

Decision 23-06-021

June 8, 2023

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

In the Matter of 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

**ORDER DENYING REHEARING OF DECISION 22-11-005****I. INTRODUCTION**

On December 7, 2022, T-Mobile USA, Inc. (T-Mobile) filed a timely application for rehearing of Decision (D.) 22-11-005 (Decision). In the Decision, we affirmed our prior order finding that T-Mobile violated Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule 1.1). We ordered T-Mobile to pay \$3,585,000 in penalties. The Decision resulted from the underlying consolidated proceeding, wherein T-Mobile and Sprint Communications Company L.P. (U5112C) jointly sought our approval of the merger between Sprint Corporation, a Delaware Corporation (Sprint), with T-Mobile, a Delaware Corporation, and the transfer of control of Sprint Communications Company L.P.<sup>1</sup> pursuant to Public Utilities Code section 854(a)

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<sup>1</sup> T-Mobile USA is a Delaware corporation wholly owned by T-Mobile. T-Mobile is a publicly traded Delaware corporation headquartered in Washington. Neither T-Mobile USA nor T-Mobile directly offer services in California. Sprint Corporation is a publicly traded Delaware corporation headquartered in Kansas and does not directly offer services in California. Sprint's wholly owned subsidiaries that provide services in California are Sprint Spectrum L.P. and Virgin Mobile USA, L.P. Sprint Spectrum L.P. uses the commonly recognized trade names of "Sprint," "Boost Mobile," or "Boost." Virgin Mobile also provides prepaid LifeLine services in California under the commonly recognized trade name of "Assurance Wireless Brought to You

(Transaction).<sup>2</sup> The Transaction eventually came to include the transfer of Sprint's Boost Mobile (Boost) business to DISH Network Corporation (DISH) (Boost Divestiture). During evidentiary hearings, in written testimony, and in subsequent briefing, T-Mobile made certain representations to the Commission regarding the length of the migration period for all former Sprint customers (*i.e.*, both the former Sprint customers who would become T-Mobile customers on the new T-Mobile 5G network; and the customers of the former Sprint subsidiary, Boost Mobile, who would become customers on the new DISH Network). Specifically, T-Mobile represented that there would be a three-year customer migration period from 2020 until 2023. We relied on T-Mobile's representation of a three-year customer migration period in approving the merger and issuing D.20-04-008.

In its application for rehearing, T-Mobile asserts that the record evidence does not support our conclusion that T-Mobile unambiguously promised to operate the CDMA network for three years and, in fact, T-Mobile's supplemental evidence and relevant context demonstrate otherwise. T-Mobile also asserts that the penalties calculation is erroneous because, even if a violation occurred, it was not continuous and there was no evidence of actual economic harm. Moreover, T-Mobile argues that because Ordering Paragraph 6 of D.20-04-008 does not concern the CDMA network, there was no harm to our regulatory process.

We have carefully considered all the arguments presented by rehearing applicant and are of the opinion that rehearing of the Decision is not warranted, as explained below. T-Mobile's application for rehearing of the Decision, therefore, is denied.

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by Virgin Mobile.” Sprint's subsidiary Sprint Wireline holds a Commission CPCN. (D.20-04-008, pp. 10-11.)

<sup>2</sup> All section references are to the Public Utilities Code unless otherwise specified.

## II. DISCUSSION

### A. Rule 1.1 violation standard.

Our standard for evaluating Rule 1.1 violations is well established: “A Rule 1.1 violation occurs when there has been a ‘lack of candor, withholding of information, or failure to correct information or respond fully....’” (D.19-12-041, at \*6.) T-Mobile disagrees, and asserts that “statements that are ‘at best unclear’ do not rise to a Rule 1.1 violation.” (Rehg. App., p. 38.)

Rule 1.1 is an ethics rule, requiring “[a]ny person who signs a pleading or brief, ... offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees ... never to mislead the Commission or its staff by an artifice or false statement of fact or law.” We have statutory authority to impose fines for violations of Rule 1.1. (Pub. Util. Code, §§ 2107, 2108.) “In determining the amount of such penalty, ... the appropriateness of such penalty to the size of the business charged, the gravity of the violation, and the good faith of the person charged ... shall be considered.” (*Id.*, § 2104.5.)

