

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



FILED

06/08/22

04:59 PM

A1807011

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

**MOTION OF T-MOBILE USA, INC. REQUESTING ALTERNATIVE DISPUTE
RESOLUTION AND STAY OF APPEAL OF THE PRESIDING OFFICERS' DECISION
(PUBLIC VERSION)**

Kathleen Ham
Michele Thomas
Stephen H. Kukta
T-Mobile USA, Inc.
12920 SE 38th St.
Bellevue, WA 98006
Tel: (425) 378-4000
Email: kathleen.ham@t-mobile.com
Email: michele.thomas@t-mobile.com
Email: stephen.h.kukta@t-mobile.com

Suzanne Toller
Thaila K. Sundaresan
John C. Nelson, Jr.
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Tel: (415) 276-6500
Email: suzannetoller@dwt.com
Email: thailasundaresan@dwt.com
Email: johnnelson@dwt.com

David Gelfand
Daniel Culley
Cleary Gottlieb Steen & Hamilton, LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Tel: (209) 974-1500
Email: dgelfand@cgsh.com
Email: dculley@cgsh.com

June 8, 2022

**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

**MOTION OF T-MOBILE USA, INC. REQUESTING ALTERNATIVE DISPUTE
RESOLUTION AND STAY OF APPEAL OF THE PRESIDING OFFICERS' DECISION
(PUBLIC VERSION)**

Pursuant to Rule 11.1 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”) and Resolution ALJ-185, T-Mobile USA, Inc. (“T-Mobile”) respectfully submits this motion to: (1) participate in the Commission’s Alternative Dispute Resolution Program (“ADR”) to resolve the issues raised in the Presiding Officers’ Decision Finding that T-Mobile USA, Inc. Should Be Sanctioned by the Commission for Violating Rule 1.1 of the Commission’s Rules of Practice and Procedure (“POD”), served on T-Mobile on April 25, 2022; and (2) stay the Commission’s consideration of T-Mobile’s May 25, 2022 appeal of the POD to allow time for ADR.

I. PROCEDURAL HISTORY

In April 2021, over a year after the Commission completed its review of the T-Mobile-Sprint merger, and some six months after receiving formal notice that T-Mobile planned to sunset the legacy Sprint 3G CDMA network (the “CDMA network”) at the end of 2021, DISH Network Corporation (“DISH”) filed a Petition for Modification (“PFM”) of the Commission’s merger

decision.¹ In its PFM, DISH claimed that T-Mobile had promised in its merger testimony before the Commission not to sunset the CDMA network until 2023, and that T-Mobile’s shutting down of the CDMA network before 2023 would harm Boost Mobile (“Boost”) customers divested to DISH as a condition of the merger’s approval.² T-Mobile opposed DISH’s PFM on the grounds that, among other things, T-Mobile never assured DISH or the Commission that it would continue to operate the CDMA network for three years and that it had fulfilled its contractual obligation to give DISH reasonable advance notice of at least six months before shutting down the CDMA network.³ The Commission ultimately denied DISH’s PFM in March 2022.⁴

Nevertheless, based on DISH’s flawed premise, and out of concern for the CDMA network shutdown’s impact on Boost’s “low-income, rural, and transient”⁵ customers, ALJ Bemederfer and Assigned Commissioner Rechtschaffen issued an Order to Show Cause (“OSC”) on August 13, 2021, directing T-Mobile to explain why it should not be sanctioned under Rule 1.1 for allegedly misrepresenting, among other things, that “DISH would have up to three years in which to complete Boost customer migration” off of the CDMA network.⁶

In multiple briefings filed and a hearing that took place after the OSC’s issuance, T-Mobile established that its statements about a three-year CDMA network shutdown and migration period

¹ Petition of DISH Network Corporation to Modify D.20-04-008 (Apr. 28, 2021) (“DISH PFM”).

² *See id.* at 1-2.

³ *See, e.g.*, T-Mobile USA, Inc.’s Response to DISH Network Corporation’s Petition to Modify D.20-04-008 at 8-17 (June 1, 2021) (“T-Mobile Response to DISH PFM”).

