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Diane Cornell
Special Counsel, Office of the Chairman
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Federal Communications Commission Reform

***In the Matter of Amendment of the Commission's* Ex Parte *Rules and Other Procedural Rules*, CG Docket No. 10-43**

Dear Ms. Cornell:

In his first blog post upon joining the Federal Communications Commission (the "Commission"), Chairman Wheeler announced that improving Commission processes was one of his top priorities.[1] T-Mobile USA, Inc. ("T-Mobile")[2] supports this effort and the subsequent request for public comment on how the Commission can improve its efficiency.[3] Adopting robust requirements to ensure disclosure of the real parties-in-interest behind comments filed in Commission proceedings will promote more informed decision-making without imposing an undue administrative burden on commenting parties.

Participatory democracy should rest on a foundation of full, open and honest communication with the public. Requiring greater transparency in Commission rulemaking proceedings will allow the public to better evaluate the true level of support for a proposal and will help the Commission distinguish novel perspectives from repetitious or duplicative filings prepared and

[1] Tom Wheeler, Chairman, Federal Communications Commission, *Opening Day at the FCC: Perspectives, Challenges, and Opportunities* (Nov. 5, 2013), *available at* http://www.fcc.gov/blog/opening-day-fcc-perspectives-challenges-and-opportunities (last accessed Dec. 20, 2013).

[2] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[3] Diane Cornell, Special Counsel, Office of the Chairman, Federal Communications Commission, *A Call for Input: Improving Government Efficiency at the FCC* (Nov. 18, 2013), *available at* http://www.fcc.gov/blog/call-input-improving-government-efficiency-fcc (last accessed Dec. 20, 2013).

filed by one organization or company, but with the financial or administrative support of another party to the proceeding.

As the Commission has recognized, many parties use docketed proceedings to obtain letters and materials of support for their position from groups and individuals they have association with financially and this is not disclosed under the current rules.[4] Indeed, the Commission expressly stated that it would serve the public interest to have a disclosure requirement and sought comment on several possible models,[5] including Supreme Court Rule 29.6,[6] Rule 26.1 of the Circuit Rules for the D.C. Circuit,[7] and the Lobbying Disclosure Act.[8]

Hundreds of commenters wrote to support such additional disclosure requirements, though some advocated for different disclosure standards than proposed by the Commission. For example, Free Press argued in favor of "disclosure by filing organizations of material conflicts, which arise with the receipt of substantial or targeted monetary contributions as well as targeted non-monetary contributions made by an interested party in Commission proceedings."[9] The Media Access Project similarly promoted "requiring parties which receive substantial contributions for the primary purpose of advocating on a particular matter under consideration at the FCC to disclose the identity of the contributor. Furthermore, a party should be required to disclose if it accepts a substantial contribution in exchange for agreeing to submit a filing in which the funding entity contributed to the substantive content."[10]

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[4] *Amendment of the Commission's* Ex Parte *Rules and Other Procedural Rules*, GC Docket No. 10-43, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-11, ¶ 80 (rel. Feb. 2, 2011) ("R&O and FNPRM").

[5] *Id*. ¶¶ 80, 82.

[6] *See* SUP. CT. R. 29.6 (requiring any nongovernmental corporation filing with the Supreme Court to disclose its parent corporations and listing any publicly held company that owns 10 percent or more of the corporation's stock and requiring any party filing an amicus brief to disclose whether a counsel for a party authored the brief in whole or in part or whether such counsel or a party funded the preparation or submission of the amicus brief); R&O and FNPRM ¶ 82; *Amendment of the Commission's* Ex Parte *Rules and Other Procedural Rules*, GC Docket No. 10-43, Notice of Proposed Rulemaking, FC 10-31, ¶ 28 (rel. Feb. 22, 2010) ("NPRM").

[7] *See* D.C. CIR. R. 26.1 (requiring any corporation, association, joint venture, partnership, syndicate or other similar entity appearing as a party or amicus curiae in any proceeding to disclose all parent corporations and any publicly held company that has a 10 percent or greater interest in the entity and to state the entity's nature and purpose as relevant to the litigation); R&O and FNPRM ¶ 82; NPRM ¶ 28.

[8] *See* 2 U.S.C. § 1603(b) (requiring registrants to disclose their clients and any organization that contributes more than $5,000 to the registrant's lobbying activities in any single quarterly period); R&O and FNPRM ¶ 82; NPRM ¶ 28.

[9] Comments of Free Press, GC Docket No. 10-43, at 7 (June 16, 2011).

[10] Comments of Media Access Project, GC Docket No. 10-43, at 2 (June 16, 2011).

The disclosure standards proposed by the Commission, Free Press, and the Media Access Project represent major improvements in the process that the Commission should adopt. At the same, these proposals would still leave substantial room for interested parties to coordinate "astro-turf" campaigns where a single company or organization supplies financial support to other organizations to give the impression of widespread support for a particular proposal. For example, astro-turf coordinators would be able to use tactics including interlocking personnel, charitable donations to affiliated groups, and significant supplier relationships to generate favorable comments that may distort public debate.

Building on the proposals in the record, the Commission should consider additional reforms to the *ex parte* rules that would require disclosure of:

- Contributors to the filer, or any of its affiliated entities, that provide contributions of any kind earmarked to support broadly defined advocacy activities, including, but not limited to, doing research, conducting tests, writing papers, performing studies, holding conversations, hosting meetings, submitting comments, or interacting with the press;

- Contributors to the filer, or any of its affiliated entities, that provide contributions of any kind that exceed $150,000 or 10% of that organization's budget, whichever is smaller. Examples of such contributions would include direct donations, sponsorships, exhibit space, in-kind contributions, endowed chairs, and charitable donations made in the name of or for the benefit of the filer;

- If the filer is a coalition or association, all members of the coalition or association that have a material interest in the proceeding;

- If the filer is a supplier of telecommunications products, any single entity or affiliated group of entities that accounts for 33% or more of their annual sales in the United States;

- If the filer is submitting an article, study, test result, paper, or other such substantive work product from a third party, any financial support to that third party or its affiliated entities, any employment history or previous independent contractor relationship with that third party, and other significant honors, affiliations, or relationships with that third party or its affiliated entities; and

- Current positions and affiliations of all members of the filer's Boards of Directors and senior management.

Adopting these disclosure requirements will not impose an undue burden on filers relative to the benefits of greater openness and accountability. Many – if not most – filers would have nothing disclose. For those that have received financial or in-kind support from third parties, moreover,

the information needed for the disclosures should be readily at hand as the proposed disclosure requirements seeks to identify only significant supporters. For example, coalitions should have no difficulty identifying their own members and no organization will struggle to identify contributors that provide 10% of the organization's budget.

To reduce administrative burdens and improve the process, limited exemptions to the general rule of disclosure of real-parties-in-interest should apply. For example, the Commission should consider adopting:

- A *de minimis* exception for contributions below $10,000;
- An exception for all monetary or in-kind donations that are made at generally solicited levels to support a conference, convention, or other similar event;
- A process for requesting confidentiality to ensure that filers for whom the disclosure of real-party-in-interest information might reasonably be expected to lead to economic harm have the ability to file without disclosure.

The above proposals are intended to spark discussion regarding how to best promote transparency and fairness in the Commission's *ex parte* proceedings. T-Mobile urges that the Commission adopt robust disclosure requirements and looks forward to a strong debate that works towards finalizing a new disclosure standard.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket.

Respectfully submitted,

/s/ Trey Hanbury

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