Under Rule 1.1, intention to mislead is not required. Rather, “there is ... a line of Commission decisions which holds that situations involving a failure to correctly cite a proposition of law, a lack of candor or withholding of information, and a failure to correctly inform and to correct the mistaken information, are actionable Rule 1 violations. (See D.93-05-020, D.92-07-084, D.92-07-078, D.90-12-038.)” (D.15-04-021, at \*180-182.) Such reckless or grossly negligent acts “can cause the Commission to expend additional staff resources in trying to resolve the misleading statement.” (*Ibid.*) “[T]he question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed.” (*Ibid.*)

“In an OSC proceeding, where the Commission has set forth allegations and a prima facie case based on record evidence, the Respondent has the burden of showing why the Commission should not take the proposed legal action.... The burden of proof is on Respondents to show that the prima facie case based on record evidence is invalid.” (D.19-12-041, at \*8.)

T-Mobile asserts that under our reasoning in *Sawaya v. MCI Telecommunications Corporation*, D.01-11-017, there is no Rule 1.1 violation here since T-Mobile's statements at issue are "at best unclear." (Rehg. App., p. 38.) But the facts and reasoning in *Sawaya* are different from the instant case.

In *Sawaya*, we declined to find a Rule 1.1 violation where a utility filed an answer containing statements that the utility discovered only later to be untrue. (D.01-11-017, p. 6.) Therefore, the utility did not make "[a] false statement of law or fact" at the time that it filed its answer. (*Ibid.*) The circumstances in *Sawaya* contrast with the events here: T-Mobile made affirmative statements regarding the approximate length of time that migration would take, and we relied upon those statements in issuing D.20-04-008. T-Mobile's arguments to the contrary misunderstand the relevant question: Did T-Mobile's statements result in "truthful information not being transmitted to the Commission"? (Decision, p. 46.) The answer is yes. The standard set forth in Rule 1.1 "requires all utilities and practitioners before the Commission to present documents ... with all relevant and material information in a clear and understandable manner. The burden is on the applicant to present the information necessary to meet this standard...." (D.11-03-030, at \*19-20.) T-Mobile did not make it clear and unambiguous that it intended to shut down the CDMA network before the expiration of the three-year migration period. (See D.13-09-028 [SCE violated Rule 1.1 by "failing to make [information] clear"].) To the contrary, as outlined below, T-Mobile stated on multiple occasions that it was operating on a three-year timeline and expected the network to be operable during that time.

## **B. Record evidence.**

As to substance, T-Mobile asserts that none of the statements it made either in prepared testimony or during evidentiary hearings unambiguously represented that it would operate the CDMA network for at least three years and that we erred in making such a conclusion in Ordering Paragraph 6. (Rehg. App., pp. 16-27.) T-Mobile also argues that we erroneously relied on the pre-Divestiture Agreement testimony in finding violations of Rule 1.1. (Rehg. App., pp. 20-21.) T-Mobile argues that, to the contrary, its

testimony demonstrated that T-Mobile intended to finalize the migration “within” three years, and it only needed to provide a six-month notice to DISH before canceling the CMDA network per the Master Network Services Agreement (MNSA) between it and DISH. (Rehg. App., pp. 18-24.)

We will review the relevant record.

At the December 2019 hearing, T-Mobile’s witness stated:

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. Obviously the intent there is to make sure that no Sprint customer during that migration process, be they a Boost customer or a Sprint customer, or however they are strayed, suffers anything approaching a degraded experience. (December 5, 2019 Evidentiary Hearing, 131:17-132:1.)

When asked about the divestiture of Sprint, Boost, and Virgin’s prepaid business and its impact on California consumers, T-Mobile’s witness stated:

So the transition services agreement is for up to three years. That’s a condition of the PFJ and our agreement with DISH. 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 another two years after the first three-year period.

[Q] Thank you. And the New T-Mobile plan is to use the 800 spectrum to support the legacy Sprint customers during the transition, correct?

[A] We would use the 800 megahertz. 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. So our intent is to – that’s why we put three years there. If we determine that we need longer, we have the right.... And the spectrum is used today. I mean that’s 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. That said, we are very, very confident that we will be at a [sic] complete migration of customers onto the New T-Mobile network within that three-year period. (December 5, 2011 Hearing, 123:12-124:21.)

