



601 Pennsylvania Ave., NW  
Suite 800  
Washington, DC 20004  
202-654-5900

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**VIA ELECTRONIC FILING**

Sen. Patrick J. Leahy  
United States Senate  
Committee on the Judiciary  
Washington, DC 20510-6275

Dear Senator Leahy:

Thank you for the opportunity to testify at the Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights hearing entitled, "An Examination of Competition in the Wireless Market," which was held on February 26, 2014.

In your letter of March 11, 2014 you attached written questions from Senators Klobuchar and Franken that follow up on my testimony. T-Mobile USA, Inc.'s ("T-Mobile's") responses to these questions appear below.

**Senator Klobuchar**

**Question 1.** *For smaller networks data roaming agreements are critical to commercial success. A small, regional carrier won't attract many customers if their mobile phones only work in the small geographic area where the company has cell towers. When customers travel outside their service area, their phones must be able to "roam" on competitors' networks. In 2011, the FCC released rules mandating that carriers give competitors access to their networks on "commercially reasonable terms." Roaming has been a major issue for small carriers, but how about a larger carrier like T-Mobile? What are your views on the FCC rulemaking that requires "commercially reasonable" prices?*

Obtaining access to data roaming on commercially reasonable terms is critical to T-Mobile's ability to provide customers with seamless access to nationwide data coverage and effectively compete in today's marketplace, in which wireless service has become an essential part of everyday life for customers who rely on ubiquitous networks. Accordingly, T-Mobile has been a strong supporter of the Federal Communications Commission's ("FCC's") rules requiring carriers to provide data roaming on commercially reasonable terms and conditions. In our comments in the FCC proceeding that led to the adoption of those rules in 2011, T-Mobile expressed concern that absent an FCC-mandated data roaming obligation, AT&T and Verizon would have an incentive to deny data roaming services to smaller carriers, or to allow data roaming only on unreasonable terms and conditions.

Roaming has been a major issue for small and regional carriers, but nationwide carriers like T-Mobile also continue to have difficulty obtaining data roaming agreements from the two largest wireless carriers on commercially reasonable terms. T-Mobile faces especially difficult challenges in reaching commercially reasonable data roaming agreements because our legacy network is based on GSM, a technology of which AT&T is the dominant provider and that Verizon utilizes in only a handful of legacy markets. Our data roaming negotiations with AT&T and, to a much lesser extent, Verizon have been protracted and drawn out affairs during which the two largest wireless carriers seek to place unreasonable terms and conditions on our access to data roaming services. Because the networks of other major U.S. carriers utilize CDMA technology, T-Mobile has no option other than to negotiate with AT&T and (to a lesser extent) Verizon. Perhaps in recognition of this reality, these carriers have sought to charge T-Mobile exorbitant rates for data roaming that cannot be characterized as commercially reasonable under any industry standard.

Moreover, the utility of roaming agreements is limited if carriers are unable to provide their customers with handsets that can operate on the spectrum used by other carriers' networks. T-Mobile was therefore a vigorous champion at the FCC for the application of interoperability requirements for handsets operating in the 700 MHz band, and will continue to fight to ensure that all future mobile devices can roam seamlessly between our network and the networks of other carriers.

The two largest wireless carriers should not be allowed to continue their practice of making it difficult, time-consuming and expensive to secure commercially reasonable rates for data roaming. Today's consumers expect high-speed broadband coverage everywhere they go, and active FCC oversight and aggressive enforcement of its roaming rules is needed to ensure that all wireless carriers have access to data roaming services.

### **Senator Franken**

**Question 1.** *T-Mobile's "uncarrier" strategy has been a clear win for consumers, and a valuable lesson in why the market needs antitrust enforcement. When I opposed AT&T's failed bid to purchase T-Mobile three years ago, I said that T-Mobile was an important maverick player in the industry. T-Mobile's strategy over the past year is freeing consumers from the shackles of harsh contracts, reducing prices, and it's forcing the other carriers to compete for the first time in at least a decade. Why did T-Mobile embark on this "uncarrier" strategy now? What prevented T-Mobile from doing this three years ago?*

T-Mobile was in a very different position three years ago than we are today. There are a couple of reasons why we did not initiate our "Un-carrier" strategy prior to 2013. First, in 2011 AT&T attempted, and then abandoned, a takeover of the company, after facing opposition from the FCC and Department of Justice. That takeover attempt, understandably, consumed a great deal of the attention of T-Mobile's senior management at the time. Second, we experienced a setback in our relationship to Apple, and specifically a delay in acquiring the iPhone. In 2012, John Legere joined T-Mobile as our CEO, bringing new vision and energy to the company, inviting significant consumer input regarding our service offerings and the customer experience, sitting in

on calls to our service centers and using social media to better engage our customers. Based on this consumer feedback, we launched our “Un-carrier” campaign.

T-Mobile’s rebranding as the “Un-carrier” has been very successful, and we are pleased that consumers have recognized the value we bring to the wireless marketplace. However, as noted in my written testimony, T-Mobile’s subscriber base is still nowhere near that of AT&T or Verizon, and their greater subscriber numbers give these carriers significant access-to-capital and economy-of-scale advantages. Our smaller scale also yields lower profit margins, smaller cash flows, and greater challenges in funding capital expenditures and bold, disruptive innovations. Our “Un-carrier” campaign, while popular with consumers, is costly. While we remain committed to addressing the real needs of wireless consumers and competing aggressively in the market for as long as we can, if we are unable to increase significantly our overall scale, our “Un-carrier” position may not be sustainable over time.

