

American Federation of Labor and Congress of Industrial Organizations



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January 14, 2016

Mr. Srikant M. Datar
Audit Committee Chair
Board of Directors
T-Mobile US, Inc.
c/o Corporate Secretary
12920 SE 38th Street
Bellevue, Washington 98006

Dear Mr. Datar:

I am writing you in your capacity as Chair of the Audit Committee of the T-Mobile US, Inc. ("T-Mobile") Board of Directors regarding T-Mobile's use of confidentiality agreements with its employees who have internally reported potential wrongdoing. These confidentiality agreements may improperly deter T-Mobile employees from acting as whistleblowers to government entities. I urge the Audit Committee to reform T-Mobile's use of confidentiality agreements for internal investigations, and to amend T-Mobile's Code of Business Conduct and Whistleblower Protection Policy to inform all T-Mobile employees of their rights as a whistleblower.

The AFL-CIO is a shareholder of T-Mobile and a longstanding advocate for strong safeguards to protect employee whistleblowers. As you know, T-Mobile's Audit Committee is responsible for T-Mobile's legal and regulatory compliance, T-Mobile's internal whistleblower procedures, and T-Mobile's Code of Business Conduct for all employees. A robust whistleblower program is an integral tool for deterring, preventing, and detecting fraud. This includes the rights of whistleblowers to report suspected wrongdoing to appropriate governmental entities when they believe their company's internal whistleblowing process has inadequately responded to their concerns.

T-Mobile's practice of requiring employees to sign confidentiality agreements as part of T-Mobile's internal investigation process recently came to light in an administrative proceeding of the National Labor Relations Board. On August 3, 2015, an

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NLRB Administrative Law Judge issued a decision finding that confidentiality agreements that T-Mobile had required its employees to sign at its South Carolina and Maine facilities violated the National Labor Relations Act because the confidentiality agreements unlawfully prohibited employees from disclosing information about pending investigations to anybody besides T-Mobile's investigators.¹ T-Mobile did not file any exceptions to the decision with the NLRB and therefore the decision is final.

As described by this decision, T-Mobile's corporate investigations and human resources departments asked T-Mobile employees to sign confidentiality agreements as part of T-Mobile's internal investigation procedure. Under the terms of these agreements, T-Mobile employees are required to keep confidential all information they provide to T-Mobile's internal investigators during the investigation. The terms also warn employees that refusal to cooperate in any investigation may result in discipline up to and including dismissal. In other words, T-Mobile employees are gagged from discussing pending investigations with anyone except T-Mobile's internal investigators. The text of one of these confidentiality agreements is attached as Exhibit A.

The terms of these T-Mobile confidentiality agreements appear to conflict with federal whistleblower protections for reporting securities law violations. As you are aware, the Sarbanes-Oxley Act protects employees of publicly traded companies from retaliation for providing information regarding securities fraud to a federal regulatory agency, law enforcement agency, or member of Congress. These whistleblower protections were enhanced by the Dodd-Frank Act by adding Section 21F to the Securities Exchange Act of 1934. Pursuant to this provision, the Securities and Exchange Commission ("SEC") adopted Rule 20F-17(a) that prohibits "any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement...with respect to such communications."

SEC Chair Mary Jo White has made enforcement of Rule 20F-17(a) a high priority for the SEC's whistleblower program.² Last year, the SEC opened an inquiry into company confidentiality agreements and whether they improperly gag corporate whistleblowers.³ On April 1, 2015, the SEC brought its first enforcement action under

¹ *T-Mobile USA, Inc. and Communications Workers of America, AFL-CIO*, Cases No. 01-CA-142030 and 10-CA-133833, available at <https://www.nlr.gov/case/10-CA-133833>.

² Letter from Mary Jo White, Chair, U.S. Securities and Exchange Commission to Maxine Waters, Ranking Member, Committee on Financial Services, U.S. House of Representatives (January 5, 2015).

³ *SEC Probes Companies' Treatment of Whistleblowers*, The Wall Street Journal, February 25, 2015.

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Rule 20F-17(a) when it charged KBR Inc. for using improperly restrictive language in its confidentiality agreements as part of its internal investigation procedure.⁴ KBR's confidentiality agreement form contained the following restrictive terms that are similar to the language used in the T-Mobile confidentiality agreements:

I understand that in order to protect the integrity of this review, I am prohibited from discussing any particulars regarding this interview and the subject matter discussed during the interview, without the prior authorization of the Law Department. I understand that the unauthorized disclosure of information may be grounds for disciplinary action up to and including termination of employment.