T-Mobile's witness also confirmed that:

[Q] In addition to divesting decommissioned cell sites, 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 during the migration process; is this correct?

[A] Yes. (December 5, 2011 Hearing, 127:12-19.)

In its post-hearing brief, T-Mobile further asserted that:

To the contrary, the 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.

...

In addition, as discussed below, the record is clear that New T-Mobile is otherwise obligated to cooperate with DISH to facilitate the migration of the Sprint divested customers to the New T-Mobile network. Thus, it is clear that, if anything the potential divestiture of the 800 MHz spectrum is designed to ensure that service to existing Sprint CDMA and LTE customers will be maintained until they are migrated to the New T-Mobile network as customers of New T-Mobile or DISH. (December 20, 2019 Post-Hearing Brief, pp. 33-35.)

In sum, T-Mobile's witness made numerous statements regarding a three-year migration period for Sprint and Boost customers post-Divestiture. T-Mobile also acknowledged that the 800 MHz spectrum is used for CDMA and made statements that it intended to use the 800 MHz spectrum for at least three years, with an option to extend if deemed necessary. Thus, it was reasonable for us to interpret T-Mobile as committing to operate the CDMA network for three years.

T-Mobile asserts that the testimony highlighted above included the qualifier “within three years,” signaling T-Mobile’s intention to complete the process in less than three years. (Rehg. App., pp. 21-24.) That is, the three-year timeline was the ceiling, not the floor, and therefore the conclusion that three years was the minimum term is erroneous. (*Ibid.*) But, as acknowledged by T-Mobile, other statements were not similarly qualified. (Rehg. App., p. 24.) T-Mobile argues that because “many more statements were qualified using phrases such as ‘within three years,’ it is legal error for the Decision to find that T-Mobile promised to maintain the CDMA network for a full three-year timeframe.” (Rehg. App., p. 24.) T-Mobile does not cite any authority in support of this assertion. The Court of Appeal has stated that, “[c]ertainly no court can hope to equal the [Commission’s] knowledge of what will ‘mislead’ it.” (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 852.) And it is within our discretion to weigh the preponderance of conflicting evidence in the record. (*The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 949.) T-Mobile repeatedly referred to a three-year migration period throughout the post-Divestiture testimony and in its post-hearing briefing, as quoted above. Nowhere in the testimony does T-Mobile commit to a migration period of less than three years, aside from expressing hope that it might be able to do so.

T-Mobile disagrees, and asserts that the following supplemental testimony clearly demonstrated that it did not intend to operate the CDMA network for a minimum of three years for the benefit of divested DISH customers:

My Rebuttal Testimony regarding the migration of Sprint’s prepaid customer base provided that they would be ‘migrated in exactly the same fashion and on the same timeframe as Sprint postpaid customers.’ At that time, the DOJ Commitments did not exist. In light of those commitments, I can no longer offer testimony as to how DISH will address the post-divestiture migration of [Boost] customers to the New T-Mobile. DISH will be responsible for its customers’ handset upgrades and compatibility after the divestiture. I would note, however, that we are obligated to cooperate in good faith with DISH with respect to the migration of those

subscribers to the New T-Mobile network. We are also required to provide DISH with at least six-month advance notice before we shut down the legacy network.(Rehg. App., pp. 18-19 [citing Ray Supplemental Testimony, 19:16-25].)

However, the witness's statements that DISH will be responsible for its customers' handset upgrades post-Divestiture and that T-Mobile has certain notice obligations are not incompatible with T-Mobile's other references to a three-year migration period. Both of these assertions may be true in addition to the fact that a three-year migration period was anticipated by the Commission, DISH, and other parties. There were no "clear and direct statements" from T-Mobile's witness that clearly and unequivocally stated that T-Mobile expected to shut down the CDMA network within three years of Divestiture. Neither does T-Mobile witness's statement that "my prior testimony did not account for the divestiture of the Sprint prepaid business," (Ray Supplemental Testimony, 20:25-21:6) categorically negate other statements and references to a three-year migration period.

