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REQUEST FOR CONFIDENTIAL TREATMENT

By Courier

September 30, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

SEP 30 2011
Federal Communications Commission
Office of the Secretary

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; WC Docket No. 07-135; WC Docket No. 10-90; WC Docket No. 05-337; GN Docket No. 09-51.

Dear Ms. Dortch:

In response to a request from the staff of the Wireline Competition Bureau, T-Mobile USA, Inc. ("T-Mobile") submits data relating to T-Mobile's intercarrier compensation costs for 2009. The requested data is contained in the Excel spreadsheet attached as Exhibit A.

As set forth in detail below, T-Mobile seeks confidential treatment of the attached data in Exhibit A pursuant to the September 16, 2010 *Protective Order* entered in the above-referenced proceeding.¹ Independently of the *Protective Order*, the attached data also is protected from disclosure under the Commission's rules implementing the Freedom of Information Act ("FOIA").² Accordingly, T-Mobile seeks confidential treatment of Exhibit A in its entirety pursuant to Sections 0.457(d) and 0.459 of the Commission's rules³ as highly sensitive trade secrets and/or confidential commercial or financial information protected from mandatory disclosure under FOIA Exemption 4.⁴ In the event that the Commission determines not to accord confidential treatment to Exhibit A, T-Mobile requests that Exhibit A be returned to T-Mobile immediately.

¹ *Developing a Unified Intercarrier Compensation Regime*, Protective Order,, 25 FCC Rcd 13160 (WCB 2010) ("*Protective Order*").

² 5 U.S.C. § 552.

³ See 47 C.F.R. §§ 0.457(d), 0.459.

⁴ 5 U.S.C. § 552(b)(4).

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A. Intercarrier Compensation Rate Reductions Cannot “Offset” The Loss Of High-Cost Support To Wireless ETCs

In connection with the staff’s intercarrier compensation data request, T-Mobile also was asked to respond to the question posed in the recent *Public Notice* released in the above-referenced proceeding regarding the extent to which “projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs.”⁵ As an initial matter, this question is based on a faulty premise. Even assuming there were savings from intercarrier compensation rate reductions that could be devoted to facilities deployment – which, as explained below, is highly unlikely – there is no reason to believe that carriers would choose to use those funds in the high-cost, low return areas that cannot support a viable competitive service. Simply put, there is no connection between the cost savings resulting from intercarrier compensation reform and the monies needed for high-cost support for competitive ETCs.

First, the competitive wireless market would not allow an “offset” to occur. Instead, reductions in intercarrier compensation costs, as in the case of any cost reductions, will be passed through to consumers in the form of lower rates and improved technology. Intercarrier compensation savings will not be available to replace reduced high-cost support for competitive ETCs in high-cost areas where mobile broadband deployment is otherwise uneconomic.

The Commission has found that “competition forces a firm to pass through its cost reductions when other competing firms also enjoy the same cost reductions.”⁶ As noted in the Consumer Benefits expert study attached to the ABC Plan, the reductions in wireless intercarrier compensation costs triggered by the intraMTA rule and the “mirroring rule” established in the Commission’s docket addressing ISP-bound traffic⁷ “led to significant gains in consumer

⁵ *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, WC Docket Nos. 10-90, *et al.*, DA 11-1348, at 2 (rel. Aug. 3, 2011) (“*Public Notice*”).

⁶ *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16702 ¶ 153 (1997), *rev’d on other grounds sub nom., United States Tel. Ass’n v. FCC*, 188 F.3d 521 (D.C. Cir. 1999) (“*Price Cap Performance*”).

⁷ *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (subsequent history omitted).

