

Docket No.: A.18-07-011 and A.18-07-012
Exhibit No.: T-Mobile-
Hearing Date: _____
Witness: Travis Dodd
ALJ: Karl Bemederfer
Commissioner: Clifford Rechtschaffen

REBUTTAL TESTIMONY OF TRAVIS DODD

**SENIOR PRIVACY DIRECTOR
T-MOBILE USA, INC.**

ON BEHALF OF T-MOBILE USA, INC.

JANUARY 29, 2019

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q: Please state your name, occupation, and business address.**

3 **A:** My name is Travis Dodd. I am Senior Privacy Director for T-Mobile, and a member of
4 the T-Mobile Privacy Office. My business address is 12920 SE 38th Street, Bellevue,
5 Washington 98006.

6 **Q: Please describe your professional qualifications.**

7 **A:** I have been a practicing attorney for twenty-five years, including approximately twelve
8 years as in-house counsel for telecommunications companies. I have practiced exclusively in the
9 privacy field since 2005. Over the past 13 years, I have served in senior privacy legal roles at T-
10 Mobile, AT&T, Microsoft, AARP and Lowes Companies, Inc. I hold the following privacy
11 certifications, awarded by the International Association of Privacy Professionals (IAPP):

- 12 • Certified Information Privacy Manager (CIPM)
- 13 • Certified Information Privacy Professional/Europe (CIPP/E)
- 14 • Certified Information Privacy Professional/US (CIPP/US)
- 15 • Certified Information Privacy Technologist (CIPT)
- 16 • Fellow of Information Privacy (FIP)

1 **II. PURPOSE OF TESTIMONY**

2 **Q: What is the purpose of your rebuttal testimony?**

3 **A:** The purpose of my testimony is to respond to the testimony of Kristina Donnelly of the
4 Public Advocates Office (“Cal PA”) regarding T-Mobile’s privacy practices as they relate to
5 children’s privacy. Cal PA separately made several assertions in its privacy testimony about T-
6 Mobile’s third-party data access practices, which are addressed in the rebuttal testimony of Susan
7 Brye.

8
9 **Q: Can you summarize your testimony?**

10 **A:** In my testimony, I respond to Cal PA’s assertion that T-Mobile is attempting to evade its
11 responsibilities under the Children’s Online Privacy Protection Act (“COPPA”). I explain that
12 COPPA’s requirements apply only to operators of commercial websites and other online services
13 directed at children under the age of 13—not to general audience websites and online services
14 such as those provided by T-Mobile, unless the operator has actual knowledge that it is collecting
15 personal information from a child under the age of 13. I then explain, based on the FTC’s
16 COPPA criteria, that T-Mobile does not direct any aspect of its business to children under the
17 age of 13. Next, I address Cal PA’s assertion that T-Mobile nevertheless has an obligation to
18 determine the age of users of its service and somehow flag a child-user for different treatment.
19 Not only is that assertion legally incorrect, it also would not address the policy concerns Cal PA
20 cites for requiring such a process and would lead to the unnecessary collection of additional
21 information that would potentially expose the child to negative consequences. Lastly, I respond
22 to Cal PA’s assertion that the T-Mobile primary account holder has only limited abilities to set
23 marketing and other controls for the lines on the account—including those the primary account
24 holder might provide to a child. Specifically, I explain that the primary account holder can
25 control the settings for all lines on the account.

26
27 **Q: Are you generally familiar with these proceedings at the Commission?**

28 **A:** Yes. I understand that T-Mobile and Sprint have submitted two filings with the
29 Commission. One filing seeks approval of the transfer of Sprint Communications, a wireline

1 provider in the state, to T-Mobile. The other filing provides the Commission with information
2 about the wireless merger. My understanding is that the Commission has set these hearings to
3 consider various issues related to those filings.
4

5 **Q: Have you ever submitted testimony before this Commission?**

6 **A:** No, I have not.
7
8
9

1 **III. CHILDREN’S PRIVACY**

2 **Q: Cal PA asserts that “[i]t’s clear that T-Mobile certainly understands that some**
3 **customers provide devices to children under the age of 13; but by stating that they don’t**
4 **‘intentionally’ collect information from children, and any information they do collect is**
5 **associated with the primary account holder, they are able to evade their responsibility to**
6 **comply with COPPA.” (Donnelly Testimony at p. 25). Has T-Mobile attempted to evade**
7 **its responsibilities to comply with COPPA?**

