

**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 18-07-011

In the Matter of the Joint Application of Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation for Review of Wireless Transfer Notification per Commission Decision 95-10-032

Application 18-07-012

**JOINT APPLICANTS AND THE CALIFORNIA EMERGING TECHNOLOGY FUND
MOTION TO FILE UNDER SEAL CONFIDENTIAL INFORMATION ON PAGE 6;
EXHIBIT A, PAGES 9 AND 10; AND EXHIBIT A, ATTACHMENT B OF JOINT
MOTION OF JOINT APPLICANTS AND THE CALIFORNIA EMERGING
TECHNOLOGY FUND TO MODIFY POSITIONS IN PROCEEDING TO REFLECT
MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA EMERGING
TECHNOLOGY FUND AND T-MOBILE USA, INC.**

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Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure (“Rules”), Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively “Sprint”), and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, the “Joint Applicants”) and the California Emerging Technology Fund (“CETF”) (jointly, the “Joint Parties”) respectfully submits this Motion to request that certain confidential and competitively sensitive information (as marked) in the motion and exhibits attached to the concurrently-filed *Joint Motion of Joint Applicants and the California Emerging Technology Fund to Modify Position in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.* (“Motion”) be filed under seal and to request that the California Public Utilities Commission (“CPUC” or “Commission”) afford confidential treatment to sensitive information, as discussed below.

I. CONFIDENTIAL INFORMATION

The Motion and Exhibit A contain confidential, proprietary and highly sensitive information, on page 6 of the Motion, pages 9 and 10 of Exhibit A, and Attachment B to Exhibit A, which has been explicitly marked with blue highlight. This information is not otherwise publicly available. Page 6 of the Motion and page 9 of Exhibit A contain sensitive financial information regarding capital expenditures that is also trade secret. The California Public Records Act (“CPRA”) protects against disclosure of statements of financial worth or financial data.¹ Indeed, the Commission has assured confidential treatment of financial information in the past.² The enclosed documents contain sensitive capital expenditure data that is the type of information provided protection under the CPRA. Therefore, the Commission should afford confidential treatment to confidential financial information enclosed herein.

Additionally, 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.³ The California Evidence Code protects against public disclosure of trade secret information.⁴ For, the capital expenditure information set forth on page 6 of the Motion and page 9 of Exhibit A, T-Mobile USA derives significant value from such data remaining confidential, especially in the competitive telecommunications marketplace. Without the protection afforded by state law, disclosure of capital expenditure information would benefit

¹ Pub. Util. Code Section 6254(n) (protecting against disclosure of statements of worth or financial data); *see also* Gov. Code § 6254.15 (“Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: *corporate financial records*....”) (emphasis added).

² D.16-04-009 at 16-17 (offering confidential treatment to financial documents).

³ 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).

⁴ Cal. Evid. Code § 1060 (protecting against disclosure of trade secrets). *See, e.g., Lion Raisins Inc. v. USDA*, 354 F3d 1072, 1080-81 (9th Cir. 2004) (where information collected by agency would allow competitor to “infer critical information about its competitors' volume, market share, and marketing strategy,” agency appropriately refused to produce in response to Freedom of Information Act request).

competitors by allowing them to gain insight into T-Mobile USA's strategic plans and decrease its competitive advantage. Joint Applicants have consistently treated California-specific capital expenditure information as confidential throughout this proceeding.⁵

The broadband and 5G deployment information set forth on page 10 of Exhibit A and Attachment B to Exhibit A is also trade secret. T-Mobile USA derives significant value from such data remaining confidential, especially in the competitive telecommunications marketplace. Without the protection afforded by state law, disclosure of broadband and 5G deployment information would benefit competitors by allowing them to gain insight into T-Mobile USA's strategic plans and decrease its competitive advantage. Further, State law protects against the disclosure of confidential broadband availability data in the context of video franchisee reporting,⁶ and there is no reason the same protection should not be provided here.

Finally, State and federal law protect against disclosure of critical network infrastructure information, including the confidential site and network data, submitted in Exhibit A at page 10 and Attachment B, 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.⁷ Moreover, the CPRA protects against disclosure that is prohibited under federal law⁸ — federal law protects against the disclosure of information

⁵ See, e.g. Hearing Exhibit Jt. Appl.-2C, Rebuttal Testimony of G. Michael Sievert, President and Chief Operating Officer T-Mobile USA, Inc. on Behalf of T-Mobile USA, Inc. dated January 29, 2019 at 14:3-7.

⁶ 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.").

⁷ 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.").

⁸ 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....").

regarding critical infrastructure,⁹ which has been found to include communications network information like the information being submitted here.¹⁰

T-Mobile USA notes that they have prepared and electronically filed and served a redacted public version of the Motion. The Commission and parties that have executed an NDA with the Joint Applicants will receive both a confidential and public version of the Motion.

II. CONCLUSION

For these reasons, Joint Parties' respectfully request confidential treatment of the confidential version of the Motion and of Exhibit A and that the Commission protect this information from release to persons and parties outside of the Commission.

Respectfully submitted this 8th day of April, 2019.

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

¹⁰ 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).

¹¹ Pursuant to Rule 1.8(d), this document is signed on behalf of Joint Applicants.

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[PROPOSED] ORDER GRANTING JOINT APPLICANTS AND THE CALIFORNIA EMERGING TECHNOLOGY FUND MOTION TO FILE UNDER SEAL CONFIDENTIAL INFORMATION ON PAGE 6, EXHIBIT A, PAGES 9 AND 10, AND EXHIBIT A, ATTACHMENT B OF JOINT MOTION OF JOINT APPLICANTS AND THE CALIFORNIA EMERGING TECHNOLOGY FUND TO MODIFY POSITIONS IN PROCEEDING TO REFLECT MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA EMERGING TECHNOLOGY FUND AND T-MOBILE USA, INC.

On April 8, 2019, Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively “Sprint”), and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, the “Joint Applicants”) and the California Emerging Technology Fund (“CETF”) (jointly, the “Joint Parties”) filed the confidential version of the motion and Exhibit A set forth in the *Joint Motion of Joint Applicants and the California Emerging Technology Fund to Modify Position in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.* The information included in the motion and Exhibit A contain confidential, proprietary, and highly sensitive information, including deployment information, financial information, critical network infrastructure, and business plans, practices, and policies, which are protected pursuant to federal and state law and Commission Orders and Decisions.

No opposition to this Motion has been submitted and the time for submission of such opposition has expired. No hearing on the Motion is necessary.

Good cause having been shown, and no opposition to the Motion having been submitted, IT IS HEREBY RULED that:

1. Joint Parties' Motion to file under seal and afford confidential treatment to the confidential versions of motion and Exhibit A is granted.
2. The identified information shall be received under seal, shall remain under seal, and shall not be made accessible to the public or disclosed to anyone other than Commission staff, except upon further order or ruling of the Commission.

Dated _____, 2019 at San Francisco, California.

Administrative Law Judge