

November 7, 2019

VIA ELECTRONIC DELIVERY

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: A.18-07-011 and A.18-07-012; Confidential Treatment of T-Mobile USA, Inc.’s
Supplemental Testimony**

To Commission and California Public Advocates:

Enclosed please find the supplemental testimony for the following witnesses submitted on behalf of T-Mobile USA, Inc. (“T-Mobile”) in the above-referenced proceedings:

- Neville R. Ray
- Thomas Keys

The testimony (including attachments), as marked, contains confidential, proprietary and highly sensitive information, including but not limited to deployment information, critical network infrastructure, and business plans, practices and policies.

Although there have been no processes established for providing confidential information in the above-referenced proceeding, this letter is submitted consistent with GO 66-D, Section 3.2 which requires information submitters seeking confidential treatment of non-public information (outside of a formal proceeding) to: (i) designate information as confidential; (ii) specify the basis for confidential treatment under the CPRA or Commission order; (iii) provide a declaration in support of confidential treatment; and (iv) provide contact information of those responsible to monitor and respond to Commission communications regarding the submitted information. The enclosed information is not otherwise publicly available, and this submission addresses all requirements set forth in GO 66-D to seek confidential treatment. T-Mobile has addressed each of these items in this submission.¹

T-Mobile thus submits the enclosed testimony under seal and requests that the Commission (including the Public Advocates Office) afford confidential treatment to this information pursuant to federal and state law and CPUC Orders and Decisions, including but not

¹ T-Mobile notes that certain of the confidential and proprietary information in the enclosed Supplemental Testimony has already been provided to the Public Advocates Office and/or the Communications Division in the course of discovery and under cover of confidentiality letters and declarations submitted pursuant to General Order 66-D.

limited to, Article 1, Section 1 of the California Constitution, the California Public Records Act (“CPRA”), California Public Utilities Code Section 583², California Government Code Section 6254(a), (c), and (e), California Government Code Section 6254(k), California Government Code Section 6255, California Civil Code Section 3426 *et. seq.*, California Evidence Code Section 1060, CPUC General Order (“GO”) 66-D, CPUC General Order 167, Section 15.4, CPUC Decision 16-08-024, and CPUC Decision 17-09-023.

A. Legal Basis for Confidential Treatment

Critical Network Infrastructure

State and federal law protects against disclosure of critical network infrastructure information, including the confidential network engineering model, site and network data, and backup power information submitted herein, because disclosure of such information could harm public safety by putting critical infrastructure at risk. Specifically, the CPRA protects against disclosure of confidential “utility systems development” data.³ Moreover, the CPRA protects against disclosure that is prohibited under federal law⁴ - federal law protects against the disclosure of information regarding critical infrastructure,⁵ which has been found to include communications network information like the information being submitted here.⁶ As described in the attached declaration, certain information in the attached testimony is critical to our nation’s communications network, and disclosure of these records could harm public safety and network reliability by exposing to attack specific locations, operations, and functionalities of utility infrastructure. Therefore, the Commission should afford confidential treatment to information enclosed herein.

Deployment

² See Gov. Code § 6276.36 (acknowledging Pub. Util. § 583 as a valid exemption to disclosure of confidential records under the California Public Records Act).

³ Gov. Code § 6254(e) (“this chapter does not require the disclosure of...(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.”).

⁴ Gov. Code § 6254(k) (“this chapter does not require the disclosure of...(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law....”).

⁵ 6 U.S.C. § 133(a)(1)(E) (protecting against state government disclosure of voluntarily shared critical infrastructure information).

⁶ See *Modernizing the FCC Form 477 Data Program*, 28 FCC Rcd. 9887 (2013); 47 C.F.R. §§ 1.7001(d)(2)-(3), 0.459; see also D.16-08-024 at 25 (identifying information regarding the location, function, and relationship between network facilities, including the identity of critical infrastructure as information that would meet the requirement for confidential treatment).

State and federal law and the Commission's own prior orders have protected against disclosure of subscription and deployment data and customer counts. In particular, the CPRA protects against disclosure that is prohibited under state and federal law.⁷ State law protects against the disclosure of confidential broadband and voice subscriber and availability data, regardless of whether the data is reported at the census tract, census block, or address level, in the context of video franchisee reporting,⁸ and there is no reason the same protection should not be provided here. Additionally, in past proceedings, even statewide customer subscription data has been afforded confidential treatment, acknowledging the need to keep such information out of the hands of those involved in competitive decision-making.⁹ Further, federal law protects against disclosure of confidential voice subscription data.¹⁰

The request for confidential treatment is further supported by the attached declaration, which attests that the enclosed testimony is protected by state law and, if disclosed, could allow competitors to engage in targeted marketing and service offerings and other competitive harms. The attached information falls into the class of information protected from disclosure, and the Commission should therefore afford confidential treatment to this information.