⁴ Decision Denying Petition for Modification of Decision 20-04-008 (Mar. 17, 2022).

⁵ Assigned Commissioner and Assigned Administrative Law Judge’s Ruling Directing T-Mobile USA, Inc. to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure at 7 (Aug. 13, 2021) (“OSC”).

⁶ *Id.* at 2.

referred to an *outer* bound for T-Mobile’s estimate of the time it would take for T-Mobile to migrate all legacy Sprint customers to the T-Mobile network, and that it was candid throughout the Commission’s merger review proceedings about its plan to complete that work *within* three years. However, on April 25, 2022, the assigned ALJs served on T-Mobile their POD, which would have the Commission find, among other things, that T-Mobile violated Commission Rule 1.1 by: (1) misrepresenting that it would maintain the CDMA network for a full three years following the merger to ensure the migration of legacy Sprint and divested Boost customers and (2) failing to promptly inform the Commission after the merger decision was issued that T-Mobile intended to discontinue the CDMA network in less than three years.⁷ The POD also asserts that Ordering Paragraph 6 (“OP 6”) of the merger decision memorialized T-Mobile’s alleged promise to maintain the CDMA network for three years after the merger.⁸

II. ARGUMENT

As explained in detail in T-Mobile’s recently filed appeal of the POD,⁹ T-Mobile believes that it was honest and transparent with the Commission about its plans for migrating customers and shutting down the CDMA network throughout the Commission’s merger review proceedings, and that the POD’s findings and conclusions cannot be supported by the record. Nevertheless, T-Mobile also recognizes and appreciates the Commission’s overarching concern about the potential impact of the CDMA network shutdown on the divested Boost customers, and understands the

⁷ See Presiding Officers’ Decision Finding that T-Mobile USA, Inc. Should Be Sanctioned by the Commission for Violating Rule 1.1 of the Commission’s Rules of Practice and Procedure at 11-33 (Apr. 25, 2022) (“POD”).

⁸ *Id.* at 11, 15.

⁹ See T-Mobile USA, Inc.’s Appeal of Presiding Officers’ Decision Finding that T-Mobile USA, Inc. Should Be Sanctioned by the Commission for Violating Rule 1.1 of the Commission’s Rules of Practice and Procedure (May 25, 2022) (“POD Appeal”).

Commission's goal of ensuring that Boost customers did not lose service as a result of the shutdown. Indeed, T-Mobile shares the Commission's goal of avoiding service disruptions for customers, including DISH's Boost customers, and ensuring that customers have the opportunity and ability to remain connected through technology transitions like the CDMA network shutdown. T-Mobile respectfully submits that T-Mobile and the Commission should be able to discuss and resolve the ALJ's and Assigned Commissioner's (collectively, the "Presiding Officers") concerns outside of the OSC proceeding and POD – through the Commission's ADR Program.

A. The Presiding Officers' Key Concern Throughout the OSC Proceeding Has Been the Boost CDMA Customer Base.

It is clear that a key concern underlying these proceedings is the potential impact of the CDMA network shutdown on the Boost customers that needed to be migrated off of the CDMA network. Indeed, this has been made evident from the outset, as the OSC emphasized that part of the reason for its issuance was the fact that "impacts on [CDMA network] service could harm Boost prepaid customers, who are frequently low-income, rural, and transient."¹⁰ This same concern carried through to the POD itself, which described "T-Mobile USA's intent to end the [CDMA network] customer migration process ahead of the three-year window [as a] threatened harm to the Boost customers."¹¹ The Presiding Officers' focus on Boost customer impact is also highlighted through the POD's seeming acknowledgement that the Presiding Officers would not

¹⁰ OSC at 7.

