



Charlie Ergen  
Co-Founder and Chairman  
DISH Network

May 3, 2021

The Honorable Brian Schatz  
U.S. Senate  
Washington, DC 20515

The Honorable Ben Ray Lujan  
U.S. Senate  
Washington, DC 20515

The Honorable Joe Manchin, III  
U.S. Senate  
Washington, DC 20515

The Honorable Kirsten Gillibrand  
U.S. Senate  
Washington, DC 20515

The Honorable Tammy Baldwin  
U.S. Senate  
Washington, DC 20515

The Honorable Angus S. King, Jr.  
U.S. Senate  
Washington, DC 20515

The Honorable Margaret Wood Hassan  
U.S. Senate  
Washington, DC 20515

The Honorable Richard Blumenthal  
U.S. Senate  
Washington, DC 20515

The Honorable Edward J. Markey  
U.S. Senate  
Washington, DC 20515

The Honorable Michael F. Bennet  
U.S. Senate  
Washington, DC 20515

The Honorable Cory A. Booker  
U.S. Senate  
Washington, DC 20515

The Honorable Patrick Leahy  
U.S. Senate  
Washington, DC 20515

The Honorable Elizabeth Warren  
U.S. Senate  
Washington, DC 20515

Dear Senators:

As the Co-Founder and Chairman of DISH, the owner and operator of Boost Mobile (“Boost”), I want to thank you for the April 19, 2021 letter that you sent to the CEOs of the three largest U.S. wireless carriers, including T-Mobile CEO Mike Sievert, regarding the transition from 2G and 3G technologies.<sup>1</sup> As you explained, millions of Americans rely on wireless broadband to access essential services, and these connections have become even more critical

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<sup>1</sup> Letter from Senators Schatz, Ray Lujan, Manchin III, Gillibrand, Baldwin, King, Jr., Hassan, Blumenthal, Markey, Bennet, Booker, Leahy, and Warren, to Mike Sievert, CEO T-Mobile, pp 4-6 (April 19, 2021), *available at* <https://www.schatz.senate.gov/imo/media/doc/2G3G%20Shutdown%20Letters%20combined.pdf>.

during the COVID-19 pandemic.<sup>2</sup> As wireless carriers roll out 5G services, many Americans still utilize 2G and 3G technology for their mobile needs. In fact, over 4 million pre-paid Boost customers are among those reliant on 3G technology today. This is because they hold devices that are currently only compatible on the legacy Sprint 3G CDMA Network (the “CDMA network”), which has been operated by T-Mobile since its April 2020 acquisition of Sprint.

I agree with you that “[w]e must ensure that we do not leave these consumers behind in the move to 5G”<sup>3</sup> and write today to provide additional information regarding the impact of T-Mobile’s announcement that it will prematurely shut down the CDMA network on January 1, 2022. The bottom line is this: T-Mobile’s anticompetitive Grinch-like decision to accelerate the shutdown of its CDMA network will likely harm millions of Boost customers that depend on access to this network for wireless connectivity, disproportionately impacting low-income consumers who over-index in communities of color.

As your letter recognizes, T-Mobile has “a responsibility to make sure that as it transitions to cutting-edge technologies, the digital divide is narrowed and not widened.”<sup>4</sup> And yet, T-Mobile’s decision to shutter the CDMA network much earlier than it committed to during its merger review will potentially disenfranchise millions of economically-challenged consumers, leaving them on the wrong side of the digital divide with wireless devices that will simply no longer work. This is especially surprising given that T-Mobile recently touted to Wall Street that its merger synergies are now expected to reach \$70 billion dollars, a 60% increase from the original merger guidance of \$43 billion (see the enclosed attachment for a relevant slide from T-Mobile’s March 2021 investor presentation). This huge increase in value from the merger should not come on the backs of lower income consumers – particularly when keeping the CDMA network operational (and thus, keeping these consumers connected) wouldn’t put a dent in T-Mobile’s newly-realized multi-billion dollar synergies.

Since our acquisition of Boost in July of 2020, DISH has been transitioning Boost customers reliant on the CDMA network to newer technology. However, we are now significantly constrained in that effort by T-Mobile’s arbitrary and wholly unexpected new timeline.<sup>5</sup> Instead of being able to successfully complete our migration by July 2023 – the earliest deadline T-Mobile committed to during its merger proceedings – we now have just 244 days. At the same time, DISH is building out the nation’s first cloud-native, Open RAN-based 5G wireless broadband network, with at least one major city going live by the end of this year, with more to follow. We are working to reach the 5G deployment milestones we committed to the FCC (20% of the U.S. population by June 2022 and 70% by June 2023). But, as we light up our own network, we are still reliant on T-Mobile for our customers’ connectivity needs. As noted above, millions of Boost customers have devices that utilize the CDMA network and

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<sup>2</sup> *Id.* at 4.

