



April 11, 2021

Acting Chairwoman Jessica Rosenworcel
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Facilitating Shared Use in the 3100-3550 MHz Band, WT Docket No. 19-348

Dear Acting Chairwoman Rosenworcel:

I am writing to you to offer some clarity about T-Mobile's plans to sunset our CDMA network – in contrast to some of the disinformation that has appeared in the media lately attempting to mischaracterize our technology shift as being bad for consumers.¹ The claims being made in this campaign (which was recently extended to the FCC by way of an *ex parte* letter²) are just plain wrong. In truth, all CDMA customers, including DISH's Boost-branded customers, will receive enormous benefits by migrating as planned onto T-Mobile's new network, and it is absolutely in their best interest to do so. Under our agreement, it is unambiguously DISH's financial responsibility to migrate customers to the new technology in a timely manner, and if they live up to those obligations, no consumers will be negatively affected by the sunset and in fact will receive substantial benefits.

All of us at T-Mobile have been working assiduously and putting our full resources to work to provide high-speed wireless broadband service to all corners of America and fulfill the promise of our merger with Sprint. In so doing, we are executing on sunseting Sprint's legacy CDMA network by January 2022 – a timeline that is fully consistent with T-Mobile's contract with DISH and the government orders approving the merger transaction. This work includes the migration of all legacy Sprint customers to the new T-Mobile network – both the large base of Sprint customers retained by T-Mobile as well as those divested to DISH. In other words, we are migrating all of T-Mobile's CDMA customers – a much larger number of customers – on exactly the same timeline as DISH's Boost-branded customer base. This belies any suggestion that it can't be done on a timely basis or that sticking with our agreed-upon timeline is somehow anti-competitive.

¹ This letter is for your awareness and is not a request for any action by the FCC, which has already ruled on these matters. Any DISH claims that T-Mobile is violating its obligations under the T-Mobile/Sprint merger Consent Decree are subject to review by the Department of Justice and resolution by the Court.

² See, e.g., Letter from Jeffrey H. Blum, Executive Vice President, External & Legislative Affairs, DISH Network Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 19-348 (Apr. 1, 2021) (“DISH April 1 *Ex Parte*”). The CDMA sunset is not germane to the 3.45 GHz proceeding or any proceeding currently before the Commission.

The move from CDMA to the new T-Mobile network will provide DISH's Boost-branded customers (as well as T-Mobile's CDMA customers) with access to an advanced, high-speed broadband network, and a far better experience than that on CDMA. CDMA is recognized as outdated in its capabilities and is deteriorating with the passage of time.³ In this era of wireless broadband, CDMA is incapable of delivering broadband speeds and suffers from higher latency and limited capacity. Moreover, CDMA cannot meet today's expectations for 911 location accuracy and there is no backup capability for CDMA in the event of outages. In short, moving off CDMA to current technologies will be a giant leap forward in performance and capabilities for these customers.

The public commentary recently instigated by DISH is founded on a false narrative that T-Mobile has deviated from its previously stated network integration plans by accelerating the sunset of the legacy Sprint CDMA network. In reality, the facts are that the CDMA sunset timing and responsibilities have long been established contractually by the parties in an agreement that was freely negotiated more than a year and a half ago, and subsequently reviewed and approved by the FCC and Department of Justice ("DOJ") in connection with their clearance of the T-Mobile/Sprint merger. T-Mobile has fully relied upon DISH holding up its end of the bargain, consistent with its agreements and the government approvals. Based on these mutually agreed upon terms, there is actually no *bona fide* dispute between DISH and T-Mobile. The facts are:

- DISH entered into an agreement that specifically provides for T-Mobile to sunset the CDMA network with six-months' notice to DISH and requires DISH to bear responsibility for the cost of migrating its customers to the T-Mobile network. These terms were part of an intensely negotiated arrangement between T-Mobile and DISH (which included DISH receiving the Boost business for an extremely favorable price, along with an unprecedented MVNO deal).
- This arrangement was reviewed and approved by the Commission and DOJ prior to the merger closing, and T-Mobile has been moving forward in reliance on its terms.
- T-Mobile provided DISH with a full 14 months' notice, significantly more than required, and DISH appears to have squandered this added time by taking inadequate steps to begin migrating customers and creating its own problems by continuing to add large numbers of new CDMA customers.⁴ It is DISH's obligation to expend the resources to comply with its commitments and timely transition these customers. DISH's purported concern for its customers is really a concern about money – specifically DISH not wanting to spend the money to comply with its contractual obligations.
- T-Mobile's planned sunset of CDMA is consistent with its plan of record and timeline approved by the FCC and DOJ.