As we noted, other parties had the same understanding of a three-year CDMA migration period. (Decision, pp. 18-20.) DISH, TURN, and the Public Advocates Office (CalAd) all asserted that they understood the migration period off the CDMA network to be three years. (*Petition of DISH Network Corporation to Modify D.20-04-008* (April 28, 2021); *Response of The Utility Reform Network to the Petition of DISH Network Corporation to Modify D.20-04-008*, p. 2; *Public Advocates Office Reply Brief on Application for Approval of Transfer of Control Over Tracfone Wireless, Inc.*, p. 30.) T-Mobile argues that these statements were erroneously considered as they came after DISH filed its petition for modification. (Rehg. App., pp. 35-36.) In fact, T-Mobile did not address this issue until after T-Mobile had notified DISH that it would be shutting down the CDMA network prior to the three-year deadline and DISH informed us of this in its petition for modification. (*Petition of DISH Network Corporation to Modify D.20-04-008* (April 28, 2021), p. 1.) Given that this issue was settled in D.20-04-008, it also makes sense that TURN and CalAd did not weigh in on this question until that time.



Both TURN and CalAd participated in the proceedings and therefore did have first-hand knowledge of the evidence presented.

Also notably, T-Mobile did not raise any concerns regarding the three-year CDMA maintenance period in its April 13, 2020 *Joint Opening Comments on the Proposed Decision* or its June 23, 2020 *Petition for Modification*. Thus, if T-Mobile believed that we had somehow misunderstood its testimony, it had ample opportunity to correct such misunderstanding either before or after D.20-04-008 issued. As it stands, the failure to correct inform or to correct any misinformation is a Rule 1.1 violation, irrespective of whether it was intentional, reckless, or inadvertent.

T-Mobile asserts that we should have looked at other evidence, aside from T-Mobile's statements in the record, to understand what T-Mobile's intentions and commitments were. (Rehg. App., pp. 31-33.) In particular, according to T-Mobile, the fact that it did not make a similar representation to any other regulator or in the MNSA with DISH "strongly suggests that T-Mobile would not have made such a promise to this Commission and this Commission alone." (Rehg. App., p. 31.) We are not obligated to comb through the records of other regulatory agencies in order to obtain relevant information that T-Mobile is required by law to provide directly to us. Whatever representations T-Mobile may have made before other regulatory bodies or in agreements outside of Commission proceedings, T-Mobile has a separate, affirmative duty of candor to this Commission pursuant to Rule 1.1. T-Mobile cites *D.94-03-050 and Util. Reform Network v. Cal Pub. Utils Comm'n, supra*, 223 Cal.App.4th 945, to support its claim that we should have considered other evidence in evaluating T-Mobile's record statements. However, neither case concerns a Rule 1.1 violation. On the other hand, we have clearly stated that in order "to perform our Constitutional and statutory duties, we must have forthright and timely factual information." (D.13-12-053, at \*8 [finding that PG&E violated Rule 1.1 when it "waited over seven months to correct information that it knew to be incorrect and that it knew the Commission had relied upon in issuing D.11-12-048."].) PG&E's actions are comparable to T-Mobile's failure to alert us of its contrary

interpretation of its testimony until after it notified DISH of its intention to shut down the CDMA network.

T-Mobile argues that DISH's responsibility to migrate its customers off the CDMA network post-Divestiture was overlooked. (Rehg. App., pp. 34-35.) But the timeline for DISH's customer migration—absent some explicit agreement—is separate from the representations T-Mobile made to us regarding the timeline for shutting down the CDMA network. That T-Mobile informed us of DISH's obligations post-Divestiture is irrelevant; since the control of the CDMA network rested entirely with T-Mobile, it is T-Mobile's obligations that are most relevant here.

Finally, T-Mobile asserts that Ordering Paragraph 6 (OP 6) in D.20-04-008 does not apply to the CDMA network and did not require T-Mobile to continue operating the CDMA network post-Divestiture. (Rehg. App., pp. 36-38.) Therefore, according to T-Mobile, any reliance on OP 6 is in error.

OP 6 reads:

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. (D.20-04-008, p. 50.)

T-Mobile interprets OP 6 as applying “only to T-Mobile's LTE network” as “an obligation to maintain LTE speeds and coverage....” (Rehg. App., p. 37.) However, we explained our understanding of the conditions in OP 6 “that T-Mobile USA has to comply with in receiving Commission authorization of the T-Mobile USA merger.” (Decision, p. 3.) That is, OP 6 memorialized “the three-year period (2020-2023) in which two separate groups of customers, *i.e.*, (1) former Sprint customers who would become customers of T-Mobile USA; and (2) customers of the former Sprint subsidiary Boost Mobile, would be migrated to their respective new networks.” (Decision, pp. 3-4.)

