

EXHIBIT C

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April 1, 2019

SENT VIA EMAIL

William Knowles-Kellett
Attorney
Enforcement Bureau
Federal Communications Commission
445 12th Street, NW, Room 3-A734
Washington, DC 20554

Re: Freedom of Information Act (FOIA) Request – Control No. 2019-000280

Dear Mr. Knowles-Kellett:

On behalf of T-Mobile USA, Inc. (“T-Mobile”), this letter responds to your e-mail dated March 22, 2019 regarding the above-referenced Freedom of Information Act (“FOIA”) request submitted by G. David Carter, an attorney with Womble Bond Dickinson (US) LLP (“Requestor”). Requestor seeks (1) “all documents in the File No. EB-IHD-00023247” (“EB Investigation File”), (2) “[a]ll compliance reports, if any, submitted to the Commission by T-Mobile pursuant to the Consent Decree” between T-Mobile and the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Enforcement Bureau, dated April 16, 2018 (DA 18-373) (“Consent Decree Compliance Reports”), and (3) “all reports and supporting information submitted by T-Mobile USA, Inc. to the Commission” pursuant to the Commission’s 2013 *RCC First Report and Order* (“Form 480 Submissions”).¹

For the reasons stated herein, the Commission should not disclose information for which T-Mobile has requested confidential treatment (including information designated as confidential in the EB Investigation File, the Consent Decree Compliance Reports, or T-Mobile’s Form 480 Submissions). It likewise should not disclose any other materials containing, quoting, characterizing, summarizing, or otherwise revealing that information or similar information. In addition, to the extent that the Enforcement Bureau (“EB”) determines (erroneously, in T-Mobile’s view) that documents relating to the settlement or adoption of the Consent Decree between T-Mobile and EB, released on April 16, 2018 (“Settlement-Related Documents”), fall within the scope of the FOIA request, such documents should be withheld in their entirety.² The

¹ See generally *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (“*RCC First Report and Order*”).

² See generally *T-Mobile USA, Inc.*, Order and Consent Decree, 33 FCC Rcd 3737 (EB 2018) (“Consent Decree”).

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Page 2

materials for which T-Mobile requests nondisclosure are detailed below and in the Appendix hereto.

I. Request 1: Documents in the EB Investigation File.

The EB Investigation File includes material submitted in response to a Letter of Inquiry (“LOI”) and a supplemental LOI regarding alleged violations of the Commission’s rural call completion (“RCC”) rules. During the investigation, T-Mobile requested confidential treatment for certain discrete pieces of information and documents contained in its filings. T-Mobile continues to seek confidential treatment of such materials, and hereby objects to their disclosure to Requestor. In addition, T-Mobile objects to disclosure of other materials, including internal Commission documents and Settlement-Related Documents (which should not be deemed part of the Investigation File in any event³), to the extent those materials contain, quote, characterize, summarize, or otherwise reveal information for which T-Mobile requested confidential treatment or similar information.

T-Mobile made six principal submissions in the EB Investigation File:

- Response to December 27, 2016 LOI (filed February 9, 2017) (“February 9 Filing”).
- Response to Inquiry 12 of December 28, 2016 LOI (filed February 23, 2017) (“February 23 Filing”).
- Response to Inquiries 14(b) and 26 of April 3, 2017 Supplemental LOI (filed July 13, 2017) (“July 13 Filing”).
- Response to April 3, 2017 Supplemental LOI (filed August 2, 2017) (“August 2 Filing”).
- Supplemental Response to EB LOI (filed September 8, 2017) (“September 8 Filing”).
- Revision of Confidentiality Requests in Connection With February 9 Filing, July 13 Filing, August 2 Filing, and September 8 Filing (filed via email December 22, 2017) (“December 22 Filing”).