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welfare” through reduced wireless consumer rates.⁸ The Consumer Benefits study predicted, based on a number of economic studies, that the pass-through of intercarrier compensation rate reductions would continue in competitive service markets, including the wireless market.⁹

Moreover, the wireless market is vigorously competitive, by a variety of metrics. The average per minute rate for wireless voice service has declined dramatically since 1993.¹⁰ As of 2009, out of twelve leading industrialized nations, Americans paid the least for wireless voice service per minute.¹¹ The decline in rates has facilitated innovative pricing plans, including the elimination of “roaming” charges and increased use of “any distance” plans, and has been accompanied by skyrocketing usage. As of December 2010, there were more than 302.8 million wireless subscribers in the U.S., an increase of about 17 million from 2008.¹²

Thus, consistent with the Commission’s finding, wireless carriers will “pass through . . . [industry-wide] cost reductions”¹³ resulting from intercarrier rate reductions in the form of lower consumer rates and innovative services and pricing plans. Once these savings are competed away by the market, they will not be available to subsidize the deployment of services in high-cost areas that cannot otherwise sustain such services. Further, to the extent that any savings are used for network investment, they will have to be spent in areas where carriers can earn a reasonable return on their investment. Rural and other high-cost areas need high-cost support precisely because investment there is otherwise uneconomic. Accordingly, the answer to the Commission’s “offset” question is that there will be no savings from intercarrier compensation rate reductions available for other uses, and that if there were, such savings, by definition, would not be used to fund deployments in areas that cannot attract private investment and thus are eligible for high-cost support.

⁸ Letter from Robert Quinn, AT&T, *et al.*, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed July 29, 2011) (“ABC Plan”), Att. 4, Professor Jerry Hausman, “*Consumer Benefits of Low Intercarrier Compensation Rates*” at 5-6 (July 25, 2011) (“Consumer Benefits”).

⁹ Consumer Benefits at 8-9.

¹⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fifteenth Report, 26 FCC Rcd 9664, 9783-84 ¶ 191 & Table 20 & Chart 23 (2011) (“*CMRS Competition Report*”).

¹¹ *Id.* at 9686 ¶ 2 (International Comparisons).

¹² CTIA, *CTIA Semi-Annual Wireless Industry Survey*, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10316> (last visited Sept. 30, 2011) (Estimated Subscriber Connections).

¹³ *Price Cap Performance*, 12 FCC Rcd at 16702 ¶ 153.

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B. The Failure Of Current Proposals To Reform Transport And Tandem Costs Should Be Addressed By Implementing An IP Interconnection Regime

Moreover, it is important that the Commission not draw unwarranted conclusions from the data attached as Exhibit A and similar data from other carriers. The proposals that the Commission appears to be considering would leave large portions of the intercarrier compensation rate regime unreformed. The ABC Plan and similar proposals fail to fully address transport and tandem switching usage elements, particularly transport needed to deliver traffic to a terminating carrier.¹⁴ As carriers reallocate costs from end office switching rates to transport and tandem switching rates, the reforms now under consideration would achieve limited results.¹⁵ Even as to the local end office functions that would be affected by the current proposals, rates are determined in many cases by contracts. Unless parties are granted a “fresh look” to renegotiate those contracts, T-Mobile and other carriers may not be able to take advantage of the reduced termination rates. Thus, a large proportion of T-Mobile’s and other competitive carriers’ current intercarrier compensation costs will still remain in effect after the end of the proposed intercarrier compensation reduction transitions, eliminating any possible “offset” to the ETC support that they will be losing.

The most effective way to address the transport and tandem switching loophole in the reform proposals now under consideration would be to establish the IP interconnection regime advocated by T-Mobile or similar rules proposed by other parties.¹⁶ If all carriers were required to deliver their traffic to, and receive terminating traffic from, a relatively few neutral IP-based points of interconnection (“POIs”), they would not be able to impose either facility or usage-

¹⁴ See Comments of T-Mobile USA, Inc. at 7-9, *Connect America Fund*, WC Docket No. 10-90, *et al.* (Aug. 24, 2011) (“PN Comments”). The ABC Plan addresses only usage-based intercarrier compensation charges. There are two types of intercarrier compensation charges: usage and facility charges. The usage charges are those per minute charges, usually composed of rate elements including tandem switching, transport and end office switching, that a terminating carrier charges the originating carrier on a per minute basis. The facility side of intercarrier compensation covers the costs imposed on carriers, usually by local exchange carriers, that force originating carriers to deliver public switched telephone network traffic deep into the terminating carriers’ networks – resulting in a network of tens of thousands of inefficient connections. The facility side of intercarrier compensation also creates revenue sources for the terminating carrier, because the terminating carrier usually requires the originating carrier to use the terminating carrier’s network, thus extracting further rents from the originating carrier in the form of T-1 and other service charges. See Comments of T-Mobile USA, Inc. at 18-19, *Connect America Fund*, WC Docket No. 10-90, *et al.* (Apr. 18, 2011) (“NPRM Comments”).

¹⁵ See PN Comments at 7-8 (increases in incumbent transport rates of almost 70 percent).

¹⁶ See *id.* at 9-11.

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based transport costs on other carriers.¹⁷ The failure of the ABC Plan and other proposals to address fully transport and tandem switching rates thus highlights the need for an IP interconnection regime along the lines proposed by T-Mobile.

C. The Attached Data Is Commercially Sensitive Confidential Information Protected From Disclosure By The *Protective Order* And The Commission's Rules

Pursuant to paragraph 4 of the *Protective Order*, T-Mobile has marked each page of the confidential version of Exhibit A as follows: **CONFIDENTIAL INFORMATION (ADDITIONAL COPYING PROHIBITED) – SUBJECT TO PROTECTIVE ORDER IN CC DOCKET NO. 01-92, WC DOCKET NOS. 05-337, 07-135 AND 10-90, AND GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.** T-Mobile has included the annotation “**ADDITIONAL COPYING PROHIBITED**” pursuant to paragraph 5 of the *Protective Order* in light of the extreme sensitivity of the attached data. T-Mobile is submitting via courier one copy of the confidential version of this filing with the Office of the Secretary, along with an additional copy to be stamped and returned to the courier. Pursuant to paragraph 4 of the *Protective Order*, two copies of the confidential version are being delivered to Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Each page of the redacted version of its submission is marked: **REDACTED – FOR PUBLIC INSPECTION.** This cover letter contains no confidential information and is included (with the same text except for the confidentiality markings) with both the confidential and redacted versions.

The data attached as Exhibit A constitutes trade secrets and/or confidential and proprietary commercial and financial information protected from disclosure under Sections 0.457(d) and 0.459 of the Commission's rules, FOIA Exemption 4 and the *Protective Order*. Paragraph 3 of the *Protective Order* defines “Confidential Information” as “information contained in a Stamped Confidential Document or derived therefrom that is not otherwise available from publicly available sources[.]”¹⁸ The data in Exhibit A is relevant to T-Mobile's ongoing business operations and includes financial information concerning its 2009 net reciprocal compensation costs and its total interstate and intrastate originating and terminating access payments, including transport costs. This type of highly competitively sensitive data is not normally made public by T-Mobile or other members of the wireless industry, and T-Mobile closely guards such information from public disclosure. Disclosure of this type of highly

¹⁷ See NPRM Comments at 17-21.

¹⁸ *Protective Order*, 25 FCC Rcd at 13161 ¶ 3.

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competitively sensitive data would risk revealing proprietary commercial and financial information that is “not routinely available for public inspection.”¹⁹

The information provided above, as well as the following additional reasons for withholding the data in Exhibit A, provide the showing required by Section 0.459(b) of the Commission’s rules.²⁰

Degree to which the information concerns a service that is subject to competition and the manner in which disclosure could result in substantial competitive harm:

As discussed above, the wireless industry remains intensely competitive. Disclosure of closely guarded commercial and financial data relating to T-Mobile’s intercarrier compensation costs would cause substantial competitive harm by allowing competitors to become aware of sensitive trade secrets or commercial and financial information regarding the operation of T-Mobile’s business and the impact of intercarrier compensation costs on its operations. The level of those costs would provide a window into the volume of T-Mobile’s traffic, its customer base and market strategies, which would provide T-Mobile’s competitors with an unfair competitive advantage.²¹

Measures taken to prevent unauthorized disclosure and availability of the information to the public and extent of any previous disclosure to third parties:

T-Mobile has treated and treats the information contained in Exhibit A as highly confidential and has protected it from any public disclosure to parties outside the company and strictly limited its dissemination within the company.²²

Justification of the period during which T-Mobile asserts that the material should not be available for public disclosure:

T-Mobile cannot determine at this time any date by which this information should no longer be considered confidential or would become stale for purposes of the current proceeding

¹⁹ 47 C.F.R. § 0.457.

²⁰ T-Mobile has identified the specific information for which confidential treatment is sought (Section 0.459(b)(1)), the proceeding in which the information is sought and the circumstances giving rise to the submission (Section 0.459(b)(2)), and the degree to which the information is commercial or financial or contains a trade secret (Section 0.459(b)(3)). The material under the following headings in the text satisfies the remaining requirements of Section 0.459(b).

²¹ See 47 C.F.R. §§ 0.459(b)(4), (5).

²² See *id.* §§ 0.459(b)(6), (7).

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and accordingly requests that it be withheld from public disclosure indefinitely. For the foreseeable future, competitors could use the confidential information in Exhibit A to their competitive advantage and to T-Mobile's detriment.²³

Other information that T-Mobile believes may be useful in assessing whether its request for confidentiality should be granted:

Exhibit A should be withheld from public disclosure under FOIA Exemption 4, which shields information that constitutes trade secrets or is commercial or financial in nature obtained from a person outside government and is privileged or confidential.²⁴ T-Mobile requests that the Commission strictly limit distribution of copies of Exhibit A within the Commission on a "need to know" basis and that it be notified immediately of any request by any other person or entity for access to Exhibit A or any portion thereof, either pursuant to the *Protective Order* or otherwise. Finally, in the event that the Commission determines that the data in Exhibit A, or any part thereof, will not be accorded confidential treatment, T-Mobile requests that it be returned to T-Mobile pursuant to Section 0.459(e) of the Commission's rules.²⁵

Please contact the undersigned if there are any questions about this submission or request for confidential treatment.

Very truly yours,



Kathleen O'Brien Ham
Vice President, Federal Regulatory Affairs
T-Mobile USA, Inc.,

Attachment

cc: Lynne Hewitt Engledow (two confidential copies)

²³ See *id.* §§ 0.459(b)(8).

²⁴ See *id.* §§ 0.459(b)(9).

²⁵ *Id.* § 0.459(e).

Exhibit A

REDACTED – FOR PUBLIC INSPECTION

T-Mobile

Intrastate

Originating transport	Rev
	MOU
	Expenses
	MOU
Originating access	Rev
	MOU
	Expenses
	MOU
Total origination charges	Rev
	Expenses
Terminating transport	Rev
	MOU
	Expenses
	MOU
Terminating access	Rev
	MOU
	Expenses
	MOU
Total termination charges	Rev
	Expenses
	Net

Interstate

Originating transport	Rev
	MOU
	Expenses
	MOU
Originating access	Rev
	MOU
	Expenses
	MOU
Total origination charges	Rev
	Expenses
Terminating transport	Rev
	MOU
	Expenses
	MOU

Terminating access	Rev	
	MOU	
	Expenses	
	MOU	
Total termination charges	Rev	
	Expenses	
	Net	
Intra- & interstate		
Totals	Rev	
	Expenses	
	Net	
Reciprocal compensation		
Origination	Rev	
	MOU	
	Expenses	
	MOU	
Termination	Rev	
	MOU	
	Expenses	
	MOU	
Total	Rev	
	Expenses	
	Net	
Facilities		
	Rev	
	Expenses	
	Net	
Total		
	Rev	
	Expenses	
	Net	

Note: All values provided in this Exhibit A are Confidential Information subject to the Protective Order.