

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

In the Matter of the 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 No. 18-07-011

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And Related Matter.

Application No. 18-07-012

**MOTION OF THE  
COMMUNICATIONS WORKERS OF AMERICA DISTRICT 9 TO STRIKE  
EXHIBIT JT APPL-16 AND THE PORTION OF THE EVIDENTIARY  
HEARING TRANSCRIPT RELATED TO EXHIBIT JT APPL-16**

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America District 9

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Communications Workers of America District 9 (CWA) submits this motion to strike from the record Exhibit JT APPL-16 and the portion of the evidentiary hearing record related to Exhibit JT APPL-16.

At the February 8, 2019 evidentiary hearing, T-Mobile and Sprint (Applicants) introduced Exhibit Jt Appl-16 (AT&T Mobility/CWA Districts 1, 2-13, 4, 7, 9 Company Package Proposal – Final 2017 Regional Labor Agreement, December 13, 2017) and used the exhibit in its cross examination of CWA’s witness.<sup>1</sup> Exhibit Jt Appl-16 is an excerpt from a confidential and proprietary draft agreement used for collective bargaining between AT&T and certain

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<sup>1</sup> See Tr. 1210:6 – 1213:7 (Goldman).

Communications Workers of America districts. According to the Applicants, they acquired the confidential draft agreement via the internet. The bottom of each page of the draft agreement states that the document is “confidential proprietary,” “may only be used for the purpose provided: AT&T Mobility/CWA 2017 Bargaining Session” and “CWA must undertake all precautions to secure from inadvertent or improper disclosure.” Nevertheless, upon discovering the document, the Applicants did not notify CWA as required by their ethical duties.<sup>2</sup> Instead, the Applicants presented the confidential document – which they knew or should of known was confidential and proprietary based on the statements at the bottom of each page – to CWA for the first time in the public hearing room during the cross-examination of CWA’s witness.

CWA raised concerns regarding the confidentiality of Exhibit Jt Appl-16 at the hearing. ALJ Bemederfer sealed the portion of the transcript related to Exhibit Jt Appl-16 and requested that CWA confer with the Applicants regarding the confidential marking of Exhibit Jt Appl-16. CWA conferred with the Applicants via email and telephone regarding the confidentiality of Exhibit Jt Appl-16. CWA explained that (1) it is the practice of both parties to the agreement (CWA and AT&T) to treat these types of agreements as confidential, (2) that the document is clearly marked confidential, (3) while the agreement was accidentally posted on the internet, it was subsequently removed, (4) collective bargaining is an important tool that is federally protected and releasing confidential collective bargaining tools to

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<sup>2</sup> *McDermott Will & Emery LLP v. Superior Court of Orange County*, 10 Cal.App.5th 1083 (2017).

the public could chill future bargaining, and (5) marking Exhibit Jt Appl-16 confidential would not harm the Applicants since they could freely cite to the document and transcript and, like many other confidential exhibits in the proceeding, simply mark those portions of their brief confidential. Still, the Applicants refused to agree to mark Exhibit Jt Appl-16 confidential.

The Applicants' failure to notify CWA when it discovered the confidential draft agreement and the Applicants' use of the confidential agreement in hearings is improper and a breach of their ethical duties. CWA therefore respectfully moves for Exhibit Jt Appl-16 and the portion of the evidentiary hearing transcript related to Exhibit Jt Appl-16<sup>3</sup> to be stricken from the record. Alternatively, CWA moves for Exhibit Jt Appl-16 to be marked confidential. Until ALJ Bemserfer has had an opportunity to rule on this motion, CWA requests that briefing related to Exhibit Jt Appl-16 be redacted.

Dated: April 11, 2019

Respectfully submitted,

/s/

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