¹¹ POD at 40. *See also id.* at 22 (recognizing that, "the circumstance facing DISH was more than just 'a very small number of customers' who would face disconnection if the legacy [CDMA] network shut down were permitted to occur on January 1, 2022"); *id.* at 22-23 (stating that T-Mobile's three-month additional delay in the CDMA Network shutdown "does little to stave off the possibility of millions of DISH customers' service being disrupted, which is why the three-year migration period that T-Mobile committed to is so critical"); *id.* at 37 ("[W]e conclude that T-Mobile USA's actions are severe as T-Mobile USA misled the Commission and the Boost customers into believing that the customer migration period would be three years, which would avoid degrading service to any of the legacy customers.").

be concerned about a migration period of less than three years, provided DISH agreed that the needs of the Boost CDMA customer base had been met.¹²

B. Events Preceding and Since the OSC's Issuance Demonstrate that the Concern Regarding the Impact on the Boost CDMA Customer Base Has Been Resolved.

The effective migration of subscribers so as to ensure continued wireless service is certainly an important issue. T-Mobile shares the Presiding Officers' interest in protecting and doing right by subscribers, including the divested Boost subscribers, and T-Mobile made substantial efforts to help ensure those customers were not adversely affected by the CDMA network's shutdown. In addition to T-Mobile's up-front efforts to facilitate the migration of Boost customers from the CDMA network (discussed further below), T-Mobile has in the year since DISH filed its PFM continued to provide DISH with substantial assistance to ensure that Boost customers were successfully migrated.

1. From the Outset, T-Mobile Took Substantial Steps to Assist DISH with its Migration of Boost Customers.

As T-Mobile has explained previously, from the outset T-Mobile has done its best to set DISH up for success with respect to the migration of the Boost customers off of the CDMA network. Indeed, prior to the merger's close, the parties negotiated a Master Network Service Agreement ("MNSA") through which DISH explicitly agreed to contractual provisions that required it to pay for migration of the Boost CDMA customers and to migrate said customers upon

¹² See *id.* at 29 ("There may well be circumstances where T-Mobile USA and DISH complete the migration of their respective customers in a particular market in less than three years. If that were to happen, T-Mobile USA would not have to wait for three years to shut down the CDMA network in that market but would, instead, utilize the six-month notice provision in Section 2.2(c) to shut down the CDMA network in that market.").

receiving from T-Mobile six-months' advance notice of the CDMA network shutdown.¹³ T-Mobile provided DISH with nearly 15 months' notice of its CDMA shutdown.¹⁴

Moreover, to facilitate the required migration, T-Mobile agreed to build out (at the cost of millions of dollars) and provide to DISH prior to the merger's close a technology called "cross-provisioning," which allowed Boost devices on the legacy Sprint network to also be recognized by T-Mobile's systems so that Boost customers' devices could be activated on the T-Mobile network rather than the Sprint network.¹⁵ As noted in T-Mobile's OSC Appeal, implementing this technology for DISH's benefit pre-divestiture ensured that DISH could begin migrating Boost customers off of the CDMA network as soon as DISH acquired the Boost assets.¹⁶

2. T-Mobile Continued to Assist DISH with its Migration of Boost Customers After DISH Filed Its PFM.

Even after DISH filed its PFM, T-Mobile remained steadfast in facilitating the Boost customer migration process for DISH, taking numerous actions to assist DISH with its migration efforts and delaying the CDMA network shutdown to help prevent any negative impact to Boost customers. For example, in July 2021, T-Mobile pulled together for DISH a comprehensive Boost CDMA customer migration "playbook," the purpose of which was to guide DISH towards achieving a timely migration of all remaining Boost CDMA customers by the end of that calendar

¹³ See T-Mobile Response to DISH PFM at 15-17.

¹⁴ See *id.* at 16.

¹⁵ See POD Appeal at 11.