T-Mobile hereby seeks nondisclosure of items it marked confidential in (1) its February 9 Filing, July 13 Filing, August 2 Filing, and September 8 Filing, as amended in each case by T-Mobile’s December 22 Filing (which modified only the company’s confidentiality designations and did not otherwise alter the prior filings); and (2) the February 23 Filing (which the December

³ Settlement discussions were conducted on a confidential basis separate and apart from the investigation itself. Related materials were not submitted into the record of the proceeding. Accordingly, Settlement-Related Documents are not appropriately considered to fall within the scope of the FOIA request. To the extent EB or the Commission disagrees, before either determines that such documents are not protected under any FOIA exemption, it should provide T-Mobile with copies of such documents so that the company can identify specific confidential information contained therein. *See also infra* Section I.C.

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Page 3

22 Filing did not amend).⁴ Descriptions of the information at issue, and the rationales for nondisclosure, follow.

A. Information Regarding Competitively Sensitive T-Mobile Internal Processes, Business Relationships, and Network Operation and Performance.

Much of the information for which T-Mobile seeks nondisclosure addresses competitively sensitive internal company processes, business relationships, and network operation and performance matters.⁵ Specific items falling into these categories include the following:

February 9 Filing (with confidentiality designations modified by December 22 Filing)

- Percentages of calls answered/completed, per T-Mobile's Form 480, from April 2016 to December 2016 (p. 13).
- Description of T-Mobile's practices upon learning of an RCC problem on its network (p. 14).
- Names of T-Mobile intermediate carriers (Exhibit 2, throughout).

February 23 Filing (Documents)

- Logs from T-Mobile's internal databases regarding treatment of four specific incidents/customer complaints identified in the LOI.
- Internal records regarding grievances and inquiries tracked and handled by T-Mobile's Executive Response Team.

July 13 Filing (with confidentiality designations modified by December 22 Filing)

- Explanation of methodologies used by T-Mobile and MetroPCS in reviewing internal data to respond to prior Inquiries (pp. 1-3).
- Specific percentages of T-Mobile out-of-network traffic sent via trunks using SIP technology for periods between 2013 and 2016 (p. 4).
- Total number of calls attempted by T-Mobile customers in 2016 (p.5).
- Estimated number of out-of-network calls attempted by T-Mobile customers sent via trunks using SIP technology in 2016 taking more than four seconds for call setup, and estimated percentage of total attempted calls such calls represented that year (p. 5).
- Names of T-Mobile intermediate carriers (Exhibit 1, throughout).

August 2 Filing (with confidentiality designations modified by December 22 Filing)

- Identities of T-Mobile intermediate providers (pp. 2-9).

⁴ For the avoidance of doubt, T-Mobile seeks confidential treatment of the documents submitted with the February 23 Filing in their entirety.

⁵ We discuss other types of information in Sections II.B and II.C, below.

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Page 4

- Descriptions of training provided to Customer Care, ERT, ECS representatives (pp. 9-12).
- Description of T-Mobile's internal testing procedures regarding potential call routing problems (pp. 13-14).
- Explanation of responsibilities of T-Mobile's Customer Care, ERT, and ECS teams (p. 14).
- Names of T-Mobile intermediate carriers (Exhibits 1-3, throughout).

September 8 Filing (with confidentiality designations modified by December 22 Filing)

- "High" and "low" monthly call answer rates for 24 months covered by the quarterly Form 480 reports T-Mobile had filed to date (pp. 3-4).⁶
- Estimated number of out-of-network calls attempted by T-Mobile customers sent via trunks using SIP technology in 2016 taking more than four seconds for call setup. (p. 13, note 62).

Information of the types listed above falls squarely within FOIA Exemption 4. Exemption 4 guards against disclosure of "trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential."⁷ According to the Department of Justice, Exemption 4 "is intended to protect the interests of both the government and submitters of information" – in particular, it "affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure."⁸

As the D.C. Circuit has explained, information is "commercial" under Exemption 4 if "it serves a 'commercial function' or is of a 'commercial nature.'"⁹ The exemption applies to any information in which the submitting party has a "commercial interest,"¹⁰ and covers information

⁶ The basis for non-disclosure of this information is also discussed below in Section III.

⁷ 5 U.S.C. § 552(b)(4). The information sought by Requestor was clearly "obtained from a person." The term "person" includes a wide range of entities, including corporations, partnerships, and limited liability corporations such as T-Mobile. 5 U.S.C. § 551(2); *Nadler v. Fed. Deposit Ins. Corp.*, 92 F.3d 93, 95 (2d Cir. 1996). In this regard, government-prepared records are deemed to reflect information "obtained from a person" if they summarize information obtained from *another* person. *See, e.g., Gulf & W. Indus. v. United States*, 615 F.2d 527, 529-30 (D.C. Cir. 1979).

⁸ *Department of Justice Guide to the Freedom of Information Act – Exemption 4*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption4_0.pdf (last visited Apr. 1, 2019).

⁹ *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C. Cir. 2002) (internal citations omitted).

¹⁰ *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983).

WILKINSON) BARKER) KNAUER) LLP

William Knowles-Kellett

April 1, 2019

Page 5

that “is obtained by the Government” but “would customarily not be released to the public by the person from whom it was obtained.”¹¹

As an initial matter, there can be no doubt that T-Mobile faces actual competition in the provision of the Commercial Mobile Radio Services (“CMRS”) that are the subject of the FOIA request – and that T-Mobile will face the likelihood of substantial competitive injury should the information and documents in question be released.¹² Moreover, the information for which T-Mobile seeks nondisclosure here is of the type that it customarily does not release. Release of information for which T-Mobile requested confidential treatment would provide competitors with knowledge regarding the operation and performance of T-Mobile’s network, the steps T-Mobile has taken, and plans to take, to improve its network performance, and – in particular – its approach to ensuring and maintaining its ability to provide robust service to its customers. Such release likewise would afford T-Mobile’s customers knowledge regarding its internal procedures, testing, and training. Access to such information by competitors would cause competitive harm to T-Mobile because those competitors could modify their own networks and procedures based on this information, improving their ability to compete against T-Mobile. Such competitors also could use the information obtained to criticize T-Mobile’s performance or otherwise to undermine T-Mobile’s business interests, leaving T-Mobile little means of responding, given that only *its* confidential information would have been revealed. Disclosure could also spur (unsupported) class action and other litigation that could competitively harm T-Mobile.

The Commission¹³ and the courts have agreed repeatedly that information of the type for which T-Mobile requests confidentiality is immune from disclosure under FOIA. For example, the Commission has underscored that “[i]nformation about networks, equipment deployment, traffic flow, and business strategies would give competitors insights into the [carrier’s] business[,] providing a competitive advantage they would not normally have.”¹⁴ The Commission has explicitly held that Exemption 4 precludes disclosure of information that would reveal “information about the types and deployment of their equipment and the traffic flows across their networks,” as well as their “market strategies” and “business strategies.”¹⁵ In particular, “the filers’ competitors would gain access to internal information that could easily be used to the competitive disadvantage of the [companies whose information was at stake],”

¹¹ *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974) (emphasis omitted).

¹² See *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16855 ¶ 45 (2004) (“*Part 4 Order*”); 47 C.F.R. § 0.459(b)(4).

¹³ The Commission’s conclusions as to FOIA are binding on EB and the Wireline Competition Bureau in reviewing the instant FOIA request.

¹⁴ *MSNBC Interactive News, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 14518, 14525-26 ¶ 16 (2008) (“*MSNBC*”).

¹⁵ *Id.*

WILKINSON) BARKER) KNAUER) LLP

William Knowles-Kellett

April 1, 2019

Page 6

affording those competitors “insights into [such companies’] businesses that would enable competitors to change their business strategies.”¹⁶ The agency recently reiterated such concerns in its *RCC Fourth Report and Order*, declining to require the filing of documentation regarding a carrier’s dealings with its intermediate providers because “in many cases,” such information “is likely to reveal important technical, personnel, and commercial details about the covered provider’s network and business operations.”¹⁷

The D.C. Circuit, for its part, recently emphasized that a commercial entity’s “supply chain” and “business relationships” are “integral to its commercial success”¹⁸ and that, consequently, “courts routinely hold that disclosing this type of information presents a likelihood of substantial competitive injury that warrants protection under Exemption 4.”¹⁹ The federal district court for the District of Columbia has likewise held that specific information regarding the suppliers a business uses to fulfill its commitments “would be valuable to a competitor hoping to gain an edge in the relevant market,”²⁰ citing favorably claims that disclosure of “valuable business data such as sources of supply, product lines, supply chains and customers” would “enable a competitor to target those suppliers who are of most benefit to the company by offering slightly higher prices or otherwise disrupting supply chains abroad.”²¹

This extensive precedent establishes that the material detailed above falls under FOIA Exemption 4 and should not be disclosed. Data regarding the number of calls placed on T-Mobile’s network, the percentages of calls completed (answered), and the proportion of calls that are sent using a particular route or technology and take a certain amount of time to complete would reveal “[i]nformation about [its] network[], equipment deployment, traffic flow, and business strategies.”²² In particular, figures relating to how many T-Mobile out-of-network calls sent via trunks using SIP technology took four seconds or more constitute competitively sensitive information that T-Mobile’s competitors could use to achieve unfair marketplace advantages over T-Mobile. Likewise, disclosure of data revealing the proportion of T-Mobile calls sent using SIP trunks in 2013, 2014, 2015, and 2016 would convey to T-Mobile’s competitors sensitive information regarding the extent to which T-Mobile has migrated to SIP technology and the pace at which it was converting its network. This information concerns T-Mobile’s network architecture and investment activities, and is not suitable for release to T-Mobile’s competitors. Such information “would give competitors insights into [its] business[,]

¹⁶ *Id.*

¹⁷ *Rural Call Completion*, Fourth Report and Order, WC Docket No. 13-39, FCC 19-23 ¶ 46 (rel. Mar. 15, 2019) (“*RCC Fourth Report and Order*”).

¹⁸ *PETA v. U.S. Dep’t of Health and Human Servs.*, 901 F.3d 343, 350-51 (D.C. Cir. 2018).

¹⁹ *Id.*

²⁰ *Gilda Indus., Inc. v. U.S. Customs & Border Prot. Bureau*, 457 F. Supp. 2d 6, 10 (D.D.C. 2006).

²¹ *Id.* at 11 (internal quotations, citations, and alterations omitted).

²² *MSNBC*, 23 FCC Red at 14525-26 ¶ 16.

WILKINSON) BARKER) KNAUER) LLP

William Knowles-Kellett

April 1, 2019

Page 7

providing a competitive advantage they would not normally have”²³ and revealing “information about the types and deployment of [T-Mobile’s] equipment and the traffic flows across [its] networks,” as well as its “market strategies” and “business strategies.”²⁴

The other information at issue also is immune from disclosure. Names of the entities with which T-Mobile contracts to carry its traffic (*i.e.*, its intermediate providers) would disclose the identities of T-Mobile’s suppliers and thus “would be valuable to a competitor hoping to gain an edge in the relevant market.”²⁵ As the D.C. Circuit has made clear, such information regarding a company’s “supply chain” and “business relationships” are “integral to its commercial success.”²⁶ Finally, descriptions of T-Mobile’s internal procedures, including logs and records concerning its treatment of specific grievances and/or complaints, the methodologies it employed to review internal databases, the specific training it provides to employees and agents, the testing regimes it uses to identify routing problems, and descriptions of the roles performed by various internal groups are also protected by Exemption 4. As the federal district court for the District of Columbia has held, Exemption 4 precludes disclosure of information about “internal processes” by which a company “make[s] decisions about managing and conducting [its] business operations.”²⁷ This includes information regarding how a company “trains employees,” because the company’s competitive position would suffer “if its competitors could obtain that information for free.”²⁸ The Commission has similarly held that Exemption 4 forbids disclosure of information regarding a company’s “relations with its customers, its internal procedures for assuring regulatory compliance, ... its methods and procedures for responding to customer complaints,” “its method of dealing with customer satisfaction issues and [its] product development.”²⁹ As these decisions recognize, disclosure of the information at issue here would provide competitors “access to internal information that could easily be used to [T-Mobile’s] competitive disadvantage,” providing “insights into [T-Mobile’s] business[] that would enable competitors to change their business strategies.”³⁰

In short, all of the competitively sensitive information for which T-Mobile seeks non-disclosure falls squarely within FOIA Exemption 4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Gilda Indus., Inc.*, 457 F. Supp. 2d at 11.

²⁶ *PETA*, 901 F.3d at 350-51.

²⁷ *Pub. Citizen v. U.S. Dep’t of Health and Human Servs.*, 975 F. Supp. 2d 81, 105 (D.D.C. 2013).

²⁸ *Butler v. U.S. Dep’t of Labor*, 316 F. Supp. 3d 330, 335 (D.D.C. 2018)

²⁹ *Nat’l Ass’n of Broadcasters et al.*, Memorandum Opinion and Order, 24 FCC Rcd 12320, 12329 ¶ 20 (2009).

³⁰ *MSNBC*, 23 FCC Rcd at 14525-26 ¶ 16.

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Page 8

B. Personal Information Regarding T-Mobile Customers, Employees, and Agents.

Other materials for which T-Mobile seeks nondisclosure reveal personal information regarding T-Mobile's customers, employees, and agents. Specifically, T-Mobile seeks nondisclosure of the following:

February 9 Filing (with confidentiality designations modified by December 22 Filing)

- Names of specific T-Mobile customers and employees/agents and specific complainants who did not subscribe to T-Mobile service (pp. 8-12).
- Names of T-Mobile customers, employees, and/or agents (Exhibit 2, throughout).

July 13 Filing (with confidentiality designations modified by December 22 Filing)

- Names of T-Mobile customers, employees, and/or agents (Exhibit 1, throughout).

August 2 Filing (with confidentiality designations modified by December 22 Filing)

- MSISDN and telephone numbers associated with T-Mobile customers and complainants/reporters of concerns (p. 6).
- Names of T-Mobile customers, employees, and/or agents (Exhibits 1-3, throughout).

The FOIA precludes disclosure of the names and telephone numbers of T-Mobile's customers, employees, and agents. As a preliminary matter, FOIA Exemption 6 guards against the disclosure of "personnel and medical files *and similar files* the disclosure of which would constitute a clearly *unwarranted invasion of personal privacy*."³¹ This Exemption encompasses lists of "names and addresses,"³² as well as lists of individuals compiled for a public function.³³ It also immunizes from disclosure the far more sensitive information described above.³⁴ In addition to Exemption 6, Exemption 4 "was intended, according to the legislative history, to

³¹ 5 U.S.C. § 552(b)(6) (emphasis added).

³² See, e.g., *Wine Hobby USA, Inc. v. IRS*, 502 F.2d 133, 135 (3rd Cir. 1974) (A "list of names and addresses is a file 'similar' to the personnel and medical files specifically referred to in the exemption" given that "[t]he common denominator in 'personnel and medical and similar files' is the personal quality of information in the file, the disclosure of which may constitute a clearly unwarranted invasion of personal privacy.").

³³ See, e.g., *Sikes v. United States*, 987 F. Supp. 2d 1355, 1365-66 (S.D.Ga. 2013) (holding an invitation list to a public function to be protected under Exemption 6).

³⁴ See, e.g., *N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1006 (D.C. Cir. 1990) ("[T]he threshold [for information to fall under the scope of a similar file] is 'minimal' The information need not be intimate; the threshold for application of Exemption 6 is crossed if the information merely 'applies to a particular individual.'" (internal citations omitted)).

