



April 1, 2021

## EX PARTE NOTICE

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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

Dear Ms. Dortch:

DISH Network Corporation (“DISH”) submits this response to T-Mobile USA Inc.’s (“T-Mobile”) recent ex parte letter, filed in the above-referenced docket.<sup>1</sup> As T-Mobile celebrates the one-year anniversary of its acquisition of Sprint, it is clear that the company’s worldview has transformed to that of an entrenched incumbent commensurate with its newfound size and scale. During its earlier life as the “Un-Carrier,” T-Mobile championed policies that promoted competition, diverse spectrum ownership, and efficient spectrum use. How quickly things change. Now, T-Mobile opposes measures that would help new entrants and smaller providers compete using CBRS licenses, participate in a globally scaled equipment market, and promote American 5G leadership.

It is ironic that T-Mobile, with the largest spectrum trove in the United States, is against increasing the utility of CBRS licenses held by other competitors. No doubt they would take a different approach if they had real ownership of CBRS spectrum; in fact, T-Mobile itself had previously argued for increasing the power levels in these bands. DISH’s goal is to enrich the utility of the CBRS spectrum to bring connectivity to Americans, promote competition, and ensure our country’s leadership in 5G. As we explained in our March 5, 2021 letter, the Commission should adopt a Public Notice exploring pro-competitive rule changes to the CBRS band.<sup>2</sup>

We also write to raise concerns about T-Mobile’s decision to prematurely shutdown the Sprint CDMA network that millions of Boost subscribers rely upon.

- ***T-Mobile previously supported higher power for CBRS***

In its most recent submission related to CBRS, T-Mobile proclaims that the “innovative nature of the CBRS band is premised on low-power use of the spectrum over limited geographic

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<sup>1</sup> Letter from Steve B. Sharkey, T-Mobile, to Marlene H. Dortch, FCC, WT Docket No. 19-348, AU Docket No. 21-62, Mar. 10, 2021 (“*T-Mobile Response*”).

<sup>2</sup> Letter from Jeffrey H. Blum, DISH, to Marlene H. Dortch, FCC, WT Docket No. 19-348 (March 5, 2021) (“*DISH CBRS Proposal*”).

areas[.]”<sup>3</sup> T-Mobile also implies that low power use was the plan all along.<sup>4</sup> Yet T-Mobile previously asked the Commission to increase CBRS power levels to allow for more robust deployments:

**The maximum EIRP adopted in the 3.5 GHz band for outdoor operations should be increased...** While T-Mobile appreciates that the Commission increased on reconsideration the EIRP limits for non-rural Category B CBSDs from the even lower 40 dBm to 47 dBm, **these EIRP limits are still not sufficiently high for robust deployment of 5G technologies.** Rather, the existing power levels will limit the coverage that cell sites can achieve, thereby driving up network costs and risking decreased investment in the band.<sup>5</sup>

After the Commission declined to adopt higher power, T-Mobile won only a token number of PAL licenses in the CBRS auction (eight PALs in six counties).<sup>6</sup> In comparison, DISH won CBRS licenses nationwide, and spent close to \$1 billion dollars to do so. In fact, over 225 diverse entities won CBRS licenses and stand to benefit from updated rules that could reduce deployment costs and increase capacity for all PAL licenses. Now, however, T-Mobile wants to maintain the status quo to prevent smaller providers and new entrants from using more flexible power levels that could better position them to compete with incumbents like T-Mobile.

- ***Raising CBRS power levels increases the utility of the entire 3 GHz band***

As DISH explained, increasing CBRS power levels will enhance the utility of the entire 3 GHz band.<sup>7</sup> Aligning CBRS power levels with those of its spectrum neighbors (3.45 GHz and C-band) could, if anything, reduce CBRS users’ vulnerability to interference.<sup>8</sup> Such changes would increase the utility and efficiency of the entire CBRS band, which would benefit the hundreds of smaller and rural entities that hold PAL licenses.

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 3 (“DISH’s proposal would turn that experiment on its head even before systems in the band, which have been planned for years to operate consistent with the current rules, are fully deployed.”).

<sup>5</sup> T-Mobile USA, Inc. Petition for Rulemaking, GN Docket No. 12-354, RM-11789 at 22-23, ¶ 2 (filed June 19, 2017) (emphasis added).

