

Decision 22-03-005 March 17, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 18-07-011

And Related Matter.

Application 18-07-012

**DECISION DENYING PETITION FOR MODIFICATION
OF DECISION 20-04-008**

Summary

We deny the Petition for Modification of Decision 20-04-008 filed by
DISH Network Corporation on April 28, 2021.

1. Background

In Decision (D.) 20-04-008 we approved with conditions the merger of
T-Mobile USA Inc. (T-Mobile) and Sprint Communications Corporation, L.P.
Among the conditions placed on T-Mobile by D.20-04-008 was the requirement
set forth in Ordering Paragraph (OP) 6:

The legacy Sprint and T-Mobile customer experience shall not
be degraded during the customer migration period
(2020-2023) or the 5G build-out period (2020-2026). During

such time New T-Mobile shall maintain LTE broadband speeds and coverage areas in California at no less than the speeds and coverage areas reported to the Federal Communications Commission on Form 477 by T-Mobile and Sprint for their respective LTE¹ services as of December 31, 2019.

The phrase “customer migration period” refers to the three-year period (2020-2023) within which former Sprint customers would become customers of T-Mobile or, in the case of the customers of former Sprint subsidiary Boost Mobile (Boost), the period within which former Boost customers would become customers of a newly-formed national, facilities-based wireless services provider, DISH Network Corporation (DISH). The phrase “5G buildout period” refers to the six-year period (2020-2026) during which T-Mobile would complete construction of its new fifth-generation wireless network.

The divestiture of Boost to DISH (“Boost Divestiture”), which was contemplated to lead to the transformation of DISH, a provider of satellite television services, into a fourth national wireless carrier, was structured by the Federal Communications Commission (FCC) and the federal Department of Justice (DOJ), as a condition of their approval of the Sprint-T-Mobile merger and was contained in a Final Judgment² issued by the federal District Court approving the merger.

As part of the Boost Divestiture, DISH and T-Mobile entered into a Master Network Services Agreement (MNSA) pursuant to which DISH would have

¹ LTE stands for “Long Term Evolution” which is the fastest version of the fourth generation of wireless service.

² See *United States v. Deutsche Telekom AG*; Final Judgment, 2020 U.S. Dist. LEXIS 87971, 2020 WL 2481785 (D.D.C., Apr. 1, 2020), Sec. IV.A: Divestitures: Prepaid Assets; Memorandum Opinion, 2020 U.S. Dist. LEXIS 65096, 2020 WL 1873555 (Apr. 14, 2020, D.D.C.), Analysis, 2020 U.S. Dist. LEXIS 65096, at *14-*26.

access to the T-Mobile network while building its own separate facilities-based national wireless network. The MNSA was vetted and approved by the DOJ. Calls to and from DISH customers during this period would be carried on the T-Mobile network. The MNSA required T-Mobile to give DISH reasonable notice of not less than 6 months before shutting down the legacy Sprint wireless network (CDMA network) in any market.

On or about October 1, 2020, T-Mobile announced that it would shut down the CDMA Network on January 1, 2022. DISH responded that the January 1, 2022 date is unreasonable and would result in substantial numbers of Boost customers who had not yet been migrated to the LTE network losing phone service altogether as of that date.

On April 28, 2021, DISH filed the Petition for Modification (PFM) that is the subject of this decision. The PFM contains the following prayer for relief:

To ensure that consumers using the CDMA network are not left with degraded or disrupted service, DISH respectfully requests the Commission grant this Petition to ensure that T-Mobile lives up to its commitment to operate the Sprint CDMA network until, at least July 1, 2023 by ordering the following:

In light of T-Mobile's announcement that it plans to shut down the CDMA network on or around January 1, 2022, we order that the legacy Sprint and T-Mobile customer experience shall not be degraded during the customer migration period (2020-2023) or the 5G build-out period (2020-2026). During such time New T-Mobile shall maintain LTE broadband speeds and coverage areas in California at no less than the speeds and coverage areas reported to the Federal Communications Commission on Form 477 by T-Mobile and

Sprint for their respective LTE services as of December 31, 2019.³

In its reply to the PFM, T-Mobile argued that the only constraint on its ability to shut down the CDMA network whenever it was convenient to T-Mobile to do so was the six-month “reasonable notice” provision and that it had met that requirement by giving fifteen months’ notice rather than six.