³ CDMA is a legacy wireless technology (3G) used to provide digital voice and data services to customers. Its use by wireless carriers began in the early 2000s, but it is now being phased out by wireless carriers and handset manufacturers due to the improved performance provided by later generation technologies. The phase-out of CDMA is an important progression of technology driven by the demand for bandwidth from customers and will positively impact the customer's experience with greatly enhanced performance and service.

⁴ DISH has not disputed that the formal notice given by T-Mobile on October 2, 2020 fully complied with the agreed upon notice provision. Consequently, DISH has not and could not under any legal grounds contend that the required notice was not given.

- CDMA is an obsolete technology providing substandard service and has significant limitations on 911/public safety capabilities – migrating customers off CDMA rapidly is in the public interest and not anti-competitive.

The sunseting of a technology is a normal occurrence in the telecom industry and there are tried-and-true methods for seamlessly transitioning customers so they can enjoy the benefits of the new technology.

The Actual Facts Versus the DISH Mischaracterizations

T-Mobile is faithfully following its network build plan of record for the merged company. One year after the closing of its merger with Sprint, T-Mobile is on track to meet its commitments to the FCC, the DOJ, and others to deploy a nationwide network that extends to rural areas and to deliver in-home broadband to millions of households who previously had no competition and/or lacked choice. T-Mobile’s network deployment includes moving customers smoothly and seamlessly from the legacy Sprint network to the merged company’s network in a manner fully consistent with its plans presented to the government and with its agreement with DISH. This includes millions of customers who are retained by T-Mobile as well as those divested to DISH. Following the agreed upon timeline is firmly in the public interest.⁵

DISH Expressly Agreed to Assume the Responsibility and Costs of Migrating the Boost-Branded CDMA Customers to the New T-Mobile Network on Six Months’ Notice. DISH – which enjoys a reputation as a shrewd negotiator and hard bargainer – unambiguously agreed to assume responsibility for the migration of its customers from CDMA to the new T-Mobile network and the timeframe in which T-Mobile could sunset the network. The Master Network Services Agreement (“MNSA”) entered into by the parties expressly states that “DISH is solely responsible for the migration of Legacy Network Subscribers to the T-Mobile Network by providing customers with a VoLTE capable device and migrating them to the T-Mobile Network before Legacy Network shutdown in each applicable Market” and that “T-Mobile will provide DISH with reasonable advance notice of at least six months prior to the shutdown of the Legacy Network (CDMA network) in any market.”⁶ The agreement also contains an integration provision that provides “this Agreement and its Schedules and Annexes constitute the entire agreement and understanding between T-Mobile and DISH.”⁷ It bears noting that the price paid by DISH for the divested Sprint prepaid business reflected the fact that DISH would be assuming the responsibilities and costs of timely migrating its customers from the CDMA network to the new T-Mobile network.

⁵ See *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order and Order to Show Cause, 34 FCC Rcd. 10578, 10728, ¶ 339 (2019) (“We find that it is not in the public interest to require a company to devote their limited resources to maintaining an outdated technology when those resources could instead be directed to bringing to American consumers faster, higher-quality and more reliable services.”) (“T-Mobile/Sprint Merger Order”).

⁶ See Master Network Services Agreement between T-Mobile USA, Inc., DISH Purchasing Corporation and solely for the purposes of Section 13 DISH Network Corporation, Annex 1, 2.2(c).

⁷ *Id.* at Section 12.4.