<sup>6</sup> See *FCC announces results of CBRS spectrum auction that T-Mobile participated in* FCC announces results of CBRS spectrum auction that T-Mobile participated in, T-Mo News, Sept. 2, 2020, available at <https://www.tmonews.com/2020/09/fcc-cbbs-spectrum-auction-results-t-mobile-verizon-dish/>.

<sup>7</sup> *DISH CBRS Proposal* at 3.

<sup>8</sup> *Id.* at 5 (“Rationalizing power levels across the two bands could also benefit the 3.45 GHz Band, which will otherwise be subject to heightened OOB restrictions to protect CBRS. In addition to the typical single -13 dBm/MHz OOB limit found in other bands, 3.45 GHz operators will also have to meet equal to or less than -25 dBm/MHz beyond the 10 megahertz offset from the band edge between 3560 and 3570 megahertz; and equal to or less than -40 dBm/MHz above 3570 megahertz. Raising CBRS power levels could thus reduce encumbrances and increase the value of the 3.45 GHz Band.”)

T-Mobile accuses DISH of “merely attempting to enhance the value of its spectrum holdings after the fact.”<sup>9</sup> T-Mobile’s hollow criticisms disregard the facts. The Commission chose to auction the 3.45 GHz Band at full power levels typical for commercial deployments, creating new policy challenges that require a holistic review of the United States’ overall approach to mid-band spectrum. As DISH explained, “CBRS operators may experience blocking interference from higher power operations in adjacent bands.”<sup>10</sup> If anything, failure to act could upset CBRS PAL auction winners’ investment-backed expectations.

- ***A holistic view of mid-band spectrum aggregation is in the public interest***

T-Mobile also attacks DISH’s spectrum aggregation proposals as a “nakedly anti-competitive effort”<sup>11</sup> to limit T-Mobile and others from acquiring spectrum in Auction 110. In support of its argument, T-Mobile asserts that it has “consistently demonstrated” that “straightforward auction rules provide certainty that encourages participation” and that “any type of screen, or other competitive analysis” will create uncertainty that will “dissuade participation in the auction.”<sup>12</sup> Here again, T-Mobile tries to rewrite history.

Prior to its merger with Sprint, T-Mobile had been an aggressive advocate for exactly the type of spectrum aggregation proposals DISH put forth for Auction 110: policies that would limit the large incumbents from foreclosing new entrants and other competitors seeking to acquire spectrum licenses at auction. For example, in advancing its argument in the C-band auction, T-Mobile recognized the critical role of mid-band spectrum to competitive carriers, noting “it is even more important for the Commission to adopt a spectrum aggregation limit for the C-band because it will likely be able to provide a particularly robust mid-band wireless broadband service.”<sup>13</sup> In the 600 MHz auction – where the Commission adopted a reserve spectrum mechanism – T-Mobile went a step further. In a petition asking the FCC to reconsider the 30 MHz spectrum reserve adopted at clearing levels of 70 MHz and above, T-Mobile called the FCC’s reserve “inadequate to sustain a wireless market with four nationwide providers and robust rural and regional competition,” because, among other reasons, “at most only one reserve-eligible carrier can acquire twenty megahertz of spectrum without facing the risk of foreclosure by the two dominant providers.”<sup>14</sup>

T-Mobile thus fully understands the ways in which incumbent carriers can foreclose competitive carriers and new entrants in auctions. It is precisely this foreclosure risk that DISH

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<sup>9</sup> *T-Mobile Response* at 3.

<sup>10</sup> *DISH CBRS Proposal* at 3.

<sup>11</sup> *T-Mobile Response* at 5.