¹⁶ See *id.*

year.¹⁷ T-Mobile then also arranged for additional handset supplies for DISH at cost, and ultimately voluntarily agreed to delay the sunset of the CDMA network to March 31, 2022.¹⁸

As T-Mobile informed the Commission in various updates, the above-described actions on T-Mobile's part have had a significant positive influence on the pace of Boost CDMA customer migration over the past year.¹⁹

More recently, in April 2022, T-Mobile and DISH jointly advised the Commission that they had reached a resolution of their dispute regarding the migration of Boost customers off the CDMA network, which at the time was pending approval by the U.S. Department of Justice ("DOJ").²⁰ During its May 6, 2022 earnings call, DISH executives reaffirmed that the settlement was favorable, noting that, "during the first quarter of 2022, we and T-Mobile reached a proposed settlement and amendment, which among other things, settled all open disputes, including CDMA matters and contains favorable terms to us."²¹ Just recently, on May 13, 2022, the DOJ approved the parties' negotiated resolution.²² And, as T-Mobile explained in its May 25, 2022 update to the

¹⁷ See Notice of Written Ex Parte Communication of T-Mobile USA, Inc., Att. A at 3-4 (July 30, 2021).

¹⁸ See Update to T-Mobile USA, Inc.'s Response to DISH Network Corporation's Petition to Modify D.20-04-008 at 1 (Oct. 22, 2021).

¹⁹ See, e.g., *id.*; Update to T-Mobile USA, Inc.'s Response to DISH Network Corporation's Petition to Modify D.20-04-008 at 1-3 (Jan. 13, 2022) (updating the Commission on "the progress made in migrating Boost customers from the CDMA network before this outdated technology is retired on March 31, 2022"); Joint Comments of T-Mobile USA, Inc. and DISH Network Corp. in Response to ALJ Mason's March 10, 2022 Ruling at (Mar. 15, 2022) ("Joint Comments on CDMA Network Resolution") (confirming that T-Mobile and DISH "have reached a potential resolution of the Dispute," which "will provide assistance to DISH to migrate Boost customers currently utilizing the Sprint CDMA Legacy Network.").

²⁰ See Joint Comments on CDMA Network Resolution at 1-2.

²¹ DISH NETWORK CORP., *Q1 2022 Earnings Call* at 4 (May 6, 2022), available at <https://seekingalpha.com/article/4508292-dish-network-corporation-dish-ceo-erik-carlson-on-q1-2022-results-earnings-call-transcript>.

²² See Update of T-Mobile USA, Inc. to March 4, 2022 Response to ALJ Mason's February 25, 2022 Email Ruling at 1 (May 25, 2022) ("May 25 Update").

Commission, while DISH is attempting to renegotiate certain provisions in the binding term sheet, those provisions are not related to the CDMA migration. Under the terms of the binding term sheet, T-Mobile postponed the physical cessation of signals at CDMA network towers that have not yet been decommissioned by two more months to May 31, 2022.²³

As T-Mobile noted in its most recent update to the Commission, through these (and many other) efforts, as of May 31, 2022, millions of customers were successfully transitioned and only [BEGIN HIGHLY CONFIDENTIAL (“BHC”)] [REDACTED] [END HIGHLY CONFIDENTIAL (“EHC”)] California Boost customers remained on the CDMA network as of May 31, 2022, or [BHC] [REDACTED] [EHC] percent of California Boost customers that were on the CDMA network at the time of the divestiture.²⁴ T-Mobile has thus worked diligently and in a steadfast manner to protect the divested Boost CDMA customers and ensure that they maintain uninterrupted wireless service.

C. A More Fulsome Discussion Between T-Mobile and the Commission Regarding T-Mobile’s Efforts to Protect the Boost CDMA Customer Base Is Warranted.

T-Mobile submits that the POD is not the appropriate vehicle by which the Commission should raise and address its concerns regarding the impact of the CDMA network shutdown on the Boost CDMA customer base. Instead, the resolution of such concerns would benefit from a frank and open discussion by T-Mobile and the Commission, where T-Mobile could address in *ex parte* fashion the details of the developments that have transpired since the OSC’s (and even the POD’s) issuance. Such a fulsome discussion will help the Commission understand that the CDMA network

²³ See *id.* at 1-2.