T-Mobile, consistent with its contractual obligations and merger commitments, has been working cooperatively with DISH to facilitate the migration of its Boost customers from the Sprint network onto the new T-Mobile network. In fact, T-Mobile provided DISH with fourteen months' advance notice (instead of the contractually mandated six) and, though not contractually obligated to do so, offered to implement a low-cost VoLTE/MOCN solution to extend the life of an estimated 800,000 handsets (based on T-Mobile forecasts, assumptions, and projections) by an additional six months.⁸

Unfortunately, DISH appears to have taken minimal steps to begin migrating its customers and has declined T-Mobile's offer to implement this short-term VoLTE/MOCN solution. DISH adamantly insisted it would not close the transaction until T-Mobile furnish, at closing, unique capabilities to migrate Boost customers to the new T-Mobile network using widely available VoLTE-compatible phones.⁹ Subsequently, DISH has under-utilized that capability. Furthermore, DISH actually has been adding a substantial number of new customers onto the CDMA network each month and has extended the end date for new legacy Sprint network activations from January 1, 2021 to June 1, 2021, despite the fact that ceasing new CDMA activations would be a very simple step to take to move toward a timely migration.

DISH also suggests that there could be a device/chip shortage that limits its ability to migrate its customers prior to T-Mobile's sunset of CDMA. However, DISH has likely been well aware of the supply situation for several months and has apparently failed to undertake the necessary actions to hedge supply shortages of its preferred devices; any lack of planning on its part is an issue that the DISH and Boost teams can and should promptly address. While this – as well as DISH's prior decisions and relative inaction on the transition – might mean that DISH may have to spend more money on devices than it wishes to, this does not and cannot relieve DISH from the timely fulfillment of its responsibilities. It also bears noting that T-Mobile has offered to help DISH secure a supply to make the migration go smoothly.

Since the signing of the MNSA over a year and half ago, all of T-Mobile's preparations and execution have relied upon the planned CDMA sunset date – a date that is fully consistent with its agreement with DISH and the government orders. T-Mobile is well underway in implementing its deployment plans and already has made enormous investments based on that timing. There is no basis for DISH to seek to evade its obligations under the MSNA and trying to do so would clearly contravene its agreement and ignore T-Mobile's reliance upon it. The migration of the wireless industry from an old technology to a new technology is hardly an unprecedented endeavor. DISH is well aware of all of the methods for executing such a transition and it is DISH's obligation to put them to use for the benefit of its customers.

⁸ "MOCN" is Multi-Operator Core Network that works by configuring a base station to transmit more than one network identity and allows T-Mobile to unify multiple radio access networks ("RANs") and allows customers with compatible devices to seamlessly access both networks during integration.

⁹ Cross-provisioning capabilities enable DISH's Boost customers to be easily re-homed to the new T-Mobile network with a simple SIM swap, all the while continuing to utilize existing Boost billing, customer service, and other operational capabilities.

The Timing of T-Mobile’s Sunset of CDMA Is Also Consistent with Its Plan of Record in the Merger Proceeding and its Goal of Completing the Network Integration Rapidly. In its filings at the FCC, T-Mobile consistently stated that it would begin to sunset the legacy Sprint CDMA network no sooner than January 1, 2021,¹⁰ clearly meaning that T-Mobile could begin decommissioning the network any time after that date. The Commission reviewed and acknowledged T-Mobile’s timeframe for sunsetting the CDMA network, providing “[w]e note first that the Applicants have stated that they do not plan to commence the termination of the CDMA network prior to January 1, 2021,” and declined to require “T-Mobile to maintain the legacy CDMA network for a specific period of time.”¹¹

Notwithstanding these clear pronouncements and the terms of its agreement, DISH now erroneously claims that T-Mobile had committed to maintain the CDMA network for three years after the merger closing. Specifically, DISH cites to a statement in a T-Mobile SEC filing regarding the company’s obligation to divest its 800 MHz spectrum to DISH three years after the merger closing.¹² DISH also notes statements made before the California Public Utilities Commission that T-Mobile would have access to the 800 MHz spectrum for sufficient time to migrate Sprint CDMA customers and that T-Mobile deemed it likely that all Sprint customers would be migrated within three years.¹³ However, on their face, the statements DISH cites were simply acknowledging that T-Mobile has up to three years to fully sunset the legacy Sprint CDMA network. These statements do not indicate that T-Mobile planned on maintaining the CDMA network for any specific period of time, much less constitute a commitment to maintain the entire CDMA network for a three-year period. Instead, they reflect the fact that T-Mobile prudently sought to ensure a sufficient amount of time to have a cushion for the migration to guard against unknown risks, particularly since T-Mobile did not have relevant information about the Sprint customer base until after closing.