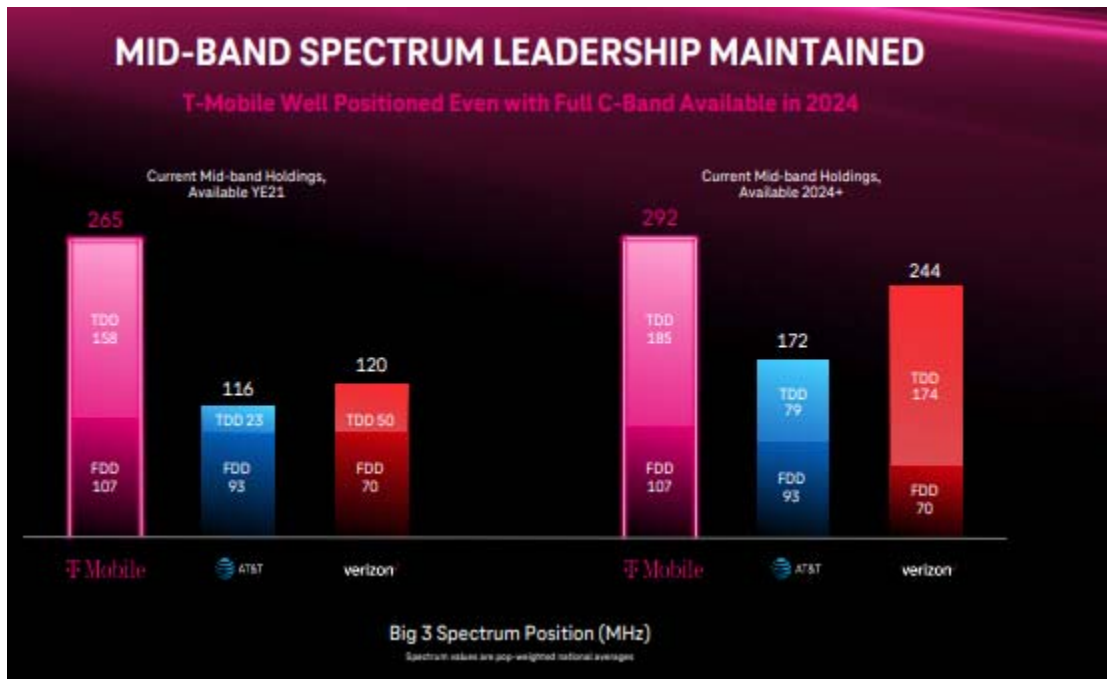
<sup>12</sup> *Id.*

<sup>13</sup> Letter from Steve Sharkey, T-Mobile, to Marlene H. Dortch, FCC, GN Docket No. 18-122, at 3 (Dec. 18, 2019).

<sup>14</sup> Petition for Reconsideration, T-Mobile USA, Inc., WT Docket No. 12-269, at 7-8 (Aug. 11, 2014) (“T-Mobile Petition for Reconsideration”).

raised with regard to the now-adopted 40 MHz cap.<sup>15</sup> Rather than recognizing, as T-Mobile once did, that the Commission’s spectrum policies here may be “inadequate to provide competitive carriers ... a meaningful opportunity to expand their [] spectrum holdings,” causing “spectrum holdings [to] become further concentrated among AT&T and Verizon, diminishing other providers’ ability to meaningfully compete for subscribers,”<sup>16</sup> T-Mobile accuses DISH’s advocacy of being “nakedly anti-competitive.”

T-Mobile’s about-face is bold, but not surprising, given it now aggressively touts the depth of its mid-band spectrum holdings.<sup>17</sup> In fact, to Wall Street analysts T-Mobile enthusiastically lumps itself with AT&T and Verizon, calling the trio the “Big 3.”



It is no wonder that T-Mobile now seeks to further cement its dominant mid-band position through excessive spectrum concentration, a position it advocated against until it too became a spectrum-rich incumbent.

<sup>15</sup> *DISH CBRS Proposal* at 7. As DISH noted, the three incumbents could walk away with all available spectrum in a market, even adhering to the 40 MHz cap: “For example, in the important New York City market, AT&T, T-Mobile and Verizon could each win 40 MHz, 40 MHz, and 20 MHz of 3.45 GHz spectrum respectively, leaving none for any remaining competitors.” *Id.*

<sup>16</sup> T-Mobile Petition for Reconsideration at 17.

<sup>17</sup> T-Mobile Virtual Analyst Day, at 30 (March 11, 2021), available at [https://s24.q4cdn.com/400059132/files/doc\\_presentations/2021/T-Mobile-Virtual-Analyst-Day-Slides\\_03.11.2021.pdf](https://s24.q4cdn.com/400059132/files/doc_presentations/2021/T-Mobile-Virtual-Analyst-Day-Slides_03.11.2021.pdf).