8 **A:** No. T-Mobile’s goal is to ensure it fully complies with all laws to which it is subject—
9 including all privacy laws. The requirements of the Children’s Online Privacy Protection Act
10 and implementing regulations (COPPA) are simply inapplicable to T-Mobile’s operations.
11

12 **Q. Please provide a brief explanation of COPPA.**

13 **A:** COPPA applies to operators of commercial websites and online services under certain
14 conditions. COPPA distinguishes between (1) operators of general audience websites and online
15 services (“General Audience Sites”), which are not subject to COPPA unless the operator has
16 actual knowledge that it is collecting, using, or disclosing personal information from a child
17 under 13, and (2) operators of commercial websites and online services directed to children
18 under 13 (“Child-Directed Sites”), which are subject to additional COPPA requirements.¹
19

20 **Q: What determines if a website or online service is directed at children under the age**
21 **of 13?**

22 **A:** The FTC has established several factors that it will consider in determining whether a
23 website or online service is directed at children under the age of 13. As set forth in the FTC’s
24 COPPA regulations:

25 In determining whether a Web site or online service, or a portion thereof, is
26 directed to children, the Commission will consider its subject matter, visual
27 content, use of animated characters or child-oriented activities and incentives,
28 music or other audio content, age of models, presence of child celebrities or
29 celebrities who appeal to children, language or other characteristics of the Web

¹ See “Complying with COPPA: Frequently Asked Questions,” A.1. and A.14, *available at*
<https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions>.

1 site or online service, as well as whether advertising promoting or appearing on
2 the Web site or online service is directed to children. The Commission will also
3 consider competent and empirical evidence regarding audience composition, and
4 evidence regarding the intended audience.²
5

6 **Q: Based upon the FTC’s criteria, is T-Mobile subject to COPPA?**

7 **A:** No. Applying the FTC’s criteria, T-Mobile clearly does not market or direct any aspect of
8 its business to children under the age of 13. Putting aside the inaccurate assumption underlying
9 Cal PA’s testimony that COPPA applies to a carrier’s communications services (*i.e.*, the
10 connectivity T-Mobile provides to account holders) as opposed to the carrier’s websites and
11 online services (such as apps),³ none of the FTC’s criteria apply to the way T-Mobile operates or
12 markets its communications services, websites, or online services. Cal PA does not allege
13 otherwise.

² Children’s Online Privacy Protection Rule, 16 C.F.R. § 312.2 (2018).

³ An online access provider (*e.g.*, a provider of wireless internet access like T-Mobile) is simply not an “operator” for purposes of COPPA. Indeed, in its original COPPA rulemaking the FTC described the distinction between mere conduits through which individuals access websites and online services, and the operators of such websites and online services, and held that “ISPs and cable operators that merely offer Internet access would not be considered operators under the Rule.” Children’s Online Privacy Protection Rule; Final Rule (Statement of Basis and Purpose), 64 Fed. Reg. 59,888, 59,891 at n. 52 (Nov. 3, 1999). Similarly, in the FTC’s COPPA FAQ 13, the FTC asks and answers the following Question:

Will the COPPA Rule keep my child from accessing pornography?

No. COPPA is meant to give parents control over the online collection, use, or disclosure of personal information from children, and was not designed to protect children from viewing particular types of content wherever they might go online. If you are concerned about your children accessing online pornography or other inappropriate materials, you may want to consider a filtering program or an Internet Service Provider that offers tools to help screen out or restrict access to such material. Information about such tools is available at organizations such as www.getnetwise.org and www.staysafeonline.org, and from manufacturers of several operating systems.

See “Complying with COPPA: Frequently Asked Questions,” A.13. at <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions>. This FAQ inherently recognizes that if an adult provides a child under age 13 with internet access, the child may seek access to adult-oriented content. But the FTC does not seek to address this through COPPA by declaring the ISP an “operator” for purposes of COPPA or mandating that the ISP determine the age of children using its service. Instead, the FTC points to the need for parental oversight and the potential use of content filtering tools that may be available from the ISP or others.