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

<sup>4</sup> *Id.* at 5

<sup>5</sup> DISH is seeking intervention from the Antitrust Division of the Department of Justice given its oversight role over the T-Mobile/Sprint merger consent decree.

cannot transition to the T-Mobile network without a device upgrade or other technology change. T-Mobile's premature shutdown of the CDMA network threatens to harm these consumers.

This new CDMA shutdown date from T-Mobile is contrary to the three to five year timeline the company's executives repeatedly gave regulators under oath when seeking to allay concerns about the impact of this very technology migration.<sup>6</sup> In fact, when asked about this at a merger hearing held by the California Public Utilities Commission (the "CPUC"), T-Mobile's President of Technology, Neville Ray, assured the public of T-Mobile's intent "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."<sup>7</sup> Further, in written testimony, Mr. Ray promised T-Mobile "will do all it can to make it possible for DISH to successfully and timely migrate the Sprint prepaid customers to the network."<sup>8</sup> But, now that T-Mobile has consummated its merger and cemented its competitive market advantage, the company has apparently decided to turn its back on these commitments and shut Boost consumers off.<sup>9</sup>

The harms of this early shutdown are exacerbated by the current microchip shortage (since less chips are available for the replacement handsets needed to transition these customers) and the recent exit of LG from the consumer handset business (since it has been Boost's largest device supplier). Both circumstances have the unfortunate effect of severely limiting our ability to accelerate the procurement of compatible inventory to migrate Boost's CDMA customers. And, all of these challenges are occurring during a global pandemic, when it is more critical than ever for Americans to stay connected, considerably intensifying the harms customers will face if their phones no longer work.

T-Mobile is now the country's second-largest wireless provider with 102 million customers, and it has all of the competitive advantages that come with such scale. T-Mobile also

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<sup>6</sup> For example, when questioned about the support of legacy Sprint customers during the migration at the California Public Utility Commission's Evidentiary Hearing, Neville Ray of T-Mobile answered: "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 we need longer, we have the right. We negotiated that through the PFJ with the DOJ and with DISH so that we could retain a portion of that 800 megahertz for up to five years.* And the spectrum is used today. I mean 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.*" CPUC Additional Evidentiary Hearing Transcript; Cross Examination Testimony of Neville Ray, Transcript at 123: 27-28 124:1-17 (December 5, 2019) (emphasis added).

<sup>7</sup> *Id.* at 131:24-28; 132:1.

<sup>8</sup> Supplemental Testimony of Neville R. Ray to the CPUC, at 20 (Nov. 7, 2019).

<sup>9</sup> Last week, DISH filed a petition with the CPUC requesting that the agency enforce T-Mobile's three-year CDMA migration commitment in light of its newly-announced timeline.

has had significantly longer than DISH to plan for this shutdown, given that it is in full control of the timeline and can more easily mitigate the impact on its own post-paid legacy network customers.<sup>10</sup> Meanwhile, the impact to Boost's pre-paid consumers could be particularly severe since they are typically the hardest to reach. These customers frequently do *not* provide a street address or e-mail address when purchasing service. Even when there is home address data, it is not unusual for pre-paid customers to be more transient than post-paid customers, especially as the pandemic's economic pressures have forced many consumers to move.

T-Mobile's rapid timeline is also unprecedented. In March of this year, for example, Verizon announced that it will extend the shutdown of its own CDMA network until December 31, 2022, even though less than *one percent* of its consumers still utilize it. This is the third time Verizon has extended this deadline since announcing in 2016 that it would ultimately decommission its CDMA network.<sup>11</sup> We commend Verizon for making sure that CDMA customers are taken care of before its legacy network is shut down.

In contrast, we have asked T-Mobile on multiple occasions to simply honor the three to five year timeline it repeatedly committed to during its merger proceeding. So far, T-Mobile has refused to back off of its new January 1, 2022 date. Instead, T-Mobile has attempted to disclaim any responsibility for the shutdown's negative impact. This has included Mr. Sievert falsely asserting that "[t]he truth of the matter is of the nine million customers that Boost has give or take, by the end of this year almost 90 percent of them will already have a handset that is totally compatible with T-Mobile's network ... nobody's having anything unplugged."<sup>12</sup>

Mr. Sievert has even gone so far as to intimate that the shutdown is being done *at the FCC's behest*. When asked about discussions with the FCC on this topic, Mr. Sievert answered:

Yes and they want us to move as quickly as possible and in fact required that we move incredibly quickly with an unprecedented set of commitments that they demanded we move to a network that requires that all of our assets be on the destination T-Mobile network very quickly... *They not only asked us to do it, they required us to do it.*<sup>13</sup>

This statement is at odds with the very reason Boost is under DISH's ownership today: the Boost divestiture was required by both the FCC and DOJ as part of the T-Mobile/Sprint merger approval in order to remedy the anticompetitive harms that would have otherwise resulted from the consolidation of the wireless market from four to three carriers. We believe that

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<sup>10</sup> T-Mobile's purchase of Sprint closed on April 1, 2020, while T-Mobile did not divest Boost to DISH until July 1, 2020. Three months later (in October 2020), T-Mobile first notified DISH of its new CDMA network shutdown timeline.