T-Mobile acknowledged OP 6 as containing its “service commitments during the customer migration and network transition periods....” (*Joint Applicants’ Response to the Public Advocates Office, the Greenlining Institute, and The Utility Reform Network Application for Rehearing of Decision 20-04-008*, p. 7.) OP 6 explicitly defined the “customer migration period” as the three-year period referenced by T-Mobile throughout its testimony (as discussed and quoted above), and also stated that the three-year period applied to “the legacy Sprint” customers, which included Sprint and Boost customers. It further stated that “their customer experience shall not be degraded” which would occur if T-Mobile shut down the CDMA network on which these customers rely. Even if OP 6 does not explicitly reference the CDMA network, it memorializes the three-year migration period and T-Mobile’s obligation to maintain “customer experience.” OP 6’s subsequent references to New T-Mobile’s LTE obligations are not incongruous with T-Mobile’s CDMA obligations.

### **C. Penalties calculation.**

We set a penalty amount of \$15,000 per offense pursuant to section 2107. (Decision, pp. 55-57.) We also determined that this was a continuing offense pursuant to section 2108 that began on October 1, 2020, when T-Mobile publicly announced its intention to shut down the CDMA network, and ending on May 24, 2021, when T-Mobile communicated its intent to shut down the network to the Commission. (*Ibid.*) The total penalty amount set was \$3,585,000 (239 days x \$15,000/day). We applied the relevant factors and concluded that a penalty was warranted because T-Mobile made misleading statements that directly impacted our regulatory duty, did not act to prevent the violation or express intent to comply with our order, had financial means to pay the penalty, there were no mitigating facts, and our precedent compelled the imposition of fines. (Decision, pp. 59-66.) We noted particularly the lack of mitigating factors—“Such intransigence indicates that T-Mobile USA’s conduct represents the highest degree of wrongdoing that runs counter to the Commission’s mission of assuring that the approved application and merger are in the public interest.” (Decision, pp. 63-64.)

T-Mobile raises three allegations of error regarding our calculation of the penalty. First, T-Mobile argues that the calculation of penalty is erroneously “based on a theory of a continuing violation,” and, instead, the violation is a singular one (*i.e.*, breaking a promise once). (Rehg. App., p. 40.) Second, even if the offense was continuing, T-Mobile asserts that the penalty is unreasonable because there was no threatened or actual harm to DISH’s Boost customers. (Rehg. App., p. 41.) Third, T-Mobile argues that there was no harm to the regulatory process because T-Mobile did not violate OP 6 since it does not apply to the CDMA network, as discussed above. (Rehg. App., p. 43.) T-Mobile asserts that, if we are inclined to impose a continuing penalty nonetheless, it should be no greater than \$5,000.00 per day, or \$1.1 million in total. (Rehg. App., p. 43.)

### **1. Continuing violation.**

“A ‘continuing violation’ occurs, by definition, only when a party has engaged in ‘a continuing course of unlawful conduct’ over a period of time. [Citation.] This principle, affirmed in scores of cases from the California Supreme Court and others, requires that the party be shown to have engaged in a course of repeated or ongoing misconduct, such that the provision in question is continually violated over a certain period of time. [Citations.] In other words, for a ‘continuing violation’ to be found, the party must have ‘continually’ violated the provision at issue, from an identifiable start date through an identifiable end date.” (*Pacific Gas & Electric Co. v. Public Utilities Com.*, *supra*, 237 Cal.App.4th at p. 855.)

Section 2108 “expressly codifies the concept of a continuing violation of ‘any order, decision, decree, rule, direction, demand, or requirement’ of the Commission.” (*Pacific Gas & Electric Co. v. Public Utilities Com.*, *supra*, 237 Cal.App.4th at p. 856.) It is up to us to determine what constitutes a violation. (See Pub. Util. Code, § 2101 [“The Commission shall see that ... statutes ... affecting public utilities ... are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due ... recovered and collected.”].) The Legislature gave us power to determine when a violation is a continuing one and our decisions are owed deference. (See

*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796; *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411.)