1 **Q: Do T-Mobile account holders sometimes provide access to children under the age of**
2 **13?**

3 **A:** They certainly have the ability to do so. Account holders may provide access to the
4 devices and lines on their account to an array of individuals, including family members, friends,
5 roommates, and others. I know this to be a possibility since I've provided such access to my
6 own children under the age of 13—just as I've provided them access to my home internet
7 connection. But that fact does not impact the COPPA analysis under the FTC's rules or
8 guidance. The relevant point is that T-Mobile does not operate Child-Directed Sites, nor use the
9 child-directed marketing methods outlined in the FTC's criteria. Nor do T-Mobile's websites or
10 online services meet the criteria outlined for child-directed sites.

11 T-Mobile's Terms and Conditions and Privacy Statement are also clear that the service is
12 intended for adults. As quoted in Cal PA's testimony, T-Mobile's Privacy Statement states:

13 **Collection of Information About Children**
14

15 We do not knowingly solicit children to purchase our services or products. If,
16 however, you authorize a child to use our services or products by providing them
17 a device associated with your account, any information associated with such use
18 will be treated as your information in accordance with this Statement. If you are
19 the primary account holder, you will have the ability to set the marketing
20 preferences for any other lines on your account, including those for any children
21 to whom you provide a device.
22

23 Our websites are not designed to attract children under the age of 13 and we do
24 not intentionally or knowingly collect Personal Information on our websites from
25 anyone under the age of 13. We encourage parents to be involved in the online
26 activities (including wireless Internet browsing) of their children to ensure that no
27 information is collected from a child without parental permission.
28

29 (Donnelly Testimony at p. 25.) This statement is not an effort to evade COPPA. It is simply a
30 factual statement of the way we do business. No evidence has been presented to suggest
31 otherwise.
32

33 **Q: Cal PA nevertheless implies that T-Mobile has an obligation under COPPA to**
34 **determine the age of a user and somehow flag a child user for different treatment. Is that**
35 **correct?**

1 **A:** No. As previously explained, T-Mobile has no obligation under COPPA to confirm the
2 age of a user of its communications services or its General Audience Sites. Nor does it matter
3 that T-Mobile is generally aware that parents or guardians may provide their children access to a
4 line on their account or that a child under 13, like any other person with access to the internet,
5 might visit T-Mobile’s General Audience Sites. As the FTC has explained, COPPA “applies to
6 an operator of a general audience website if it has actual knowledge that a *particular visitor is a*
7 *child.*”⁴ T-Mobile does not, and is not required to, seek nor collect information to identify which
8 devices or lines are used by a child (or other adults for that matter). Similarly, T-Mobile also
9 does not, and is not required to, seek, collect, or develop information necessary to determine a
10 parental relationship between users on an account. Ironically, Cal PA’s testimony concedes that
11 “[i]t is important to note that COPPA rules only apply when companies have ‘actual knowledge’
12 that they collect personal information from children under 13.” (Donnelly Testimony at p. 21.)
13 But Cal PA then seems to ignore this important limitation of the law.

14
15 **Q: Do you have additional concerns with Cal PA’s assertion that T-Mobile should**
16 **determine which lines on an account are used by children under the age of 13?**

17 **A:** Yes, I have several concerns. First, T-Mobile has no practical way of determining the
18 age of all users on an account. Second, as Cal PA concedes in the first paragraph of its
19 testimony on this subject, children don’t necessarily use devices that are exclusively allocated to
20 them—instead they may use devices of a “parent, relative, or other adult” (Donnelly Testimony
21 at p. 20) or they may use a shared household device—such as a family iPad or laptop. Under
22 such circumstances, there is no way to accurately identify or apply different rules when a child or
23 adult is using a shared device. Third, even if that were possible, it isn’t clear what Cal PA
24 believes such a designation would accomplish. T-Mobile’s designation of a “child” line would
25 have no effect on the information collected by non-affiliated third parties through the user’s
26 interactions with websites, apps, and other online services—which seems to be the public policy
27 basis for the concerns. T-Mobile’s communications network must collect and use device and

⁴ *Id.* G.5(a) (emphasis added).

1 usage information to provide connectivity, bill for services, and improve the network—whether
2 or not the end-user is a child.