<sup>11</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-setdecember-31-2022>.

<sup>12</sup> Mike Sievert, Fox Business: The Claman Countdown, at 4:46 (March 12, 2021), available at <https://video.foxbusiness.com/v/6239743908001#sp=show-clips>.

<sup>13</sup> *Id.* at 5:38 (emphasis added).

T-Mobile will likely be ready, willing, and able to try and poach Boost customers impacted by the premature CDMA shutdown, which will damage DISH's ability to compete.

In sum, T-Mobile's decision to shut down the CDMA network significantly earlier than the company promised regulators raises serious competitive and consumer protection issues that are worthy of your review. Thank you for your consideration of this information and your time.

Sincerely,

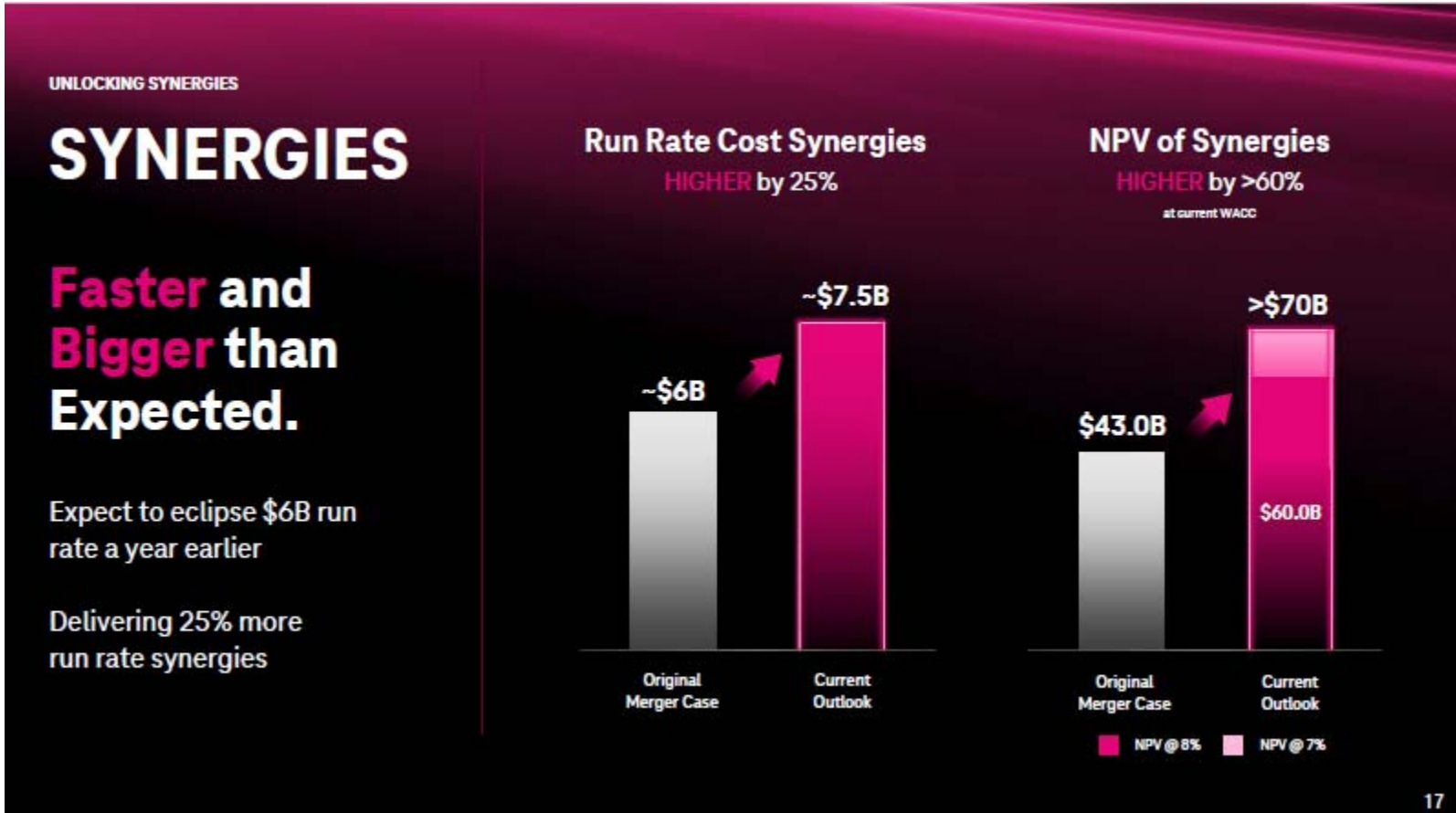
A handwritten signature in black ink, appearing to be 'CE', written over a horizontal line.

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Charlie Ergen  
Co-Founder & Chairman, DISH Network

Attachment

Attachment<sup>1</sup>



<sup>1</sup> T-Mobile Virtual Analyst Day, p. 17 (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).