

January 8, 2013

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

Re: **Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301.**

Dear Ms. Dortch:

The Communications Workers of America (“CWA”) hereby opposes the objections of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. (collectively, “Applicants”)¹ to the disclosure of their complete January 7, 2013 responses (“Responses”) to the Commission’s Information and Discovery Requests.² The Applicants’ objections lack any legal basis and, if accepted by the Commission, would constitute a dangerous departure from Commission precedent. The Applicants do not have the right to determine what information may or may not be relevant to reviewing parties. The Commission should promptly dismiss the Applicants’ objections and require the Applicants to provide CWA’s outside counsel and consultant immediate access to the Applicants’ complete Responses in accordance with the Protective Orders adopted in this proceeding.³

¹ See Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301 (Jan. 7, 2013) (“Deutsche Telekom/T-Mobile Objection”); Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-301 (Jan. 7, 2013) (“MetroPCS Objection”).

² See Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Dan Menser, T-Mobile License LLC, WT Docket No. 12-301 (Dec. 20, 2012) (“Deutsche Telekom Information Request”); Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Mark Stachiw, MetroPCS Communications, Inc., WT Docket No. 12-301 (Dec. 20, 2012) (“MetroPCS Information Request”).

³ See *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 12-301, Protective Order (Oct. 17, 2012); *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 12-301, Second Protective Order (Oct. 17, 2012).

The Applicants assert that CWA's Comments and Reply Comments focus only on employment-related concerns, and that CWA, therefore, should be granted access only to specific portions of the Responses that the Applicants determine are relevant to employment issues.⁴ The Applicants' position is untenable for policy reasons, and as a practical matter.

First, the Protective Orders adopted in this proceeding do not allow the Applicants to choose what information is or is not relevant to a reviewing party's concerns. To the contrary, the Protective Orders grant reviewing parties access to all confidential and highly confidential information filed in this proceeding as long as the relevant procedures are followed.⁵ This is for a very good reason: permitting the Applicants to pre-determine what information is relevant for reviewing parties would directly contradict the Commission's policy objectives of public, transparent proceedings. In adopting the Protective Orders, the Commission was "mindful of the right of the public to participate in this proceeding in a meaningful way."⁶ Letting the Applicants choose what others can review undermines this objective.

Moreover, the Commission explicitly concluded that the specific procedures adopted in the Protective Orders "give appropriate access to the public while protecting [confidential and highly confidential information] from improper disclosure."⁷ CWA's outside counsel and consultant have met these requirements.

And, from an administrative resource perspective, it would be an enormous burden for Commission staff to have to parse through these types of objections in each and every proceeding. As illustrated by the current objections raised by the Applicants, any party could manipulate the public review process to try to delay or discourage critical evaluation by interested members of the public by raising any objections to any question or question subpart. As a result, parties such as CWA are forced to expend their limited resources responding to such objections, and are forced to reveal strategic thinking regarding whether and how Applicant responses may be relevant to particular arguments. The Commission staff has to divert its limited resources away from evaluating a proposed transaction, to instead reviewing and evaluating objections related to individual questions and subparts of questions, reviewing and evaluating responses to those objections, meeting with interested parties in the course of their evaluation, making initial internal decisions as to how they intend to rule on the various objections, coordinating internally with the various bureaus and offices

⁴ See Deutsche Telekom/T-Mobile Objection at 1; MetroPCS Objection at 1. According to the Applicants, CWA is entitled only to their responses to Item 7(f) of the Deutsche Telekom Information Request and Item 4 of the MetroPCS Information Request. See also Comments of the Communications Workers of America, WT Docket No. 12-301 (Nov. 26, 2012) ("CWA Comments"); Reply Comments of the Communications Workers of America, WT Docket No. 12-301 (Dec. 17, 2012) ("CWA Reply Comments").

⁵ See Protective Order, ¶ 6; Second Protective Order, ¶¶ 8-9.

⁶ Protective Order, ¶ 1; Second Protective Order, ¶ 1.

⁷ Protective Order, ¶ 1; Second Protective Order, ¶ 1.

before making a final internal determination, and drafting and issuing an order related to these determinations. Then, any party may appeal that determination, and the same review and evaluation process will be repeated. These administrative burdens are further compounded when the Commission is evaluating multiple transactions simultaneously. In the meantime, the shot-clock is continuing to run, disadvantaging parties that are being denied their right to review the information being put before the Commission by the Applicants, and at the same time putting increased pressure on the transaction staff who must not only evaluate such objections, but also evaluate the underlying proposed transaction. For administrative burden reasons alone, it makes sense that the Commission has never allowed such a process.

Second, even assuming for the sake of argument that CWA is limited to reviewing only information that bears a relationship to the issues raised in its Comments and Reply Comments, other responses to the Commission's Information and Discovery Requests – not merely Item 7(f) of the Deutsche Telekom Information Request and Item 4 of the MetroPCS Information Request – are relevant to these issues.⁸ For example:

- Item 1 of both the Deutsche Telekom Information Request and the MetroPCS Information Request asks the Applicants to provide organizational charts and personnel directories for each respective company as a whole and each facility or division. Obviously, a pre-transaction employment snapshot is relevant to an evaluation of the proposed transaction's employment impact.
- Item 9 of the Deutsche Telekom Information Request and Item 6 of the MetroPCS Information Request address the Applicants' claim that "MetroPCS customers will experience improved services and options..." and that "current MetroPCS customers will receive the benefits of an expanded and enhanced network..." In connection with this topic, the Commission requests information regarding extension of service to new metropolitan areas, and other information in connection with expansion plans. The responses are relevant to employment opportunities and service quality.
- Item 7 of the Deutsche Telekom Information Request requests information regarding the Applicants' projected post-transaction synergies. All subparts of this item – not only 7(f) – are relevant to the employment and service quality concerns raised by CWA.

The Applicants' responses to these and other additional items in the Commission's Information and Discovery Requests are potentially relevant to the concerns raised by CWA. CWA's outside counsel and consultant must have the opportunity to inspect the Applicants' complete Responses in order to determine what information is relevant to its own concerns.

⁸ CWA has addressed both employment issues, as well as concerns regarding service quality. *See, e.g.*, CWA Comments at 5; CWA Reply Comments at 2.

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The Commission should promptly dismiss the Applicants' objections and require the Applicants to provide CWA's outside counsel and consultant immediate access to their complete Responses. Timing is particularly critical as the Commission, as of today, is already on day 74 of its 180-day shot-clock for review of the proposed transaction. To the extent there is any delay as a result of the Applicants' objections, CWA requests that the Commission stop the shot-clock.

Respectfully submitted,



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