It is absurd for DISH to suggest that these three cherry-picked statements formed the basis of its business plan and should be deemed to override the clear and unambiguous contractual language contained in the MNSA. T-Mobile has been consistent and clear that its migration plan has been to move rapidly and that doing so best serves the interests of customers, including DISH’s Boost-branded customers. The right to take three years for the transition is not an obligation to do so.

Migrating Customers Off an Obsolete CDMA Technology Rapidly and Onto T-Mobile’s New Network Is in the Public Interest and Is Not Anti-competitive. There are compelling reasons for moving customers off CDMA and not delaying this transition. The customer experience on CDMA is substandard and declining with the passage of time. CDMA is incapable of delivering broadband speeds and suffers from higher latency and limited capacity. In contrast, customers

¹⁰ See Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, WT Docket No. 18-197, at 98 (Sept. 17, 2018) (“Any concern about a rapid termination of the CDMA network is misplaced. Termination of the CDMA network will vary by geography, but is not expected to commence prior to January 1, 2021.”).

¹¹ T-Mobile/Sprint Merger Order, 34 FCC Rcd. at 10711.

¹² DISH April 1 *Ex Parte* at 5.

¹³ *Id.*

moving to the upgraded T-Mobile network will have access to high-speed broadband with vastly superior capabilities.

Significantly, CDMA service also does not meet today’s expectations for public safety. CDMA does not provide the expected location accuracy (CDMA provides 50-meter location accuracy only 70% of the time, and only 20% of the time when Assisted Global Navigation Satellite System is not available) and it does not provide any z-axis information. In addition, in the event of a network outage, there is no backup capability for CDMA. These are additional and compelling reasons for not delaying moving customers from outdated CDMA technology.

The Commission rightly determined that it was not in the public interest to require T-Mobile to devote its “limited resources to maintaining an outdated technology when those resources could instead be directed to bringing to American consumers faster, higher-quality and more reliable services.”¹⁴ Sunsetting the CDMA network allows T-Mobile to redeploy freed-up resources to expedite the build-out of its network and to provide a more feature-rich experience for our customers. Further, the phase-out of CDMA is a normal step in technological evolution, driven by consumers’ demand for greater bandwidth and bandwidth-rich applications, as well as enhanced performance and service. For example, transitioning to next-generation networks will provide users with improved performance in the delivery of high-bandwidth data services, such as video, which requires the use of more capable technologies. The transition away from CDMA to next-generation services is therefore pro-competitive and results in significant public benefits.

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In summary, the misinformation campaign that DISH has launched should not impose on the Commission’s time or distract T-Mobile from its focus on building a network for all Americans. The message to DISH must continue to be: honor your agreement, take care of your customers, and go do

¹⁴ See T-Mobile/Sprint Merger Order, 34 FCC Rcd. at 10728. The Commission has consistently reached the same conclusion when parties sought to delay the retirement of a legacy service and the transition to the next generation of services. See, e.g., *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters*, 22 FCC Rcd. 11243, 11255 (2007); Statement of Commissioner Michael J. Copps, *id.* at 11273.

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your job. DISH has the tools in its toolbox and the resources to take care of its wireless customers – it's time for it to start using them. T-Mobile, for its part, has been helping DISH on the migration from CDMA and will continue to provide assistance as DISH complies with its responsibilities.

Respectfully,

A handwritten signature in black ink, appearing to read "Kathleen O'Brien Ham". The signature is written in a cursive style with a horizontal line underneath it.

Kathleen O'Brien Ham
Senior Vice President, Government Affairs
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Washington, DC 20004

cc: Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington