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

T-MOBILE'S MOTION FOR PARTIAL RECONSIDERATION OF THE FEBRUARY 3, 2020 PRESIDING OFFICER'S RULING GRANTING IN PART AND DENYING IN PART JOINT APPLICANTS' REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION IN JOINT APPLICANTS' EXHIBIT 22C AND NEVILLE R. RAY'S SUPPLEMENTAL TESTIMONY EXHIBIT 28C ATTACHMENT H

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Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure ("Rules"), T-Mobile USA, Inc. ("T-Mobile") submits this motion for partial reconsideration of the February 3, 2020 *Presiding Officer's Ruling Granting In Part And Denying In Part Joint Applicants' Request For Confidential Treatment Of Information In Joint Applicants' Exhibit 22c And Neville R. Ray's Supplemental Testimony Exhibit 28C Attachment H* (the "Confidentiality Ruling").[1]

T-Mobile respectfully (1) requests reconsideration of the ruling that the data contained in Attachment H to the Supplemental Testimony of Neville Ray ("Attachment H") is not entitled to confidential treatment and (2) seeks a determination that such information will be deemed confidential as marked.[2] The marked data in Attachment H is highly sensitive, proprietary information concerning T-Mobile's closely held critical network infrastructure and discloses

[1] T-Mobile does not seek reconsideration of the ALJ's determination that "the final figure in Column K, showing the total number of Sprint prepaid customers in California as of December 5, 2019" is not confidential. *See* Confidentiality Ruling at 3.

detailed and confidential business plans relating to New T-Mobile's planned 5G deployment and in-home broadband roll-out after the closing of the merger. Under well-established law, this highly sensitive data constitutes trade secrets protected by California law and federal law. *See* Section II.C, *infra*. Indeed this Commission has previously accorded this information confidential treatment and no party to this proceeding has disputed or challenged T-Mobile's designation of this information as confidential.

The potential release of this data to the public—and especially to T-Mobile's competitors—would run afoul of these well-established protections for trade secrets and provide an unfair and asymmetrical competitive advantage to New T-Mobile's competitors. This in turn would subject T-Mobile, consumers, and the broader wireless market to severe competitive harm. No countervailing public interest benefit exists—much less justifies—this Commission to breach the confidentiality of this information. *See* Section II.D, *infra*. Accordingly, T-Mobile respectfully urges the Commission to grant reconsideration of the denial of confidential treatment for Attachment H.

As detailed below (Section II.A-B, *infra*), T-Mobile submitted the competitively sensitive information with a well-supported confidentiality request and an accompanying declaration that demonstrated in detail that the marked information constitutes protected trade secrets. No party to the proceeding objected to treating the marked information as confidential.

Moreover, this data is essentially identical to—and in many cases more granular than—information that has previously been accorded confidential treatment in this proceeding[3] and in

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[2] T-Mobile reserves the right to withdraw before public disclosure any information in Attachment H that is marked confidential in the event that reconsideration is not granted.

[3]As previously noted, the merging parties submitted a wireless notification to provide the CPUC with information concerning the transaction's effects on the state and its consumers, notwithstanding the Commission's jurisdictional limitations under Sections 253 and 332 of the Communications Act, 47 U.S.C. §§ 253, 332. It would be anomalous for the CPUC to provide less protection for confidential information so submitted than that afforded by the agencies with statutory approval authority over wireless transactions.

the Federal Communications Commission's ("FCC") proceeding addressing this merger,[4] as well as other FCC proceedings involving similar data.[5] Furthermore, the *same* type of information has been treated as confidential in judicial proceedings addressing the present merger.[6] In declining confidential treatment, the Confidentiality Ruling is an outlier that should be corrected.

Without discussing any of the foregoing facts, the Confidentiality Ruling assumed that the marked confidential information does not provide sufficient geographic or timing information to give rise to economic harm to New T-Mobile or benefits to competitors if publicly disclosed. This is simply incorrect. As the accompanying Declaration of Neville Ray (T-Mobile's President of Technology) explains, and as referenced in the cover letter and confidentiality declaration that accompanied the initial distribution of Mr. Ray's Supplemental Testimony, the marked information is of the type that competitors in the wireless industry routinely treat as confidential and do not publicly disclose.[7] Moreover, T-Mobile has consistently treated the information as competitively sensitive and has diligently preserved its confidentiality—both in the regular course of business and in this proceeding.[8] Indeed, the marked information has even greater sensitivity than other data that the assigned Administrative Law Judge ("ALJ") has accorded confidential treatment in this proceeding, as the information

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[4] *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent To Transfer Control of Licenses and Authorizations,* WT Docket No. 18-197, Protective Order, DA 18-624 (June 15, 2018) (Protective Order).

[5] This includes the FCC's proceedings pursuant to Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302. That provision requires broadband providers (including mobile broadband providers) to submit data reflecting their coverage areas and offered speeds. While the aggregated data are released for public inspection, the provider-specific data are accorded confidential treatment by the FCC.

[6] *See, e.g., U.S. v. Deutsche Telekom AG et al*, Case 1:19-cv-02232-TJK, Minute Order (Nov. 13, 2019) (granting the Unites States Department of Justice's motion for leave to file under seal the national version of Attachment H on the basis that the numbers are competitively sensitive and subject to the FCC Protective Order); *State of New York et al. v. Deutsche Telekom AG et al*., Case No. 1:19-cv-5434-VM-RWL, Amended Interim Protective Order (S.D.N.Y. Aug. 14, 2019).

[7] *See* Exhibit A (Declaration of Neville R. Ray at ¶ 4 (Feb. 10, 2020)) ("Ray Decl.").

[8] *Id.* at ¶¶ 4 and 10.

reveals where, when, and how New T-Mobile will challenge its competitors.

Future specifications and plans for New T-Mobile's network and the services it will support are critical to its success in the marketplace and thus among the most closely guarded trade secrets that it and any other wireless network operator has. Public disclosure of this information would unfairly provide competitors with a roadmap of New T-Mobile's business strategy and highly confidential plans. And these competitors, in turn, would be able to exploit the confidential information to curtail their competitive responses to New T-Mobile (for example, limiting promotional offers only to those areas where New T-Mobile plans to deploy). In short, this would cause great harm to New T-Mobile, competition, and consumers—without any countervailing public interest in the release of this sensitive data. Thus, T-Mobile respectfully requests that the Confidentiality Ruling be reconsidered as to Attachment H.

I. PROCEDURAL HISTORY

A. The Confidentiality Request

To preserve the confidentiality of its pre-filed testimony, and consistent with General Order ("G.O.") 66-D, Section 3.2, T-Mobile included a letter, as well as a supporting declaration, specifying the bases for confidential treatment of competitively sensitive information included in its pre-filed supplemental testimony, including Attachment H ("Confidentiality Request").[9] Joint Applicants concurrently served a public version of their testimony, including Attachment H, with confidential information redacted, to the entire service list in this proceeding.[10] Accordingly, any

[9] *See* Exhibit B (T-Mobile's Confidentiality Cover Letter and Declaration re Supplemental Testimony (November 7, 2019)) ("Confidentiality Request"). While T-Mobile acknowledges that Section 3.2 of General Order 66-D is explicitly not applicable in formal proceedings, submission of testimony with a letter and declaration requesting confidential treatment is consistent with the practices of major utilities, including PG&E, which have served testimony with a letter and accompanying declaration. *See, e.g.,* A.18-06-001, *Pacific Gas and Electric Company Declarations Seeking Confidential Treatment for Certain Information Contained Prepared Testimony* (June 1, 2018).

[10] In order to maintain the confidentiality of documents *filed* with the Commission in a formal proceeding, G.O. 66-D, Section 3.3 dictates that parties must file a motion to pursuant to Rule 11.4 or comply with the processes established by the ALJ in the proceeding. However, pre-filed testimony is, by definition, not

interested person had full access to non-confidential portions of T-Mobile's filings with this Commission.

B. Unchallenged Confidential Treatment at the Evidentiary Hearing

On December 5, 2019, the ALJ conducted an evidentiary hearing in which the confidential version of Mr. Ray's Supplemental Testimony (Jt Appl. Exhibit 28 C), including Attachment H, was entered into the record. During the hearing, Joint Applicants reiterated that the referenced documents were confidential when introducing and entering them into the evidentiary record.[11] Neither the Commission, nor any party, objected to the confidential designations with respect to Attachment H (or any other information designated by T-Mobile as confidential).

As Mr. Ray testified, that same information (in a different format), with the same specific information designated as confidential, was provided to the Communications Division during discovery in response to a data request.[12] That response was also provided to all the parties that executed non-disclosure agreements with the Joint Applicants. No party, however, challenged the limited confidentiality designations associated with that information either before, during, or after the hearings. Nor is T-Mobile aware of any request for public disclosure of this information.

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filed with the Commission and the docket office does not accept motions to file such testimony under seal. Moreover, there have been no confidentiality processes established by the ALJ for this particular proceeding.

[11] Hearing Tr. 1453:12-18 (December 5, 2019) ("MS. TOLLER: Your Honor, we would move Mr. Ray's testimony, which are Joint Applicants Exhibit 28, and then Joint Applicants Exhibit 28-C for the confidential version. ALJ BEMESDERFER: Objection? Hearing none, they are admitted.").

[12] *See* T-Mobile' s June 13, 2019 Response to Communications Division Data Request No. 39, a copy of which was included as Confidential Attachment D to Mr. Ray's Supplemental Testimony. This Response, like the information in Attachment H, is properly designated as confidential, and has been treated as such in this proceeding. There is no basis to the equivalent information in Attachment H any differently.

C. The Confidentiality Ruling

On February 3, 2020, the ALJ released the Confidentiality Ruling. Despite the absence of any party's opposition to T-Mobile's request for confidential treatment, the Confidentiality Ruling determined that the information in Attachment H was not entitled to confidential treatment. The Ruling acknowledges that Attachment H "provides aggregated urban and rural deployments targets for New T-Mobile's roll-out of its planned 5G network and in-home broadband service," but asserts that "it does not break down [aggregated urban and rural] deployment targets by specific zip codes, standard metropolitan statistical areas, existing cell phone coverage areas, or other similar geographic criteria, nor does it contain localized priorities or timetables for the planned roll-out." On that basis, and without citing any supporting precedent, the Confidentiality Ruling "conclude[d] that releasing [the marked information] does not deprive applicants of an economic value, nor does it provide competitors an economic value." The Confidentiality Ruling further states that the Joint Applicants "failed to provide the proposed bases of confidential treatment," but it did not acknowledge T-Mobile's Confidentiality Request and accompanying declaration."[13]

II. THE CONFIDENTIALITY RULING SHOULD BE REVERSED AS TO ATTACHMENT H

It is well-established that the Commission has the authority to review and reverse interim rulings by ALJs where the issues are important and/or the potential disclosure of confidential data is at stake.[14] Although this motion seeks reconsideration by the assigned ALJ of his ruling,

[13] Confidentiality Ruling at 2.

[14] *See, e.g.*, D.92-09-082 (allowing interlocutory appeal of ruling denying confidentiality of utility cost study where it would "maintain consistency of rulings between proceedings, and because it demonstrates the need to restate the standards that should govern motions for confidential treatment of data in our proceedings"); D.94-08-028 (allowing interlocutory appeal of ruling allowing discovery of information from members of industry association, where ruling would have undesirable chilling effect on public participation in proceedings); D.08-11-004 (allowing interlocutory review of denial of motion to dismiss where error in denying motion would expose ratepayers to significant costs); D.92-10-049 (allowing interlocutory appeal of ALJ ruling regarding electric power resource bidding rules, where incorrect ruling

this precedent offers helpful guidance. Since both criteria are satisfied here, the Confidentiality Ruling should be reversed to the limited extent discussed below.

A. The Confidentiality Ruling Fails to Address the Strong Public Interest Showing Supporting Confidential Treatment of the Marked Information

The Confidentiality Ruling does not acknowledge the Confidentiality Request that T-Mobile submitted with its supplemental testimony, and instead asserts that T-Mobile "failed to provide the proposed bases of confidential treatment."[15] T-Mobile, however, did submit such a request.[16] Citing relevant provisions of California law, and supporting its request with a sworn declaration, the T-Mobile Confidentiality Request described in detail the bases for the confidential treatment of the data marked as confidential in Attachment H. It explained, for example, that

> "[T]he 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. Moreover, there is no articulable public benefit gained from the disclosure of such material."[17]

Notwithstanding the prior request for confidentiality and attendant submission supporting the request, to provide further assurance to the ALJ, T-Mobile submits herewith the sworn declaration of Neville Ray, to further support the bases for confidential treatment of Attachment H.

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would have disrupted pending bidding process); *see also* D.03-12-057 at n.1 (in appropriate cases, "the Commission may choose to reconsider some interim rulings, including Scoping Memos").

[15] Confidentiality Ruling at 2.

[16] While T-Mobile recognizes that its Confidentiality Request was not part of the official record, there was no process for making it a part of that record. *See* n.9, *supra*.

[17] Confidentiality Request at 4.

B. Attachment H Contains Highly Sensitive, Proprietary Information, and Prior Rulings in This Proceeding Support its Confidential Treatment

Attachment H was prepared and submitted in response to Question 8 of the October 24, 2019 *Assigned Commissioner's Amended Scoping Ruling* ("Amended Scoping Ruling"). The Amended Scoping Ruling requested that T-Mobile provide California-specific data with respect to its 5G Network and In-Home Broadband deployment—as modified by the FCC Commitments it made in May 2019—using the same format it used to provide similar nationwide data to the FCC.[18]

Attachment H consists of three sections, each of which contains highly confidential information that is of particular commercial value to T-Mobile and—if publicly disclosed—would give its competitors a detailed and unfair insight into New T-Mobile's network plans and service plans. The three sections, discussed more fully below, include: (1) California 5G Network Deployment, (2) Rural 5G Network Deployment, and (3) In-Home Broadband. The Network Deployment sections each contain detailed projections of coverage by spectrum band, the number of 5G cell sites and projected download speeds for two time periods (*i.e.*, both three and six years after the closing date). The In-Home Broadband section contains similarly detailed marketing and coverage projections for those same time periods. The marked confidential information was prepared specifically in response to the Commission's request and is not publicly available in any context. T-Mobile notes that the same type of information contained in Attachment H has been deemed confidential by this Commission where it has been provided in other filings in this docket. For the same reasons, Attachment H warrants the full protections afforded to such confidential treatment under state law, the law of this case, and Commission precedent.

[18] *See* Amended Scoping Ruling at 3.

1. Projected In-Home Broadband Coverage. Attachment H contains confidential data regarding the projected coverage of New T-Mobile's in-home broadband service in California. This data includes the specific number of households in California that would be eligible to receive New T-Mobile's service, the specific number of households in California that could be supported by the service, and the minimum number of such households that New T-Mobile plans to market the service to as of three and six years after the date of merger closing. The "Eligible Households" term defines how many customers in California fall within the geographic areas where service will be available. The "Supported Households" term defines how many customers the New T-Mobile network will be able to serve, consistent with available network capacity. As noted in the Ray Declaration, this is particularly sensitive data, as it specifically identifies how fast T-Mobile plans—and is able to—to grow this business in California (both generally and specifically in rural areas), including the geographic reach of the service.[19]

Disclosure of this information would allow incumbent broadband providers to know in advance how strong a competitive alternative New T-Mobile will be, in what time frame, and generally in what areas. Simply put, the data would provide a roadmap that competitors could exploit to copy New T-Mobile's closely-held business strategies or otherwise tailor their competitive responses to New T-Mobile's business plans. T-Mobile has stated that the merged company will target areas where competition does not exist or is very limited. Any data that can help anticipate and blunt these plans provides them with an unfair competitive advantage, especially in rural areas. The data would also enable such competitors to understand with precision (as a result of the Supported Households numbers) the maximum number of subscribers that could be supported by New T-Mobile's in-home broadband business in

[19] Ray Decl. at ¶ 5.

California as of the different timeframes and respond—or not—accordingly. Further, making this information public would not only provide New T-Mobile's competitors with a significant advantage in the marketplace, but could also harm consumers by eroding full and fair competition and the many benefits that accompany it. For example, if a cable company is allowed to learn about New T-Mobile's marketing plans and the planned scope of its service (Supported Households) in California, that competitor could respond with narrowly targeted promotions or rate reductions to address New T-Mobile's specific plans—as opposed to broader competitive responses that cover customers in all regions.[20] As a result, the projected consumer savings of $5-10 less per month would be entirely eliminated (or reduced) for many of the millions of California in-home customers who would otherwise benefit from the competitive responses of the incumbent monopoly or duopoly in-home broadband providers. In this way, public disclosure not only harms T-Mobile; it harms consumers in general.

Further underscoring the error of the Confidentiality Ruling's refusal to accord confidential treatment to this highly sensitive data, this *same* type of information was deemed confidential in two prior rulings in this very proceeding. In the *Presiding Officer's Ruling Granting Joint Applicants' Motion to File Under Seal the Confidential Version of their Post-Hearing Opening Brief and Appendix 1 Thereto* ("Confidentiality Ruling on Opening Brief"), confidential treatment was granted to marked information in that brief, including number of Californians to receive in-home broadband service.[21] Similarly, in the May 20, 2019 *Presiding*

[20] *Id.* at ¶ 6.

[21] Compare *Joint Applicants' Post-Hearing Opening Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032* ("Opening Brief") at 43 ("By 2024, New T-Mobile expects to offer its high-speed, in-home broadband service to approximately **[REDACTED]** California residences. T-Mobile estimates that 20 to 25 percent of these new subscribers will be in rural areas.") to Attachment H, Section IIII ("In-Home Broadband. T-Mobile and Sprint commit that: (A) within three (3) years of the closing date of the T-Mobile/Sprint merger, New T-Mobile will … at least **[REDACTED]** Supported Households in California, of which at least **[REDACTED]** are Rural Households.").

Officer's Ruling Granting Joint Applicants' Motion to File Under Seal the Confidential Version of their Post-Hearing Reply Brief and Appendix 3 Thereto ("Confidentiality Ruling on Reply Brief"), confidential treatment was granted to marked information in that brief, including population estimates in-home broadband coverage.[22] The only difference between the earlier data that was deemed confidential by the Commission and the data in Attachment H is that the information in Attachment H is *even more detailed*—and hence even more clearly warranting confidential treatment—and was based on projections used to establish nationwide commitments to the FCC in May 2019 (commitments that did not exist at the time the earlier data was provided).

2. Number of 5G Cell Sites. Both the California and Rural 5G Deployment sections in Attachment H contain detailed figures of the number of 5G cell sites to be deployed in the New T-Mobile network both in California generally and in rural areas in California specifically. Neither T-Mobile nor its competitors typically disclose the number of cell sites on which they have deployed a specific technology—either at the national or the more granular state level.[23] Such data would enable a competitor to reverse engineer the performance of the New T-Mobile network in terms of speed, capacity, and reliability within its coverage footprint and gain an unfair competitive advantage.[24] Here, because the 5G site information comprises New T-Mobile's future build plans, it is particularly competitively sensitive as it would enable the company's competitors to know in advance what it plans to do. Indeed, the state-level data, being more granular, is much easier for competitors to interpret than national data. For example, the areas of unserved populations for wireless and in-home broadband are finite in California, so

[22] *See Joint Applicants' Post-Hearing Reply Brief on the Joint Application for Review of Wireless Transfer Notification per Commission Decision 95-10-032* ("Reply Brief") at 63 ("In-Home Service: T-Mobile estimates approximately **[REDACTED]** will be covered….").

[23] Ray Decl. at ¶ 7.

[24] *Id.*

data that shows how aggressively the merged company plans to close these gaps is highly valuable and easy to interpret.[25] Disclosing this information would provide New T-Mobile's competitors with a treasure trove of sensitive business plans that could readily be exploited to New T-Mobile' detriment.

Again, there is no basis for according this information lesser protection than has previously been granted in this proceeding. Indeed, information on the number of projected 5G cell sites was deemed confidential in several prior rulings. For example, information about the number of projected 5G cell sites in California in the Joint Applicants' Post-February 2019 Hearing Reply Briefs was deemed confidential.[26] In addition, the Memorandum of Understanding between California Emerging Technology Fund and T-Mobile USA, Inc. ("CETF MOU") listed the number of cell sites in the State that would achieve certain speed tiers (100 Mbps vs. 300 Mbps) in 2021 and 2024. Joint Applicants' and CETF's motion to file that MOU under seal in the context of their motion was granted.[27] There is no substantive difference between the information contained in Attachment H with respect to the number of projected 5G cell sites in California and the information provided earlier that has already been found to require confidential treatment.

3. Coverage by Spectrum Band. Although T-Mobile has made its overall projected 5G California coverage publicly available, it has not publicly disclosed the projected coverage by type of spectrum band. This type of information is highly confidential and it reveals the specific

[25] *Id.*

[26] *Compare* Opening Brief at 38, n.103 ("As Mr. Ray explained in his testimony New T-Mobile plans to deploy 5G spectrum at approximately **[REDACTED]** sites across California.") to Attachment H, Section I ("[W] within three (3) years of the closing date of the T-Mobile/Sprint merger, New T-Mobile will deploy a 5G network with … **[REDACTED]** 5G Sites in the state….").

[27] *See Presiding Officer's Ruling Granting Joint Motion of Joint Applicants and the California Emergency Technology Fund to File Under Seal the 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*

proprietary building blocks of the New T-Mobile 5G network here in California. Like with 5G sites, enabling a competitor to understand the extent to which New T-Mobile will deploy 5G on low-band spectrum, on mid-band spectrum and the average amount of spectrum on which it will deploy 5G in California generally, and in California rural areas in particular, would enable a competitor to reverse engineer New T-Mobile's network before it is even built, giving such competitors an enormous unfair competitive advantage and disrupting full and fair competition.[28]

Furthermore, as with the other categories of data discussed above, spectrum-specific cell site information, including such information presented in Opening Briefs,[29] has previously been deemed confidential.

4. Download Speeds. In the interests of transparency, T-Mobile has made expected download speeds for the general population publicly available. Accordingly, where the same information was included in Attachment H, it was not marked confidential. However, the other download speed projections identified in Attachment H are either information specific to the experience of individuals living in rural areas in California, or specific to timeframes or speed levels not otherwise made public. Unlike national or statewide download speed figures, public availability of New T-Mobile rural download speed numbers are much more granular and area-specific. Failing to provide the requisite confidential treatment of these figures would allow competitors to readily determine T-Mobile's rural coverage and build plans and the timing of same.[30] This would provide competitors with an unfair advantage and potentially cause

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Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc. (May 20, 2019).

[28] Ray Decl. at ¶ 8.

[29] *Compare* Opening Brief at 21 ("New T-Mobile will have **[REDACTED]** than the standalone companies individually or combined in California by 2024.") to Attachment H, Section I ("("[W] within three (3) years of the closing date of the T-Mobile/Sprint merger, New T-Mobile will deploy a 5G network with … **[REDACTED]** MHz of low-band and mid-band 5G Spectrum averaged over all 5G Sites deployed in the state….").

[30] Ray Decl. at ¶ 9.

competitors to adjust their rural plans in a manner that might deprive rural consumers of other innovative approaches.

C. State Law Precludes the Disclosure of the Information Marked as Confidential in Attachment H

As set forth in the Confidentiality Request, the California Public Records Act ("CPRA"), as well as G.O. 66-D, exempts from disclosure of the information marked as confidential in Attachment H on numerous grounds as discussed below.

1. The Information Constitutes Trade Secrets. The CPRA, and Commission precedent, protects against disclosure of trade secrets.[31] A trade secret is defined as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives 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.[32]

T-Mobile's Confidentiality Request included a declaration demonstrating the company's significant efforts to guard its confidential information, and that T-Mobile derives significant economic value from such data remaining confidential. *See* Section II.A, *supra* (quoting Confidentiality Request). There is no evidence to the contrary.

2. Disclosure of the Marked Information is Prohibited Under State and Federal Law**.**

The CPRA also protects against disclosure that is prohibited under state and federal law.[33] Attachment H includes the same type or more sensitive information that has been held to be confidential under state and federal law. For example, in the past the CPUC has deemed as

[31] 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).

[32] Civ. Code § 3426.1(d).

[33] 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….").

confidential both confidential spectrum use data[34] and network deployment plans.[35] Additionally, as part of its annual inquiry to assess broadband deployment, the FCC requires providers to submit data regarding its deployment, regarding both coverage areas and speed.[36] The FCC publicly releases the *aggregate* data but treats *provider-specific* subscription data as confidential.[37]

Similarly, Attachment H includes highly specific and granular deployment information that would allow a competitor to determine in advance how strong a competitor New T-Mobile will be—or not—and adjust its plans accordingly. *See* Section II.B, *supra*. Moreover, the data in Attachment H is focused on future deployment and future marketing—information that is arguably even more sensitive in a competitive marketplace.

The marked information in Attachment H includes California-specific projections associated with Joint Applicants' nationwide FCC Commitments. A number of the corresponding nationwide commitments were designated and treated as confidential under the protective order in that FCC proceeding.[38] Moreover, even where the nationwide numbers were

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[34] *See, e.g.,* I.15-11-007, *Administrative Law Judge's Ruling on Access to Competitive Carrier Data* at 2 (April 18, 2016) ("Information that I have ruled Highly Confidential includes the following: … spectrum use data ….").

[35] *See, e.g., Re Frontier Communications Corp.*, D.15-12-005, Exhibit 1 (approving settlement agreement that provides that "Frontier shall submit to the Commission … a multi-year *confidential* Network Plan by no later than December 15, 2016 with the specific plans for improving voice and broadband service quality, reliability, and availability ….") (emphasis added). *See also Confidentiality of Electric Procurement Data,* D.06-06-066, Appendix 1 (forecasts for deployment of various generation resources).

[36] 47 U.S.C. § 1302.

[37] *See* FCC, *Changes to the Form 477 Data Collection in 2014*, https://www.fcc.gov/general/changes-form-477-data-collection-2014 (Oct. 29, 2013).

[38] *See, e.g.,* Letter from Nancy Victory, Counsel to T-Mobile, and Regina Keeney, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-197, at 3-4 (filed May 20, 2019) (treating as highly confidential, for example, the number of 5G sites New T-Mobile committed to deploy, the average megahertz of low-band and mid-band spectrum, the number of mid-band 5G sites deployed in rural America, and the number of additional low-band sites that will have 5G deployed); accord Highly Confidential treatment under *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent To Transfer Control of Licenses and Authorizations,* WT Docket No. 18-197, Protective Order, DA 18-624 (WTB June 15, 2018) (Protective Order); *see also Applications of T-Mobile US, Inc. and Sprint*

made public, the California-specific projections used to create those nationwide numbers, as well as the projections for other states, were not made public and would otherwise put highly proprietary granular information in the hands of T-Mobile's competitors if made publicly available.[39] Such a result would be unlawful and anomalous given the focus on competition in this docket.[40] As discussed above, the same type of information has been accorded confidential treatment by not only the FCC, but also by Judge Marrero of the U.S. District Court for the Southern District of New York and Judge Kelly of the U.S. District Court for the District of Columbia.[41]

While T-Mobile does publicly provide maps showing its current coverage area,[42] and its spectrum holdings may be public, it does not follow that the company's *detailed and granular, future* plans for precisely how it will deploy spectrum and sites to achieve future deployment and coverage are or should be public. T-Mobile fiercely guards this information and keeps it confidential to prevent competitors from seizing and capitalizing on this information. As discussed above and in the unrefuted declaration accompanying the Confidentiality Request—as well as in Mr. Ray's declaration—without the protection afforded by state law, disclosure of the confidential information contained in the testimony could unfairly benefit competitors and

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Corporation for Consent To Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, Supplemental Protective Order, DA 19-80 (Feb. 13, 2019) (Supplemental Protective Order).

[39] Ray Decl. at ¶¶ 5 - 10.

[40] The Confidentiality Ruling cites no authority for the proposition that only deployment data at the census-tract level is protected, nor are we aware of any such authority. As the plain language of the CPRA makes clear, the definition of a protected trade secret is much broader, and encompasses various types of competitively sensitive business data.

[41] *See* n.6, *supra.*

[42] T-Mobile does show coverage and speed maps as part of its advertising, but as referenced above, these differ from the granular plans at issue today. Moreover, such maps are *simulated* coverage maps developed solely for advertising purposes; they do not provide the type of detailed coverage information contained in Attachment H.

decrease T-Mobile's competitive advantage in violation of state and federal law.[43] If disclosed, the marked information would allow competitors to engage in targeted marketing and service offerings and other competitive harms. *See* Section II.B, *supra*.

Finally, state and federal law also protect against the disclosure of critical network infrastructure information, including the confidential network engineering models, site, and network data at issue here. Specifically, the CPRA protects against disclosure of confidential "utility systems development" data.[44] Moreover, as noted above, the CPRA protects against disclosure that is prohibited under federal law,[45] and federal law protects against the disclosure of information regarding "critical infrastructure."[46] Critical infrastructure includes communications network information like the information being submitted here,[47] including, but not limited to, sensitive spectrum coverage data and projected cell site deployment information.

[43] *See, e.g., Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1520 (1997) ("Yet also fundamental…is the concomitant right to have the ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that 'sweat-of-the-brow' by others.").

[44] 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."); *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).

[45] 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….").

[46] 6 U.S.C. § 133(a)(1)(E) (protecting against state government disclosure of voluntarily shared critical infrastructure information).

[47] Presidential Policy Directive 21 ("PPD-21") identifies 16 critical infrastructure sectors so vital to the United States that their incapacitation or destruction would have a debilitating effect on national security or public health and safety. PPD-21 identifies the communications sector as uniquely critical because it provides an "enabling function" across all critical infrastructure sectors. Likewise, the FCC has "long recognized that certain information about communications networks may be competitively sensitive or reveal vulnerabilities to individuals or organizations with hostile intent, and should therefore generally be treated as confidential." *Improving 911 Reliability, Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Report and Order, 28 FCC Rcd. 17476 ¶ 151 (2013).

D. There is No Public Interest Served by Disclosing the Confidential Data.

Confidential treatment is justified where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure."[48] The Confidentiality Ruling identified no public interest that outweighs the interest, mandated under state and federal law, in preserving T-Mobile's trade secrets. Indeed, parties who signed a non-disclosure agreement with T-Mobile have had access to the information and ability to view it in this proceeding. Notably, no parties or members of the public requested this data from the Commission. On the other hand, as explained above, disclosure would *harm the public interest*—for example, by incentivizing competitors to cut back on promotions and competitive responses that they would otherwise make if they did not have a detailed roadmap of New T-Mobile's business strategies. Enabling competitors to learn about New T-Mobile's planned network and services would seriously distort competition and harm consumers.[49] *See* Section II.B, *supra*.

III. CONCLUSION

For these reasons, T-Mobile respectfully request that the Confidentiality Ruling be reconsidered to the extent that it determined that the marked information in Attachment H was not entitled to confidential treatment. Instead, T-Mobile requests that the ALJ otherwise determine the marked information contained in Attachment H be properly designated as confidential. In the event that the Commission denies reconsideration, T-Mobile respectfully requests that the Commission afford T-Mobile the opportunity—before any public disclosure—to withdraw any information in Attachment H that is marked confidential.

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[48] 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.").

[49] *See* D.16-12-025 at 132 ("There is intermodal competition in the market today.").

Respectfully submitted this 10th day of February, 2020.

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Attorneys for T-Mobile USA, Inc.

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

[PROPOSED] ORDER GRANTING T-MOBILE'S MOTION FOR PARTIAL RECONSIDERATION OF THE FEBRUARY 3, 2020 PRESIDING OFFICER'S RULING GRANTING IN PART AND DENYING IN PART JOINT APPLICANTS' REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION IN JOINT APPLICANTS' EXHIBIT 22C AND NEVILLE R. RAY'S SUPPLEMENTAL TESTIMONY EXHIBIT 28C ATTACHMENT H

On February 10, 2020, T-Mobile USA, Inc. ("T-Mobile") filed a motion for partial reconsideration of the February 3, 2020 *Presiding Officer's Ruling Granting In Part And Denying In Part Joint Applicants' Request For Confidential Treatment Of Information In Joint Applicants' Exhibit 22c And Neville R. Ray's Supplemental Testimony Exhibit 28c Attachment H.* 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. T-Mobile's request for reconsideration is granted.
2. Attachment H is appropriately designated as confidential and should be treated as such for all purposes.

_____

Administrative Law Judge Karl Bemesderfer

Dated _____, 2020 at San Francisco, California.

EXHIBIT A

DECLARATION OF NEVILLE R. RAY

DECLARATION OF NEVILLE R. RAY

I, Neville R. Ray, am informed and believe and hereby declare as follows:

1. I am the President of Technology of T-Mobile US, Inc. ("T-Mobile").

2. The information stated herein has been derived from my employment with T-Mobile.

3. This declaration supports T-Mobile's motion for partial reconsideration of the February 3, 2020 *Presiding Officer's Ruling Granting In Part And Denying In Part Joint Applicants' Request For Confidential Treatment Of Information In Joint Applicants' Exhibit 22c And Neville R. Ray's Supplemental Testimony Exhibit 28C Attachment H* (the "Confidentiality Ruling").

4. Attachment H to my Supplemental Testimony consists of three sections, each of which contains highly confidential information that is of particular commercial value to T-Mobile and—if publicly disclosed—would give its competitors a detailed and unfair insight into New T-Mobile's proposed network plans and service plans, which constitute critical trade secrets of the company. The three sections include: California 5G Network Deployment, Rural 5G Network Deployment, and In-Home Broadband. The marked confidential information was prepared specifically in response to the Commission's request and is not publicly available in any context. I discuss below why the information is highly commercially sensitive and should be kept confidential.

5. Projected In-Home Broadband Coverage. Attachment H contains confidential data regarding the projected coverage of New T-Mobile's in-home broadband service in California. This data includes the specific number of households in California that would be eligible to receive New T-Mobile's service, the specific number of households in California that could be

supported by the service, and the minimum number of such households that New T-Mobile plans to market the service to as of three and six years after the date of merger closing. The "Eligible Households" term defines how many customers in California fall within the geographic areas where service will be available. The "Supported Households" term defines how many customers the New T-Mobile network will be able to serve, consistent with available network capacity. This is particularly sensitive data as it specifically identifies how fast T-Mobile plans—and is able to—to grow this business in California (both generally and specifically in rural areas), including the geographic reach of the service.

6. Disclosure of this information would allow incumbent broadband providers to know in advance how strong a competitive alternative New T-Mobile will be, in what time frame, and generally in what areas. T-Mobile has stated that the merged company will target areas where competition does not exist or is very limited. Any data that can help anticipate and blunt these plans provides competitors with an unfair competitive advantage, especially in rural areas. It would also enable such competitors to understand with precision (as a result of the Supported Households numbers) the maximum number of subscribers that could be supported by New T-Mobile's in-home broadband business in California as of the different timeframes and respond—or not—accordingly. Further, making this information public would not only provide New T-Mobile's competitors with a significant advantage in the marketplace, but could also harm consumers by eroding full and fair competition and the many benefits that accompany it. For example, if a cable company is allowed to learn about New T-Mobile's marketing plans and the planned scope of its service (Supported Households) in California, the cable company could respond with narrowly targeted promotions or rate

reductions to address New T-Mobile's specific plans—as opposed to broader competitive responses that cover customers in all regions. This reduces the benefits for consumers.

7. Number of 5G Cell Sites. Both the California and Rural 5G Deployment sections in Attachment H contain detailed figures of the number of 5G cell sites to be deployed in the New T-Mobile network in both California generally and in rural areas in California specifically. Neither T-Mobile nor its competitors typically disclose the number of cell sites on which they have deployed a specific technology—neither at the national nor the more granular state level. Such data is one of the key pieces of information that would enable a competitor to reverse engineer the performance of the New T-Mobile network in terms of speed, capacity, and reliability within its coverage footprint and gain an unfair competitive advantage. Here, because the 5G site information comprises New T-Mobile's future build plans, it is particularly competitively sensitive as it would enable the company's competitors to know in advance what it plans to do. Indeed, the state-level data, being more granular, is much easier for competitors to interpret than national data. For example, the areas of unserved populations for wireless and in-home broadband are finite in California, so data that shows how aggressively the merged company plans to close these gaps is highly valuable and easy to interpret. Disclosing this information would provide New T-Mobile's competitors with a treasure trove of sensitive business plans that could readily be exploited to New T-Mobile's detriment.

8. Coverage by Spectrum Band. Although T-Mobile has made its overall projected 5G California coverage publicly available, it has not publicly disclosed the projected coverage by type of spectrum band. This type of information is highly confidential and it reveals the specific proprietary building blocks of the New T-Mobile 5G network in California. Like with

5G sites, enabling a competitor to understand the extent to which New T-Mobile will deploy 5G on low-band spectrum, on mid-band spectrum and the average amount of spectrum on which it will deploy 5G in California generally, and in California rural areas in particular, would enable a competitor to reverse engineer New T-Mobile's network before it is even built, giving such competitors an enormous unfair competitive advantage and disrupting full and fair competition.

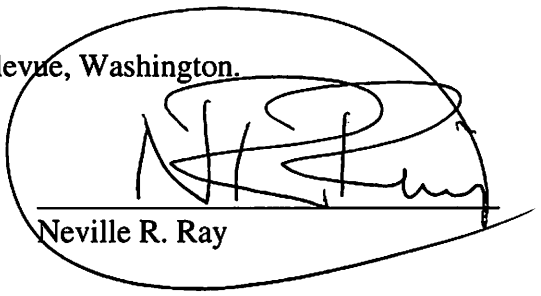
9. Rural Download Speeds. In the interests of transparency, T-Mobile has made expected download speeds for the general California population publicly available. However, the other download speed projections identified in Attachment H are either information specific to the experience of individuals living in rural areas in California, or specific to timeframes or speed levels not otherwise made public. Unlike national or statewide download speed figures, public availability of New T-Mobile rural download speed numbers are much more granular and area-specific. Failure to provide the requisite confidential treatment of these figures would allow competitors to readily determine T-Mobile's rural coverage and build plans and the timing of same. This would provide competitors with an unfair advantage and potentially cause competitors to adjust their rural plans in a manner that might deprive rural consumers of other innovative approaches.

10. T-Mobile keeps confidential the information discussed above and my experience is that other carriers also keep confidential similar information about their plans for deployment of critical network infrastructure, network performance and service deployment. A wireless carrier's network is its most important asset and key to its success in the marketplace. Future specifications and plans for this network and the services it will support are critical to a

carrier's success in the marketplace and thus among the most closely guarded trade secrets it has.

I declare under penalty of perjury under the laws of the state of California that, to the best of my knowledge and belief, the foregoing is true and correct.

Executed on this February10, 2020 at Bellevue, Washington.



Neville R. Ray

EXHIBIT B

CONFIDENTIALITY REQUEST

Davis Wright Tremaine LLP
DEFINING SUCCESS TOGETHER

Suite 800
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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 583[2], 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 law[4] - 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

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[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

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[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.").

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