We listed six prior decisions where we found a continuing violation. (Decision, pp. 64-66.) In each of the decisions, we found that the acting party had an ongoing obligation to do or abstain from doing some affirmative duty, therefore the violation was found to be of a continuing nature from the time that we discovered the violation until it was addressed, remedied, or adjudicated. T-Mobile asserts that the violation here is a discrete action—breaking its promise once, on October 1, 2020. (Rehg. App., p. 41.) But T-Mobile had an ongoing duty to maintain the CDMA network for the benefit of all legacy Sprint customers pursuant to D.20-04-008. On October 1, 2020, T-Mobile publicly announced its intention to shut down the CDMA network, *i.e.*, stop complying with its obligations pursuant to D.20-04-008. T-Mobile then continued to abstain from performing its obligation until DISH filed its petition for modification and T-Mobile first asserted its position on May 24, 2021. We, therefore, correctly determined that such failure to comply with a Commission order constitutes a continuing violation.

## **2. Economic harm.**

“Economic harm reflects the amount of expense which was imposed upon the victims as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine.” (D.98-12-075, 84 CPUC 2d at \*188-90.) “The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions.” (*Ibid.*) The Court of Appeal has also rejected the proposition that “a civil penalty cannot be imposed if ‘the potential risk never materialized[,]’” because “it would reward defiance of the Commission.” (*Pacific Gas & Electric Co. v. Public Utilities Com.*, *supra*, 237 Cal.App.4th at p. 865.)

T-Mobile states that any asserted harm to DISH’s Boost customers was “unsubstantiated and highly exaggerated” and there was no evidence of actual harm to

the customers. (Rehg. App., pp. 41-42.)<sup>3</sup> However, pursuant to D.98-12-075, the absence of actual economic harm is not conclusive. But, to the extent that it is a mitigating factor, we considered T-Mobile's cooperation with DISH. Nonetheless, we concluded that the more pertinent harm in this matter was T-Mobile's misleading statements. Moreover, T-Mobile's witness confirmed that "a delay in the CDMA Sunset to July of 2023" would result in "material lost synergies," including lost financial benefits to T-Mobile. (September 20, 2021 Transcript, 197:5-14, 198:24-199:15.) Thus, economic harm in this instance also included considerations of "any unlawful benefits gained" by T-Mobile.

### **3. Harm to the regulatory process.**

Compliance with our directives "is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity." (D.98-12-075, 84 CPUC 2d at \*188-190.) As noted by the Court of Appeal, "The Commission takes a very dim view of denying it information, treating it as a factor in aggravation when it comes to fixing penalty. (See Cal.P.U.C. Dec. No. 13-09-028, *supra*, 2013 Cal.P.U.C. Lexis 514 at pp. \*51-\*52 ["The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times.... [T]his criterion weighs in favor of a significant fine."].)" (*Pacific Gas & Electric Co. v. Public Utilities Com.*, *supra*, 237 Cal.App.4th at p. 865.) In *PG&E*, the Court affirmed the penalties levied on the utility where "the Commission made [an] authorization on the basis of inaccurate information furnished by PG&E." (*Ibid.*)

T-Mobile asserts that there was no harm to the regulatory process because it believes OP 6 did not apply to the CDMA network and therefore T-Mobile could not have violated OP 6. (Rehg. App., p. 43.) We reject this argument as discussed above.

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<sup>3</sup> "T-Mobile waited to sunset the CDMA network for an additional five months until there were a de minimis number of Boost customers left on the network, and it worked cooperatively with DISH to complete that process." (Rehg. App., p. 42.)

T-Mobile's actions harmed the regulatory process because T-Mobile's statements directly influenced our decision making. That is, absent T-Mobile's representation that the migration period would be three years, we may have denied the application or levied additional requirements on the transaction. T-Mobile misinformed the Commission, which resulted in an order, and one which T-Mobile subsequently disregarded. Such actions weigh in favor of a significant fine.

### III. CONCLUSION

For above reasons, we deny rehearing of the Decision.

**THEREFORE, IT IS ORDERED** that:

1. Rehearing of D.22-11-005 is denied.
2. T-Mobile USA's *Motion for Leave to File Under Seal Confidential Version of the Application of T-Mobile USA, Inc. for Rehearing of Decision 22-11-005* is granted.
3. This proceeding is closed.

The order is effective today.

Dated June 8, 2023, at San Francisco, California.

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners