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October 2, 2018

*Filed via ECFS*

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-197**

T-Mobile US, Inc. (“T-Mobile”), by its undersigned attorney, hereby objects to the Acknowledgements of Confidentiality (“Acknowledgements”) filed in the above-captioned proceeding by counsel to CarrierX, LLC—Stephen Wald, Partner, Robins Kaplan LLP, and Lauren J. Coppola, Partner, Robins Kaplan LLP.<sup>1</sup>

T-Mobile recognizes that the *Protective Order* permits the Commission to afford certain individuals access to Stamped Confidential and Highly Confidential Information (“CI” and “HCI”, respectively), and neither it nor Sprint Corporation (“Applicants”) have objected to access sought to date by qualified individuals. However, the Acknowledgements filed by Mr. Wald and Ms. Coppola raise significant concerns that these individuals and CarrierX are seeking access to CI and HCI for purposes inconsistent with the *Protective Order*. As discussed below, CarrierX’s filing in this proceeding has failed to raise any issue relevant to the FCC’s merger review, focusing instead on an unrelated private dispute currently in litigation. Mr. Wald and Ms. Coppola serve as lead litigation counsel for CarrierX in that judicial proceeding and have requested access only to information related to that litigation matter, raising significant concerns that the Acknowledgements are being filed in an effort to advance CarrierX’s interests in its litigation matter, not to enable meaningful participation in the above-captioned FCC proceeding. Accordingly, T-Mobile objects to the Acknowledgements filed by Mr. Wald and Ms. Coppola.

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<sup>1</sup> Letter from Stephen Wald, Partner, Robins Kaplan LLP, to Marlene H. Dortch, Secretary, FCC (filed Sept. 27, 2018). T-Mobile counsel was served by email on Thursday, September 27, 2018. T-Mobile’s objection is therefore timely under paragraph 8 of the Protective Order, which affords parties submitting confidential and highly confidential information three (3) business days from receipt of the acknowledgements to object to any requested disclosure of Protective Order Information. *See Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Protective Order, WT Docket No. 18-197, DA 18-624 (rel. June 15, 2018) (“*Protective Order*”).

*Use of HCI Is Strictly Limited to Purposes Related to the Instant Proceeding*

The *Protective Order* in this proceeding explains that any individual obtaining access to CI or HCI “shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding.”<sup>2</sup> Further, the *Protective Order* specifically notes that the CI and HCI shall not be used “for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings.”<sup>3</sup> Accordingly, a party accessing CI or HCI may use that information only to advance its advocacy in the context of the Commission’s review of the Applicants’ proposed transaction.

*CarrierX Is Involved in a Private Dispute Involving T-Mobile and Has Raised Only That Non-Germane Issue in the Merger Proceeding*

CarrierX is currently involved in litigation with Inteliquent, a long-distance carrier.<sup>4</sup> Although the pending litigation is the result of a commercial dispute between the two parties regarding terminating access charges, T-Mobile has produced some documents as a related party to this litigation. Specifically, these documents relate to T-Mobile’s policy of charging \$0.01 per minute to “out-of-plan” phone numbers such as chat lines, radio broadcast lines, and conference calls.

CarrierX’s filing in the instant merger proceeding was limited to describing this litigation and requesting that the Commission condition the license transfer on T-Mobile’s cessation of its “One-Cent” policy.<sup>5</sup> As the Applicants pointed out in their Joint Opposition, the proposed transaction has nothing to do with CarrierX’s litigation claims or vice versa.<sup>6</sup> Under well-established precedent, the Commission has consistently found such private disputes not relevant to merger review proceedings and refused to consider such issues.<sup>7</sup>

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<sup>2</sup> See *id.* at ¶ 11.

<sup>3</sup> *Id.*

<sup>4</sup> *Inteliquent, Inc. v. Free Conferencing Corporation et al.*, Case No. 16-cv-06976 (N.D. Ill.).

<sup>5</sup> See Petition to Deny of CarrierX, LLC, WT Docket No. 18-197 (filed Aug. 27, 2018) (“CarrierX Petition”).

<sup>6</sup> Joint Opposition of T-Mobile US, Inc. and Sprint Corporation, WT Docket No. 18-197 at 121-123 (Sept. 17, 2018).

<sup>7</sup> See *Id.* CarrierX also failed to demonstrate standing to participate in the merger proceeding and its petition must be dismissed on that basis as well. *Id.* at n.1.

*Mr. Wald and Ms. Coppola Are Litigation Counsel to CarrierX in the Separate, Unrelated Judicial Proceeding Involving T-Mobile*

Mr. Wald and Ms. Coppola serve as lead litigation counsel to CarrierX in its unrelated private dispute currently pending before the courts. Their role in the litigation raises significant concerns that the Acknowledgements are being filed in an effort to access CI and HCI information in order to advance CarrierX's interests in its litigation matter, not to enable meaningful participation in the merger review proceeding. Indeed, in their letter to the undersigned T-Mobile counsel, Mr. Wald and Ms. Coppola made plain that their interest is only in information "concerning or relating to T-Mobile's out-of-plan charges and/or One-Cent Policy that discuss pricing decisions, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analysis, the introduction of new pricing plans and their expected or actual impact, tiered pricing, and the criteria and factors used and considered in how T-Mobile prices its products and services."<sup>8</sup> Even if CarrierX were to contend that it is using the information to prepare filings and advocacy in this proceeding, as noted above, the pricing policy claim it has raised is not germane to the Commission's merger review.

Mr. Wald's and Ms. Coppola's involvement in the pending litigation must preclude them from accessing the CI and HCI filed by the Applicants. The *Protective Order* requires that any CI and HCI information accessed be used only for purposes of the instant proceeding. However, it would be impossible for Mr. Wald and Ms. Coppola to compartmentalize information obtained through this proceeding such that the information would not influence their role as lead counsel in the pending litigation with Inteliquent. For these reasons, the Commission should direct Mr. Wald and Ms. Coppola to withdraw their Acknowledgements.

Respectfully submitted,

*/s/ Nancy J. Victory*

Nancy J. Victory

cc: Stephen Wald  
Lauren J. Coppola  
Joel Rabinovitz  
Kathy Harris  
Linda Ray  
Kate Matraves  
Jim Bird  
David Krech

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<sup>8</sup> See Attachment A at 1.

# **ATTACHMENT A**

September 27, 2018

*Via E-Mail and Overnight Mail*

Nancy J. Victory  
Ian Forbes  
DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004

Re: *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-197 (the "Proceeding")*

Dear Ms. Victory and Mr. Forbes:

I, along with Lauren Coppola, are Outside Counsel of Record for CarrierX, LLC d/b/a freeconferencecall.com ("Free Conferencing"), a participant in the Proceeding. Enclosed are copies of Acknowledgements of Confidentiality signed by Mrs. Coppola and me, which were filed with the Commission earlier today.

Pursuant to the Protective Order (DA 18-624), I hereby request that T-Mobile US, Inc. ("T-Mobile") provide me at cost, either by mail or email, a complete set of the Confidential Information and Highly Confidential Information T-Mobile has submitted to the Commission in the Proceeding.

Alternatively, if T-Mobile prefers, I would accept for now all Confidential Information and Highly Confidential Information T-Mobile submitted in response to the Commission's Document Request No. 33, dated August 15, 2018, that concern or relate to T-Mobile's out-of-plan charges and/or One-Cent Policy, as described in Free Conferencing's Petition to Deny dated August 27, 2018. Specifically, I am requesting, among other things, all Confidential Information and Highly Confidential Information concerning or relating to T-Mobile's out-of-plan charges and/or One-Cent Policy that discuss pricing decisions, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analysis, the introduction of new pricing plans and their expected or actual impact, tiered pricing, and the criteria and factors used and considered in how T-Mobile prices its products and services. Those matters are subjects raised by the Petition to Deny filed by Free Conferencing.

I am available to discuss this request if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Stephen Wald', written over a horizontal line.

Stephen Wald

## APPENDIX B

## Acknowledgment of Confidentiality

## WT Docket No. 18-197

I am seeking access to [ ] only Confidential Information or  Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this 27th day of September, 2018.



[Name] Stephen Wald  
[Position] Partner  
[Firm] Robins Kaplan LLP  
[Telephone] (617) 859-2735  
[Party] CarrierX, LLC

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## WT Docket No. 18-197

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Executed this 27th day of September, 2018.



[Name] Lauren J. Coppola  
[Position] Partner  
[Firm] Robins Kaplan LLP  
[Telephone] (617) 859-2736  
[Party] CarrierX, LLC