**Question 2.** *Although T-Mobile’s business strategy has clearly benefited consumers, I am also concerned about T-Mobile’s respect for employee rights. Over the past 12 years, the National Labor Relations Board has issued multiple complaints and settlements regarding allegations that T-Mobile has terminated, harshly punished, and inappropriately monitored employees for union activity. How does your company plan to ensure compliance with the National Labor Relations Act going forward?*

T-Mobile works hard to provide rewarding career opportunities and competitive pay and benefits to our employees, and to strengthen our ‘open door’ culture of trust and respect. We work equally hard to diligently follow all applicable U.S. workplace laws and regulations. T-Mobile respects the rights of unions to exist and recognizes and respects employees’ rights to organize, or to refrain from organizing.

In furtherance of its campaign against T-Mobile, which has included a litany of misstatements and falsehoods, the Communication Workers of America (“CWA”) has filed numerous charges with the National Labor Relations Board (“NLRB”). The vast majority of these charges have been dismissed by the NLRB or withdrawn by the union. Some of the charges have been settled. However, this does not imply wrong-doing on the part of T-Mobile. Like most employers, T-Mobile sometimes settles legal matters to avoid the cost and distraction of defending against the charges. The settlements into which T-Mobile has entered specifically provide that they do not constitute any admission of unlawful or inappropriate conduct. While the NLRB has issued complaints in a small number of cases that are currently pending, it has never found after a hearing that T-Mobile violated the National Labor Relations Act (“NLRA”).

Going forward, T-Mobile will continue our practice of requiring that all supervisors and managers follow the NLRA, and will maintain our training program to ensure that they do so.

T-Mobile provides rewarding career opportunities for 38,000 employees across the United States. To monitor the satisfaction of our employees, we retain an independent third party to conduct a regular Employee Perspectives Survey that ensures the anonymity of all respondents, and is based on scientific analysis and statistical significance. The most recent such survey

shows that over 85% of current T-Mobile employees say they are proud to work at T-Mobile, and 80% of employees would recommend working at the company to their friends and family. These results belie the allegations made by the CWA and place T-Mobile in the top 25% of all U.S. companies surveyed. Our work sites are routinely recognized as great places to work, and, as mentioned in my written testimony, we have been cited as one of the best employers for military veterans and their spouses, one of the twenty best places for college graduates to work, and one of the “World’s Most Ethical Companies” as awarded by the Ethisphere Institute for the fifth straight year.

**Question 3.** *We need a comprehensive strategy for fighting mobile device theft, which is a growing problem in my state. Part of that strategy is the “blacklist” of stolen phones, which the wireless industry created in cooperation with the Federal government. But the black market for stolen phones extends beyond state and national boundaries. The black market is global, but the blacklist is not. What role did your company play in the creation of the blacklist, and how do you think it can be improved?*

T-Mobile is committed to working to end the risks posed to our customers by device theft and we agree that a comprehensive strategy, employing numerous tools, is required. For this reason, we currently participate in a public/private initiative led by the FCC and the industry’s main trade association, CTIA, which aims to mitigate the damage caused by cell phone theft. As part of that initiative, we first established connectivity in October 2012 to the GSMA’s Global IMEI Database (“Database”) (which we understand is international in scope), where stolen devices are listed on a centralized database in an effort to prevent their use on another carrier’s GSM/LTE network. Additional wireless carriers, both within the U.S. and abroad, have since signed up for the Database – with each of the four largest national U.S. carriers reporting connectivity by the end of 2013. Although our work with the Database is ongoing and it is too early to reach any final conclusion about the effectiveness of this initiative, as widespread adoption continues we believe this program may potentially serve as an effective deterrence for handset theft, in the U.S. and abroad. The GSMA, with its international membership and deep industry ties and experience, is an appropriate body for administering this important tool in the fight against handset theft.

Another key component of our comprehensive strategy to deter handset theft involves software that is currently available for all handsets sold by T-Mobile. In partnership with our vendor Lookout, Inc., we offer our customers a variety of features that protect their handsets against theft. Currently, Lookout’s Automatic App Security comes preloaded on many of our devices, securing smartphones and tablets right out of the box at no cost to the consumer. Lookout’s pre-installed service allows T-Mobile customers to locate and lock a stolen or missing wireless device, to generate a loud alert to locate the device, and to remotely wipe personal data from the device.

In addition, T-Mobile continues to explore other tools and technologies that may help deter mobile device theft, including a “kill switch” type of solution. Our goal is to empower our customers by enabling an effective and usable solution that deters theft and helps them to better

protect their devices. To that end, we are working with industry, law enforcement and others on additional measures that can be taken to address this problem.

T-Mobile welcomes the opportunity to respond to your colleagues' questions, and looks forward to working with you on the important issue of wireless competition.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

Kathleen O'Brien Ham  
Vice President, Federal Regulatory Affairs

cc     Senator Amy Klobuchar  
       Senator Al Franken