Although the matters subject to internal investigation in the NLRB Administrative Law Judge decision did not encompass securities fraud, neither did the SEC's enforcement action against KBR. Rather, the restrictive terms of KBR's confidentiality agreements were deemed to violate Rule 20F-17(a) because they had the potential of gagging future whistleblowers. In addition paying the SEC a \$130,000 penalty, KBR agreed to inform its employees who had previously signed confidentiality agreements of their rights as whistleblowers. KBR also promised to amend its confidentiality agreement form by adding the following new language:

Nothing in this Confidentiality Statement prohibits me from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. I do not need the prior authorization of the Law Department to make any such reports or disclosures and I am not required to notify the company that I have made such reports or disclosures.

For these reasons, I urge the Audit Committee to investigate T-Mobile's use of confidentiality agreements for internal investigations and to take corrective action. T-Mobile should amend the terms of its confidentiality agreements to explicitly permit communications with governmental entities. T-Mobile employees who have previously signed confidentiality agreements should be informed that they are not prohibited from contacting governmental entities. Finally, I urge T-Mobile to amend its Code of Business Conduct and Whistleblower Protection Policy to affirmatively state that T-Mobile employees are permitted to contact government entities as whistleblowers.

⁴ In re KBR, Inc., Exchange Act Release No. 74619 (Apr. 1, 2015).

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I look forward to your response. If the AFL-CIO can be of further assistance, please contact Brandon Rees at (202) 637-5152 or brees@aficio.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'HSC', is placed over a light gray rectangular background.

Heather Slavkin Corzo
Director, Office of Investment

HSC/sdw
opeiu #2, afl-cio

Attachment

cc: Andrew Ceresney, Director, SEC Division of Enforcement
Sean McKessy, Chief, SEC Office of the Whistleblower

EXHIBIT A

“Notice and Acknowledgement of Duty to Cooperate and Confidentiality”

You have been asked to provide information in connection with an investigation being conducted by the Corporate Investigations Department of T-Mobile. The Corporate Investigations Department is part of the Legal Department and is charged with investigating certain types of matters. Our job is to be a fact finder. We are unbiased and objective. We are not the decision makers with regard to the outcomes of an investigation.

We are meeting with you because an allegation of inappropriate conduct has been received by our team and we believe you have information that is relevant to the investigation. We are required to investigate this allegation, and it may be reportable to DT, The Compliance Committee, the TMUS Audit Committee, the VP of Legal Affairs and Compliance and/or TMUS management. In some cases, we are required by law to investigate these matters.

Employees must fully cooperate in internal investigations, including providing complete, truthful and accurate information and written statements upon request. An employee's refusal to cooperate in any investigation may result in forfeiture of good standing, and/or may result in performance improvement action up to and including dismissal.

To ensure the integrity of investigations, employees should maintain the confidentiality of the names of the employees involved in the investigations, whether as complainants, subjects or witnesses, throughout the pendency of this investigation, and you should only disclose such information to T-Mobile Corporate Investigators, Human Resources personnel or counsel for T-Mobile, unless permitted by law. You should keep confidential all communications between you and the Corporate Investigator(s) concerning this matter throughout the pendency of this investigation unless permitted by law. This includes all questions and answers during this interview, any written statement that you provide to the investigator(s), and all other information or documents provided to the investigator(s) in connection with this matter.

You should provide all documents, data and other information requested by the Corporate Investigator(s) and should not attempt to destroy, alter or conceal any such information.

Conduct that interferes with, undermines, impedes or is otherwise detrimental to any internal investigation is prohibited. Additionally, T-Mobile policy prohibits retaliation against any employee who brings a complaint in good faith or against any employee who participated in an investigation. Please note that nothing in this Notice and Acknowledgement impacts your rights to discuss terms and conditions of employments as protected by law or as otherwise provided in T-Mobile's Employee Handbook and Code of Business Conduct. By signing below, you acknowledge that (1) you have read this document, understand it and agree to adhere to it; and (2) failure to adhere to the duties set forth above may cause harm to T-Mobile and subject you to performance improvement action up to and including dismissal.

You will be provided with a signed copy of this document.