibits from across four different deposition and trial transcripts of several different witnesses.[159] DISH thus had no way of divining in advance that T-Mobile intended to

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[156] *See Varshock v. Dep't of Forestry & Fire Prot*., 125 Cal. Rptr. 3d 141, 155 (Cal. Ct. App. 2011) (California courts required to consider whether facts were "clearly called to the attention of court and counsel, whether evidence is not referenced, is hidden in voluminous papers . . . and, most importantly, whether . . . the opposing party has sufficient notice of the evidence[.]") (internal quotation marks omitted); *Aloe Vera of Am. Inc. v. United States*, No. CV-99-01794-PHX-JAT, 2014 WL 3397139, at *4 (D. Ariz. July 11, 2014) (notice was inadequate when an "affidavit was buried in 156 exhibits"); *Mannick v. Kaiser Found. Health Plan, Inc*., No. C 03-5905 PJH, 2006 WL 2168877, at *18 (N.D. Cal. July 31, 2006) (rejecting attempt to include "evidence that is buried in a two-foot-tall stack of paper, where the parties do not specifically direct the court's attention to the exact page where the evidence is to be found" including "exhibits to [ ] declarations included[ing] discovery responses and deposition transcripts, many with no indication as to their significance to the arguments"); *Hollander v. Sandoz Pharms. Corp*., 95 F. Supp. 2d 1230, 1233 n.6 (W.D. Okla. 2000) (refusing to consider exhibits when plaintiff "refer[red] generally to voluminous exhibits without specific page citations . . . comprised of hundreds, if not thousands, of pages of materials.").

[157] *See* T-Mobile Opening Brief at 37 n. 113.

[158] Email from James Donovan to Anita Taff-Rice (Sept. 19, 2021 6:33 p.m.), attaching TMO Proposed Exhibit List in Matter A.18-07-011.

[159] Email from James Donovan (Sept. 20, 2021 7:09 a.m.), attaching Final Exhibit List in Matter A.18-07-011.

use the tiny subset of that material that was marked as highly confidential and subject to the Court Protective Order. Indeed, T-Mobile now acknowledges that it was not until the hearing itself that it specifically identified the September Model as an exhibit: "Once in confidential session, Mr. Gelfand specifically identified the exhibit number for DISH's counsel, 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."[160]

T-Mobile goes so far as to try to infer a waiver on DISH's part from the fact that DISH's counsel and Mr. Blum "*specifically requested* that Mr. Gelfand show the document to Mr. Blum in the OSC hearing."[161] The desire to know what document one is being asked to testify about was in no way a knowing waiver or an excuse of T-Mobile's contractual and court-imposed obligations.

In these circumstances, it is not surprising that T-Mobile's waiver argument, and indeed its entire attempt at rebuttal, does not contain one legal citation other than an inapposite citation to the California Evidence Code about a failure to claim privilege.[162] But use of a document in a way prohibited by the S.D.N.Y Protective Order is unrelated to privilege. And, while the **[BHC-AEO]** [redacted] **[EHC-AEO]** may perform the function of creating a privilege against *others*—the plaintiffs—it also creates *contractual* obligations between the parties to it.

E. T-Mobile's Good Faith Defense Is Unavailing

T-Mobile cannot hide its misconduct regarding the Sept. Model, so it attempts instead to absolve itself with an alternative argument. T-Mobile claims that even if the Commission

[160] T-Mobile Opening Brief at 38.
[161] T-Mobile Opening Brief at 38.
[162] T-Mobile Opening Brief at 35 n.108.

concludes T-Mobile breached its contractual and ethical obligations, that breach was somehow undertaken in which T-Mobile calls "good faith."[163]

T-Mobile first cites "the general principle that agencies only have the authority to enforce their own orders, not those of other agencies[.]"[164] In other words, T-Mobile seems to say, even if it was caught violating the Protective Order, it was not caught by the court that issued it. But this does not make this Commission powerless to punish a party's effort to mislead it through misuse of documents protected under court orders.

T-Mobile next claims that it, and its counsel, acted in good faith. They did not. While T-Mobile states that it gave DISH advance notice, T-Mobile apparently tried to conceal from DISH its plan to use the highly confidential Sept. Model, burying it in hundreds of superfluous pages to obscure it. A wide body of case law regards efforts to conceal as evidence of bad faith.[165] As for the "precautions to protect confidentiality within the Commission's process," they are irrelevant. T-Mobile should not have used the document at the Commission at all -- on a confidential basis or otherwise. And finally, it is impossible to credit the good faith claim particularly when T-Mobile's defense contains serious misrepresentations, including the claim that DISH did not share the documents with T-Mobile's lawyers after all. This claim is contradicted by DISH's testimony and elicited persistently by Mr. Gelfand himself that DISH had indeed shared the document with T-Mobile's lawyers.

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[163] T-Mobile Opening Brief at 40.
[164] T-Mobile Opening Brief at 41.
[165] *See Jacobs v. Bernstein*, 156 A.D. 263, 267 (App. Div. 1913), *aff'd*, 215 N.Y. 743, 109 N.E. 1079 (N.Y. 1915) ("Whoever conceals facts required by good faith and fair dealing to be disclosed, acts inequitably, and will not be permitted to assert those facts to the injury of one misled by such conduct."); *Love v. Cardenas*, No. EDCV180208FMOKKX, 2019 WL 6463395, at *1 (C.D. Cal. Aug. 19, 2019) (finding that efforts of counsel to conceal critical facts from the court was sufficient to establish bad faith); *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp*., 337 F.3d 314, 321 (3d Cir. 2003) (inference of bad faith arises when "averments in the pleadings demonstrate both knowledge of a claim and a motive to conceal that claim in the face of an affirmative duty to disclose.").