²⁴ See Second Update of T-Mobile USA, Inc. to March 4, 2022 Response to ALJ Mason’s February 25, 2022 Email Ruling at 2 (June 8, 2022) (“June 8 Update”).

shutdown has not adversely affected Boost customers. Moreover, such a discussion will allow T-Mobile and the Commission to reach a meeting of the minds on how the Commission intended for the merger decision's Ordering Paragraph 6 ("OP 6") to apply to T-Mobile's ongoing efforts and to ensure that there are no future miscommunications or misunderstandings regarding OP 6's intent in connection with the eventual decommissioning of T-Mobile's LTE network.

Accordingly, pursuant to Rule 11.1 and Resolution ALJ-185, T-Mobile requests an opportunity to resolve the Presiding Officers' concerns related to the divested Boost customers through the ADR Program and a stay of the Commission's consideration of T-Mobile's appeal of the POD during the pendency of the ADR discussions.

III. REQUESTS FOR RELIEF

A. Request for Alternative Dispute Resolution.

In Resolution ALJ-185, the Commission "endorse[d] the policies behind ADR" and "encourage[d] its more frequent and systemic application in formal proceedings,"²⁵ noting further that "ADR may be used in a specific phase of the proceeding or as a means to resolve a set of issues."²⁶ The Commission thus "believe[s] ADR offers great potential to the Commission, and all who practice before the Commission, for improving decisionmaking processes."²⁷ And there is Commission precedent that supports utilizing ADR in Rule 1.1 cases such as this, including after a presiding officer's decision has been issued.²⁸

²⁵ ALJ-185 at 1.

²⁶ *Id.* at 3.

²⁷ *Id.* at 9.

²⁸ See R.12-12-011, Assigned Administrative Law Judge's Ruling Granting Uber Technologies, Inc.'s Motion Requesting Alternative Dispute Resolution (Feb. 22, 2021) ("Uber ADR Ruling").

Because the Consumer Protection and Enforcement Division (“CPED”) has not been directly involved and *ex parte* rules limit communications with the Presiding Officers, there has not been any party or Commission representative with whom T-Mobile could engage to resolve the Commission’s concerns in a manner consistent with the Commission’s interest in the CDMA network’s shutdown, the migration of Boost customers from the CDMA network, and the overall impact of the shutdown and migration on divested Boost CDMA customers. However, if CPED or another Commission representative is authorized to engage in ADR to discuss the various new developments that have occurred since the POD’s issuance, T-Mobile expects the Presiding Officers’ concerns could be resolved to the Commission’s satisfaction. Therefore, consistent with Commission precedent, T-Mobile respectfully moves for authorization to conduct ADR with CPED or another Commission representative,²⁹ as ADR will provide the opportunity for the expedient resolution of the above-described concerns in a non-adversarial manner.

B. Request to Stay T-Mobile’s Appeal of the POD to Allow Time for ADR.

T-Mobile respectfully seeks to stay the Commission’s consideration of T-Mobile’s recently filed appeal of the POD until these matters are resolved. T-Mobile submits that the public interest will be served by giving T-Mobile and the Commission a chance to work through ADR because, as already detailed above, such discussions will: (1) help the Commission understand that the CDMA network shutdown did not adversely affect Boost customers and (2) ensure that a similar misunderstanding does not occur in the future as a result of the eventual decommissioning of T-Mobile’s LTE network.

²⁹ See Uber ADR Ruling at 3-4 (granting motion requesting alternative dispute resolution, ordering CPED to participate in said ADR, and staying the Commission’s consideration of the pending presiding officer’s decision during the pendency of ADR).

IV. CONCLUSION

For the foregoing reasons, T-Mobile requests: (1) an opportunity to resolve through ADR the issues raised in the POD; and (2) a stay of the Commission's consideration of T-Mobile's appeal of the POD to allow time for ADR.

Respectfully submitted this 8th day of June 2022.

/s/
Suzanne Toller
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Tel: 415.276.6500
Fax: 415.276.6599
Email: suzannetoller@dwt.com

Attorney for T-Mobile USA, Inc.