- ***T-Mobile’s other efforts to harm competition through its power of incumbency***

T-Mobile’s filing is just its latest attempt to flex its power to thwart competition. T-Mobile has announced its intention to turn off the Sprint CDMA network – home to millions of Boost subscribers – on January 1, 2022. This is significantly sooner than the three-year migration timeline it previously announced. For example:

- In a July 2019 SEC filing, T-Mobile stated that it would divest its 800 MHz spectrum to DISH, pursuant to the DOJ-approved Spectrum Purchase Agreement, three years *after* the closing of the Boost divestiture (with an additional two-year lease back option) to “permit the New T-Mobile to *continue to serve legacy Sprint customers during network integration*, pending later FCC approval of the license transfer.”<sup>18</sup>
- T-Mobile and Sprint reiterated this three-year transition timeline to the California Public Utilities Commission (“CPUC”): “[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*. Thus, even with the divestiture, New T-Mobile will have access to the 800 MHz spectrum for sufficient time to support Sprint customers who are reliant on LTE and CDMA technologies and to shepherd customers with incompatible handsets through the migration process.”<sup>19</sup>
- Neville Ray also provided testimony to the CPUC that “T-Mobile expects that all Sprint customers are likely to be completely migrated within three years.”<sup>20</sup>

A three-year timeline makes sense, given the complexity of this migration. Just this week, Verizon announced that it will *extend* the shutdown of its own CDMA network until December 31, 2022. This is the third time Verizon has extended its shutdown deadline:

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<sup>18</sup> T-Mobile US, Inc., Form 8-K, at 93 (Jul. 26, 2019), *available at* <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001283699/960973fe-4882-42ab-a2f7-1af18a51848f.pdf> (emphasis added).

<sup>19</sup> Joint Applicants’ Post-December 2019 Hearing Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032 (Public Version), Applications 18-7-011 and 18-07-012, at 33-34 (Dec. 20, 2019) (emphasis added), *citing* Ray Rebuttal Testimony at 47:5-6 and Ray Supplemental Testimony at 13:14-21 (“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. 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 and to complete the migration of Sprint customers before this deadline. We did not plan, and do not plan, to use 800 MHz spectrum to support former Sprint customers after the migration period and after the legacy network is terminated. Thus, even with the divestiture, New T-Mobile will have access to sufficient 800 MHz spectrum to support Sprint customers with CDMA and LTE through the migration process.”).

<sup>20</sup> Ray Rebuttal Testimony at 47:5-6.

Since 2016, we have stated publicly that we are actively decommissioning our 3G CDMA network. Initially, we announced we would close down our 3G network in 2019. However, we extended our shut off date - first to the end of 2020 and now to the end of 2022 - in order to care for our customers and give them every effort to minimize disruptions to their service as they move to newer and more advanced technologies.<sup>21</sup>

According to Verizon, currently less than *1 percent* of its customer base is still accessing the company's 3G network, thanks to its multi-year migration effort.

In contrast, T-Mobile plans to shut down the entire CDMA network in just 276 days. Unfortunately, a majority of our 9 million Boost subscribers (many of whom face economic challenges) have devices that rely on Sprint's CDMA network and will be harmed if T-Mobile prematurely shuts down that network. A forced migration of this scale under this accelerated time frame is simply not possible and will leave potentially millions of Boost subscribers disenfranchised and without cell service come January 1, 2022. This is especially the case given significant device/chip shortages that make it even more difficult to acquire compatible replacement devices prior to the shutdown.

We believe that T-Mobile's actions raise significant competition and public interest concerns. We hope that T-Mobile reconsiders its decision to shut down the CDMA network prematurely so Boost subscribers will not be impacted and DISH can continue providing consumers with competitive choices.

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As the Commission moves forward with Auction 110, DISH urges it to think holistically about all currently-licensed mid-band spectrum in order to maximize the efficient use of these important frequencies and promote competition. In parallel with the 3.45 GHz auction, the Commission should issue a Public Notice seeking comment on proposals to raise CBRS power levels.

Sincerely,

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/s/

Jeffrey H. Blum  
DISH Network Corporation

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<sup>21</sup> 3G CDMA Network Shut off date set for December 31, 2022, Mike Haberman, Verizon Blog (March 30, 2021), available at <https://www.verizon.com/about/news/3g-cdma-network-shut-date-set-december-31-2022>.