Trade Secret

The CPRA protects against disclosure that is prohibited under state law, including the Evidence Code, which is the only state law expressly spelled out in the code subsection.¹¹ The California Evidence Code protects against public disclosure of trade secret information. A trade secret is defined as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives

⁷ Gov. Code § 6254(k) (“this chapter does not require the disclosure of...(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law....”).

⁸ Cal. Pub. Util. Code § 5960(c) (“All information submitted to the commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Section 583.”); see also *New Cingular v. Picker*, Case No. 16-cv-02461-VC, Order of Dismissal (January 12, 2017) (“[T]here is no reason to believe that the CPUC would disclose the subscription data to the public, particularly since it would almost certainly be a violation of California law to do so.”).

⁹ I.15-11-007, *Administrative Law Judge's Ruling on Remaining Protective Order Issues, and Other Issues* (April 1, 2016) (providing confidential treatment to subscription and deployment data).

¹⁰ 47 C.F.R. § 1.7001(d)(4)(i) (Form 477 data (i.e., the very data at issue here) may be released “to ... [a] state commission” only “*provided that the state commission has protections in place that would preclude disclosure of any confidential information.*”).

¹¹ Gov. Code § 6254(k) (“this chapter does not require the disclosure of...(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, *provisions of the Evidence Code relating to privilege.*”) (emphasis added).

independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.¹²

The request for confidential treatment is supported by the attached declaration, which attests that T-Mobile has taken significant efforts to guard this information, and that T-Mobile derives significant value from such data remaining confidential, especially in the competitive telecommunications marketplace. Without the protection afforded by state law, disclosure of the confidential information contained in the testimony could benefit competitors and decrease T-Mobile's competitive advantage.

Moreover, the CPRA directly protects against disclosure of trade secrets. Therefore, the Commission should afford confidential treatment to information enclosed herein.

Balancing Test

The CPRA protects against disclosure of information where “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.”¹³ Here, the supplemental testimony, as marked, includes a wide-range of confidential and proprietary information that the parties have gone to great lengths to protect in general and in the course of the merger. The disclosure of such information would seriously harm or distort the operation of the market, thereby negatively impacting the public interest by reducing the many benefits associated with the merger.¹⁴ Moreover, there is no articulable public benefit gained from the disclosure of such material. Therefore, the Commission should afford confidential treatment to information enclosed herein.

B. Contact Information

As noted above, attached is a declaration in support of confidential treatment of the attached records. Thank you for your consideration of this request, and if you have any questions regarding this please either contact me, Suzanne Toller, at 415-276-6500, or Leon Bloomfield at 510-625-1164.

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¹² Civ. Code § 3426.1(d).

¹³ Gov. Code § 6255; see also *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065 (2006) (ruling that, under Section 6255, proposals for lease of hangar facility at public airport were exempt from disclosure during negotiation period to ensure benefits of competition which “assure the best social, environmental, and economic result for the public.”).

¹⁴ See D.16-12-025 at 132 (“There is intermodal competition in the market today.”).

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Best regards,

_____/s/_____

Suzanne Toller
Attorney for T-Mobile

Enclosures:
Declaration of Leon M. Bloomfield

DECLARATION OF LEON M. BLOOMFIELD

I, Leon M. Bloomfield, hereby declare as follows:

1. I am an Attorney for T-Mobile USA, Inc. (“T-Mobile”).
2. I have been granted authority to sign on behalf of T-Mobile by Dave Conn, Vice-President, State Government Affairs for T-Mobile USA, Inc.
3. My personal knowledge of the facts stated herein has been derived from my legal representation of T-Mobile.
4. T-Mobile is submitting the enclosed supplemental testimony, as marked, under seal and requests confidential treatment for these materials, as described in the cover letter submitted by counsel.
5. **Critical Network Infrastructure.** The enclosed supplemental testimony includes certain network information that is critical to our nation’s communications network, and disclosure of these records could harm public safety and network reliability by exposing to attack specific locations, operations, and functionalities of utility infrastructure.
6. **Deployment Data.** Certain information in the enclosed supplemental testimony is protected by state law and, if disclosed, could allow competitors to engage in targeted marketing and service offerings and other competitive harms. The attached information falls into the class of information protected from disclosure.
7. **Trade Secret.** T-Mobile has taken significant efforts to guard this information, and that T-Mobile derives significant value from such data remaining confidential, especially in the competitive telecommunications marketplace. Without the protection afforded by state law, disclosure of confidential information, as marked, included in the enclosed supplemental testimony would benefit competitors and decrease T-Mobile’s competitive advantage.
8. **Balancing Test.** The enclosed supplemental testimony includes highly sensitive confidential and proprietary information, and disclosure of such information could harm or distort the operation of the market, thereby negatively impacting the public interest by reducing the benefits of the merger as described including those derived from a competitive telecommunications marketplace.

Executed on this 7th day of November, 2019 at Oakland, California.

/s/
Leon M. Bloomfield