3 Most importantly, Cal PA’s assertion is contrary to the “data minimization” principle,
4 which has been an important element of virtually every construct of fair information practice
5 principles—going back to at least the Privacy Act of 1974. T-Mobile does not, and does not have
6 a need to, collect age information about the various individuals who may use devices or lines on
7 a T-Mobile customer’s account. Collecting such information simply creates additional privacy
8 risks for everyone. Even simply flagging a user as a child could create risk because the activity
9 related to the line will then be unnecessarily associated with a child. While that would make no
10 difference to T-Mobile’s operations, such a connection could be misused if it fell into the wrong
11 hands. Indeed, the three primary concerns Cal PA cites regarding increased data risks for
12 children are (1) data breaches, (2) fraudulent marketing, and (3) long-lived digital dossiers.
13 (Donnelly Testimony at pp. 20–21.) But none of those concerns are implicated with respect to
14 T-Mobile’s operations because there is simply no connection between any data T-Mobile collects
15 and a child—all information T-Mobile collects is associated solely with the account holder.
16

17 **Q: Cal PA also expresses a host of generalized concerns about how children use**
18 **Internet-connected devices like mobile phones. (Donnelly Testimony at pp. 20–21). Do you**
19 **have any response?**

20 **A:** Yes. The use of Internet-connected devices raises a host of complex issues. Indeed, that
21 has been the case since the dawn of the Internet—and COPPA is a testament to the challenges of
22 balancing, among other things, the desire to protect children with the inherent anonymity of
23 online interactions. We strongly encourage parents and guardians to be involved in and monitor
24 their children’s online activities and encourage the use of available tools for that purpose. But
25 these complex issues require a much broader discussion that takes into consideration multiple
26 public policy viewpoints and considerations. In this regard, T-Mobile is committed to
27 complying with all applicable privacy laws, including COPPA and California’s recently enacted
28 California Consumer Privacy Act (“CCPA”), which addresses many of the data access, deletion,

1 and control issues alluded to by Cal PA. In that regard, T-Mobile is currently assessing its
2 operations with respect to the CCPA, which goes into effect on January 1, 2020.

3
4 **Q: After citing a passage from T-Mobile’s Privacy Statement addressing the ability of**
5 **the customer to limit or opt out of marketing communications from T-Mobile, Cal PA**
6 **concludes that T-Mobile “primary account holders may ‘set the marketing preferences’ for**
7 **devices associated with their accounts only by ‘opting-out’ of interest-based advertising.”**
8 **(Donnelly Testimony at pp. 25). Is that accurate?**

9 **A:** No. I’m unclear on the basis for the confusion, but the primary account holder of a T-
10 Mobile multi-line account can manage all available settings for all lines on the account (whether
11 the device is used by a child, parent, spouse, roommate, etc.)—not just the setting that provides
12 an opt-out of interest-based adverteng. Indeed, this issue is specifically addressed in T-Mobile’s
13 Privacy Statement just a couple of lines below the language Cal PA cited:

14 We may send you communications about services or products we, or our partners,
15 sell. We want to provide you with meaningful choices regarding our marketing
16 communications, and you may choose to limit or opt-out of some marketing
17 communications from us at any time. Although you may elect not to receive
18 marketing information from us, if you subscribe to our services or buy our
19 products, you will continue to receive invoices, customer-service and
20 transactional notices, and similar communications. ***The Primary Account Holder***
21 ***can configure options for marketing communications for all lines on the***
22 ***account.***

23 (<https://www.t-mobile.com/website/privacypolicy.aspx>) (emphasis added).
24

25 I’ve included below, as an example, a screenshot of a marketing preference page for a
26 subsidiary line from my.t-mobile.com. The primary account holder can manage these settings
27 for all lines on the account through his or her online account, the T-Mobile app, or by calling T-
28 Mobile customer care. Further, as noted above, T-Mobile does not engage in any marketing or
29 ad campaigns targeted towards minors.

Control how T-Mobile sends you information about products and services.

Text or Call My Phone	<input checked="" type="checkbox"/>
Send Me Email	<input checked="" type="checkbox"/>
Receive Monthly T-Mobile Newsletter	<input type="checkbox"/>
Mail to My Billing Address	<input type="checkbox"/>

LANGUAGE PREFERENCE
English

1
2
3
4

Q: Does that conclude your rebuttal testimony?
A: Yes.