WILKINSON) BARKER) KNAUER) LLP
 William Knowles-Kellett
 April 1, 2019
 Page 9

*extend privacy to a number of interests.*³⁵ Thus, Exemption 4 “protects individuals from disclosure of financial information which is privileged or confidential.”³⁶ Accordingly, the data described above is protected from disclosure on multiple grounds.

C. Settlement-Related Documents.

As noted above,³⁷ Settlement-Related Documents are not part of the EB Investigation File, and thus do not fall within the scope of the FOIA request. In any event, to the extent that EB or the Commission disagrees, and believes Settlement-Related Documents to constitute part of the EB Investigation File, such documents should nevertheless be withheld from disclosure in their entirety. The Commission has held that documents that “arise from settlement negotiations” “may also be withheld under the settlement privilege of FOIA Exemption 5.”³⁸ Similarly, FOIA Exemption 7 protects from disclosure certain “records or information compiled for law enforcement purposes,” including records whose release “could reasonably be expected to interfere with enforcement proceedings” or “would disclose techniques and procedures for law enforcement investigations or prosecutions.”³⁹ Here, release of Settlement-Related Documents would undercut the confidential nature of FCC enforcement-related settlement discussions, interfere with the agency’s conduct of its law enforcement mission, and disclose techniques and procedures utilized to settle EB investigations. For these reasons, the Settlement-Related Documents should be withheld entirely from disclosure, even if EB or the Commission were to conclude that those documents fell within the scope of the FOIA request.⁴⁰

³⁵ *N.Y. Pub. Interest Research Grp. v. EPA*, 249 F. Supp. 2d 327, 332 (S.D.N.Y. 2003) (emphasis added) (citing H.R. Rep. 89-1497 at 10 (1966) (“The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in the case of labor-management mediations. ... It would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government.”)).

³⁶ *Rural Housing All. v. U.S. Dep’t of Agric.*, 498 F.2d 73, 78 (D.C. Cir. 1974).

³⁷ See *supra* note 3.

³⁸ *Wireless Consumer Alliance et al.*, Memorandum Opinion and Order 20 FCC Rcd 3874, 3588 ¶ 25 note 55 (2005). See also *COMPTEL*, Memorandum Opinion and Order, 27 FCC Rcd 7705, 7712 ¶ 17 (2012) (citing in part *Goodyear Tire & Rubber Co. v. Chiles Powder Supply Inc.*, 332 F.3d 976 (6th Cir. 2003)).

³⁹ 5 U.S.C. § 552(b)(7).

⁴⁰ As noted above, portions of any Settlement-Related Documents that include “commercial or financial information” that is “privileged and confidential” are separately subject to nondisclosure under Exemption 4. See *supra* at 2 and note 3.

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Page 10

II. Request 2: Compliance Reports Submitted by T-Mobile Pursuant to the Consent Decree.

T-Mobile has filed one compliance report since the Consent Decree was issued. It did not request confidential treatment of that report and does not oppose disclosure here.

III. Request 3: T-Mobile's Form 480 Submissions.

T-Mobile submitted Form 480s and supporting information throughout the period that Form 480 reports were required. On each occasion, T-Mobile requested nondisclosure of the data submitted, using the filing portal's mechanism for seeking confidential treatment. These reports, and the data that they contain, are subject to FOIA Exemption 4, and should not be disclosed.

In adopting the Form 480 requirement, the Commission recognized that the data submitted could be competitively sensitive, warranting confidential treatment. As such, it established a streamlined process for requesting such treatment, and explained that even states would only be able to access Form 480 data if they themselves abided by nondisclosure mandates.⁴¹ In particular, the Commission credited arguments that release of the Form 480 reports "could result in public misperception of the nature of the call completion problem [or] in the misuse of information taken out of context," and that the data "may prove difficult to compare fairly across providers due to potentially differing abilities of providers, for example, to identify autodialer traffic or account for call attempts that are handed back to be retried using a different intermediate provider."⁴² To that end, the Form 480 filing portal included a checkbox allowing providers to request nondisclosure on the basis that the information submitted "is privileged and confidential and [that] public disclosure ... would likely cause substantial harm to our competitive position."⁴³

While the Commission contemplated case-specific review regarding disclosure of Form 480 filings,⁴⁴ its belief that the data submitted is competitively sensitive, warranting nondisclosure, is correct. T-Mobile routinely seeks to protect as confidential information such as that contained within the Form 480 (as evidenced by its repeated requests for confidentiality when it submitted those forms). As described above, the Form 480 details T-Mobile's performance in the highly competitive CMRS market. Finally, the Form 480 data, which provides extensive information regarding T-Mobile's network performance, *on an OCN-by-OCN*

⁴¹ *RCC First Report and Order*, 28 FCC Rcd at 16199 ¶ 109.

⁴² *Id.* at 16199-200 ¶ 110.

⁴³ The Commission has subsequently taken down the Form 480 filing portal in germane part, pursuant to the filing requirement's elimination. See *Form 480 Filer Resources*, FCC, <https://www.fcc.gov/general/form-480-filer-resources> (last visited Apr. 1, 2019).

⁴⁴ See *RCC First Report and Order*, 28 FCC Rcd at 16199-200 ¶ 110.

WILKINSON) BARKER) KNAUER) LLP

William Knowles-Kellett

April 1, 2019

Page 11

basis for rural areas, is precisely the type of competitive material Exemption 4 was intended to protect from disclosure. Disclosure of such detailed “[i]nformation about [T-Mobile’s] network[], equipment deployment, [and] traffic flow” would “give competitors insights into [T-Mobile’s] business[,] providing a competitive advantage they would not normally have.”⁴⁵

Disclosure of T-Mobile’s Form 480 filings and/or related data would be particularly inappropriate given the findings of the Wireline Competition Bureau (“WCB”) and the Commission alike that this data is not useful or relevant in assessing a provider’s RCC performance. As WCB noted in 2017, the data collected for these purposes – “[e]ven if accepted at face value – “provides a less than clear understanding of the overall state of rural call completion performance.” WCB thus recommended that the Commission “seek comment on eliminating” the requirements.⁴⁶ The Commission sought comment on the possible elimination of the requirement, noting that “even if we were to retain and modify our recording, retention, and reporting rules to address the data quality issues discussed in the Data Report, it is not clear that the benefits of such modifications would outweigh the costs.”⁴⁷ And the Commission correctly determined that the “Form 480 reports are of limited utility to us in discovering the source of rural call completion problems and a pathway to their resolution.”⁴⁸

* * *

For the reasons stated above, the Commission should not disclose information for which T-Mobile has requested confidential treatment (either in the EB Investigation File or in its Form 480 Submissions), or any other materials containing, quoting, characterizing, summarizing, or otherwise revealing such or similar information. In addition, to the extent that EB or the Commission determines (erroneously, in T-Mobile’s view) that Settlement-Related Documents fall within the scope of the FOIA request, it nevertheless should withhold such documents in their entirety.

⁴⁵ *MSNBC*, 23 FCC Rcd at 14525-26 ¶ 16; *see also Part 4 Order*, 19 FCC Rcd at 16854-55 ¶¶ 44-45 (“Competitors presumably would have ample incentives to utilize [network performance] information to compete for wireless customers”; because of competition and the importance that such information “may have on the selection of a service provider,” the Commission treated such information as presumptively confidential.).

⁴⁶ *Rural Call Completion*, Report, 32 FCC Rcd 4980, 4981 ¶¶ 2-3 (WCB 2017).

⁴⁷ *Rural Call Completion*, Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 6047, 6058-59 ¶ 28 (2017).

⁴⁸ *Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 4199, 4204 ¶ 11 (2018); *see also id.* at 4225-26 ¶ 61.