In addition to filing the PFM with the Commission, DISH sought remedy from the DOJ and the FCC, asserting that the early shutdown contradicted the assurances given by T-Mobile that the CDMA network would remain fully operational until DISH had completed the Boost customer migration. The DOJ responded to the DISH complaints with letters to T-Mobile asking it to refrain from taking any irrevocable action until the Antitrust Division had reviewed DISH’s complaint⁴ and to explain how the early shutdown was consistent with T-Mobile’s obligations under the Final Judgment.⁵

In a Response to the PFM filed on October 22, 2021, T-Mobile announced that it would delay the shutdown of its CDMA network by three months, to April 1, 2022, stating that:

T-Mobile made that decision following discussions with the U.S. Department of Justice and to err on the side of protecting consumers and remove any doubt that there is sufficient time for DISH to complete the CDMA migration. With that additional three months, DISH will now have had 18 months’ notice — three times the amount required by the Master

³ Petition of DISH Network Corporation to Modify D.20-04-008 at 10 (emphasis added).

⁴ Letter from Lawrence Reichner, Chief, Office of Decree Enforcement and Compliance, Antitrust Division, to Melissa Scanlan and Craig Codlin, T-Mobile, dated April 19, 2021 at 1.

⁵ Letter from Ashley D. Kaplan, Trial Attorney, Office of Decree Enforcement and Compliance, Antitrust Division, to Melissa Scanlan and Craig Codlin, T-Mobile, dated October 4, 2021 at 1.

Network Services Agreement between DISH and T-Mobile — to migrate Boost customers before the CDMA sunset.⁶

Following T-Mobile's extension of the shutdown date to April 1, 2021, DISH indicated in confidential portions of filings with this Commission that a shutdown of the CDMA network on that date would still leave a significant number of former Boost customers with phones that would no longer be operational.⁷ On January 13, 2022, T-Mobile filed an updated response to the PFM indicating that additional progress had been made in migrating Boost customers and that the migration that DISH had estimated would be achieved by April 1, 2022 had already occurred by the end of December, 2021.⁸

2. Discussion

Neither T-Mobile nor DISH can unilaterally decide what constitutes reasonable notice from T-Mobile to DISH before T-Mobile shuts down the CDMA network. DOJ, the agency that structured the Boost Divestiture, including the reasonable notice requirement, is the only entity that can state definitively whether the notice given by T-Mobile meets the reasonable notice requirement. Nonetheless, the PFM asks this Commission to order T-Mobile to maintain the CDMA network until at least mid-2023.

In this circumstance, we find that it is appropriate to leave the determination of what constitutes reasonable notice of the proposed CDMA shutdown to the federal government. Thus, we deny the PFM.

⁶ Update to T-Mobile USA, Inc.'s Response to DISH's Petition to Modify D.20-04-008 at 1-2.

⁷ DISH Network Corporation Reply to T-Mobile USA, Inc.'s Update to Its Response to DISH's Petition to Modify D.20-04-008, filed November 3, 2021 at 3.

⁸ Update to T-Mobile USA, Inc.'s Response to DISH Network Corporation's Petition to Modify D.20-04-005, at pp. 1-2.

3. Comments on Proposed Decision

The proposed decision of ALJ Bemederfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

4. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner for this proceeding and Karl J. Bemederfer is the assigned Administrative Law Judge.

Findings of Fact

1. On or about October 1, 2020, T-Mobile announced it would shut down its CDMA network on January 1, 2022.
2. On April 28, 2021, T-Mobile announced it would delay shutdown of its CDMA network until April 1, 2022.
3. T-Mobile and DISH entered into a Master Network Services Agreement pursuant to which DISH will operate as a virtual provider of wireless services while building its own facilities-based national wireless network.
4. Pursuant to the Master Network Services Agreement, DISH is obliged to migrate former Boost Wireless customers to its virtual network.
5. Pursuant to the Master Network Services Agreement, T-Mobile is required to give DISH reasonable advanced notice of at least six months prior to the shutdown of the CDMA network in any market.
6. On April 1, 2020, the federal district court for the District of Columbia entered a Final Judgment in *United States v. Deutsche Telekom AG*.
7. The Master Network Services Agreement was developed as part of the Boost Divestiture, which the Final Judgment required for approval of the T-Mobile-Sprint merger.

8. The DISH Petition for Modification asks the Commission to order T-Mobile to maintain its CDMA network for at least three years.

Conclusions of Law

1. Neither T-Mobile nor DISH can unilaterally decide what constitutes reasonable notice from T-Mobile to DISH before T-Mobile shuts down the CDMA network.

2. In light of the federal government's structuring of the Boost Divestiture, including the reasonable notice requirement, the Commission should defer to the federal government's determination of what constitutes reasonable notice of the shutdown of the CDMA network.

3. The Petition for Modification should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 20-04-008 is denied.
2. Application (A.) 18-07-011, A.18-07-012 remain open.

This order is effective today.

Dated March 17, 2022, at Sacramento, California.

ALICE REYNOLDS

President

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE HOUCK

JOHN R.D. REYNOLDS

Commissioners