IV. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

For the foregoing reasons, the Commission should confirm the conclusions in the OSC and sanction T-Mobile for its multiple Rule 1.1 violations.

Signed and dated November 1, 2021 at Walnut Creek, CA.

Respectfully Submitted,

/s/ Anita Taff-Rice

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EXHIBIT 1

WITNESS DESIGNATION OF T-MOBILE USA, INC.

Subject: RE: A.18-07-011 OSC: Witness Designation of T-Mobile USA, Inc.
From: "Toller, Suzanne" <suzannetoller@dwt.com>
Date: 9/13/2021, 3:47 PM
To: "Bemesderfer, Karl J. (karl.bemesderfer@cpuc.ca.gov)" <karl.bemesderfer@cpuc.ca.gov>, "Mason, Robert" <robert.mason@cpuc.ca.gov>
CC: "England, Karin" <KarinEngland@dwt.com>, "RKoss@AdamsBroadwell.com" <RKoss@AdamsBroadwell.com>, "ttf@cpuc.ca.gov" <ttf@cpuc.ca.gov>, "CMailloux@turn.org" <CMailloux@turn.org>, "Rachelle@ChongLaw.net" <Rachelle@ChongLaw.net>, "Anita@iCommlaw.com" <Anita@iCommlaw.com>, "LMB@wblaw.net" <LMB@wblaw.net>, "VinhcentL@Greenlining.org" <VinhcentL@Greenlining.org>, "Kristin.Jacobson@DLAPiper.com" <Kristin.Jacobson@DLAPiper.com>, "ABender@Warren-News.com" <ABender@Warren-News.com>, "AppRhg@cpuc.ca.gov" <AppRhg@cpuc.ca.gov>, "Lyndall.Nipps@dish.com" <Lyndall.Nipps@dish.com>, "mark.dinunzio@cox.com" <mark.dinunzio@cox.com>, "stacy.lee@cpuc.ca.gov" <stacy.lee@cpuc.ca.gov>, "susan.lipper@t-mobile.com" <susan.lipper@t-mobile.com>, "EdnEditorial@Event-Driven.com" <EdnEditorial@Event-Driven.com>, "Pau, Judy" <judypau@dwt.com>, "lselwyn@econtech.com" <lselwyn@econtech.com>, "ASethian@QuadGroup.com" <ASethian@QuadGroup.com>, "stephen.h.kukta@sprint.com" <stephen.h.kukta@sprint.com>, "Hadass.Kogan@Dish.com" <Hadass.Kogan@Dish.com>, "Jeffrey.Blum@dish.com" <Jeffrey.Blum@dish.com>, "Nelson, John" <JohnNelson@dwt.com>, "pj1585@att.com" <pj1585@att.com>, "ASalas@turn.org" <ASalas@turn.org>, "jesus.g.roman@verizon.com" <jesus.g.roman@verizon.com>, "SteveBlum@TellusVenture.com" <SteveBlum@TellusVenture.com>, "nicole.gordon@doj.ca.gov" <nicole.gordon@doj.ca.gov>, "ajc@cpuc.ca.gov" <ajc@cpuc.ca.gov>, "aj1@cpuc.ca.gov" <aj1@cpuc.ca.gov>, "aku@cpuc.ca.gov" <aku@cpuc.ca.gov>, "cr5@cpuc.ca.gov" <cr5@cpuc.ca.gov>, "cu2@cpuc.ca.gov" <cu2@cpuc.ca.gov>, "wit@cpuc.ca.gov" <wit@cpuc.ca.gov>, "eo2@cpuc.ca.gov" <eo2@cpuc.ca.gov>, "pod@cpuc.ca.gov" <pod@cpuc.ca.gov>, "eg2@cpuc.ca.gov" <eg2@cpuc.ca.gov>, "jd8@cpuc.ca.gov" <jd8@cpuc.ca.gov>, "j06@cpuc.ca.gov" <j06@cpuc.ca.gov>, "min@cpuc.ca.gov" <min@cpuc.ca.gov>, "wow@cpuc.ca.gov" <wow@cpuc.ca.gov>, "rd4@cpuc.ca.gov" <rd4@cpuc.ca.gov>, "rk4@cpuc.ca.gov" <rk4@cpuc.ca.gov>, "rim@cpuc.ca.gov" <rim@cpuc.ca.gov>, "sg8@cpuc.ca.gov" <sg8@cpuc.ca.gov>, "svn@cpuc.ca.gov" <svn@cpuc.ca.gov>, "sjy@cpuc.ca.gov" <sjy@cpuc.ca.gov>, "RCosta@turn.org" <RCosta@turn.org>, "BLui@MoFo.com" <BLui@MoFo.com>, "Jane.Whang@Verizon.com" <Jane.Whang@Verizon.com>, "Marg@Tobiaslo.com" <Marg@Tobiaslo.com>, "Andy.Umana@att.com" <Andy.Umana@att.com>, "nelsonya.causby@att.com" <nelsonya.causby@att.com>, "Tracy@media-alliance.org" <Tracy@media-alliance.org>, "Huang, David" <DavidHuang@dwt.com>, "Sundaresan, Thaila" <ThailaSundaresan@dwt.com>, SFOCPUCDockets <SFOCPUCDockets@DWT.com>, "Susan.Walters@CETfund.org" <Susan.Walters@CETfund.org>, "eb@calcable.org" <eb@calcable.org>, "JKinney@CalCable.org" <JKinney@CalCable.org>, "karl.bemesderfer@cpuc.ca.gov" <karl.bemesderfer@cpuc.ca.gov>, "clifford.rechtschaffen@cpuc.ca.gov" <clifford.rechtschaffen@cpuc.ca.gov>

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
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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 <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; 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

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