WILKINSON) BARKER) KNAUER) LLP

William Knowles-Kellett

April 1, 2019

Page 12

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David H. Solomon", written over a horizontal line.

David H. Solomon

Russell P. Hanser

cc: G. David Carter (David.Carter@wbd-us.com)
Jocelyn Frye (Jocelyn.Frye@fcc.gov)
Alex Espinoza (Alex.Espinoza@fcc.gov)

WILKINSON) BARKER) KNAUER) LLP
William Knowles-Kellett
April 1, 2019
Appendix Page 1

APPENDIX

Response to December 27, 2016 Letter of Inquiry (“LOI”) (filed February 9, 2017) (“February 9 Filing”).

- Percentages of calls answered/completed, per T-Mobile’s Form 480, from April 2016 to December 2016 (p. 13).
- Description of T-Mobile’s practices upon learning of an RCC problem on its network (p. 14).
- Names of T-Mobile intermediate carriers (Exhibit 2, throughout).
- Names of specific T-Mobile customers and employees/agents and specific complainants who did not subscribe to T-Mobile service (pp. 8-12).
- Names of T-Mobile customers, employees, and/or agents (Exhibit 2, throughout).

Response to Inquiry 12 of December 28, 2016 LOI (filed February 23, 2017) (“February 23 Filing”).

- Logs from T-Mobile’s internal databases regarding treatment of four specific incidents/customer complaints identified in the LOI.
- Internal records regarding grievances and inquiries tracked and handled by T-Mobile’s Executive Response Team.

Response to Inquiries 14(b) and 26 of April 3, 2017 Supplemental LOI (filed July 13, 2017) (“July 13 Filing”).

- Explanation of methodologies used by T-Mobile and MetroPCS in reviewing internal data to respond to prior Inquiries (pp. 1-3).
- Specific percentages of T-Mobile out-of-network traffic sent via trunks using SIP technology for periods between 2013 and 2016 (p. 4).
- Total number of calls attempted by T-Mobile customers in 2016 (p.5).
- Estimated number of out-of-network calls attempted by T-Mobile customers sent via trunks using SIP technology in 2016 taking more than four seconds for call setup, and estimated percentage of total attempted calls such calls represented that year (p. 5).
- Names of T-Mobile intermediate carriers (Exhibit 1, throughout).
- Names of T-Mobile customers, employees, and/or agents (Exhibit 1, throughout).

Response to April 3, 2017 Supplemental LOI (filed August 2, 2017) (“August 2 Filing”).

- Identities of T-Mobile intermediate providers (pp. 2-9).
- MSISDN and telephone numbers associated with T-Mobile customers and complainants/reporters of concerns (p. 6).
- Descriptions of training provided to Customer Care, ERT, ECS representatives (pp. 9-12).

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April 1, 2019
Appendix Page 2

- Description of T-Mobile's internal testing procedures regarding potential call routing problems (pp. 13-14).
- Explanation of responsibilities of T-Mobile's Customer Care, ERT, and ECS teams (p. 14).
- Names of T-Mobile intermediate carriers (Exhibits 1-3, throughout).
- Names of T-Mobile customers, employees, and/or agents (Exhibits 1-3, throughout).

Supplemental Response to EB LOI (filed September 8, 2017) ("September 8 Filing").

- "High" and "low" monthly call answer rates for 24 months covered by the quarterly Form 480 reports T-Mobile had filed to date (pp. 3-4).
- Estimated number of out-of-network calls attempted by T-Mobile customers sent via trunks using SIP technology in 2016 taking more than four seconds for call setup. (p. 13, note 62).

Form 480 Submissions.

- All Form 480 reports (and supporting materials) filed by T-Mobile, and any data contained therein.

Other.

- Any and all other material containing, quoting, characterizing, summarizing, or otherwise revealing any of the foregoing information, or similar information.
- All material relating to the settlement or adoption of the Consent Decree between T-Mobile and EB (released on April 16, 2018).