

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

T-MOBILE USA, INC.

and

Case 14-CA-106906

**COMMUNICATIONS WORKERS OF
AMERICA**

T-MOBILE USA, INC.

and

**Cases 28-CA-106758
28-CA-117479**

**COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 7011, AFL-CIO**

METROPCS COMMUNICATIONS, INC.

Case 02-CA-115949

and

**COMMUNICATIONS WORKERS OF
AMERICA**

T-MOBILE USA, INC.

**Cases 28-CA-128653
28-CA-129125
10-CA-128492**

And

**COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

**CHARGING PARTY'S OPPOSITION TO RESPONDENT'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Pursuant to Rule 102.46 (d)(1) of the Rules and Regulations of the National Labor Relations Board (“NLRB”), Charging Party Communications Workers of America (“CWA” or “Union”) and CWA Local 7011 file this opposition to Respondent T-Mobile USA, Inc.’s (“T-Mobile” or “Company”) exceptions to the Decision of Administrative Law Judge Christine E. Dibble (“ALJ”).

I. STATEMENT OF THE CASE

On March 18, 2015, the ALJ issued a ruling finding that T-Mobile and, in some cases, MetroPCS Communications, Inc. (“MetroPCS”), a corporation affiliated with T-Mobile, had maintained, in various documents and forms, a myriad of unlawful work rules that employees were required to obey in violation of Section 7 of the Act . Specifically, the ALJ found unlawful:

- a rule that states that the employee handbook is a proprietary and confidential document which may not be disclosed to third parties without T-Mobile’s prior written consent (ALJD 8:21-36)¹;
- a rule that requires employees to maintain the confidentiality of internal investigations or suffer discipline (ALJD 17:32-35);
- a policy which provides that the only method of addressing specific wage or rest/meal period disputes is through the Company, and which threatens discipline for failure to adhere to this policy (ALJD 21:10-19; 22:30-35, 43-44)
- a requirement that employees refer all media inquiries to the Company (ALJD 18:45-47);
- a rule that prohibits the use of Company information or communications resources in “disruptive” or “offensive” ways, or which are “harmful to morale” (ALJD 27: 4-6);

¹ The Decision will be cited as “ALJD [page number]:[line numbers].”

- a policy that prohibits any use of Company-owned electronic devices and systems that advocates, disparages or solicits for political causes or non-Company related “outside organizations” (ALJD 27:32-41; 28:11-14);
- a policy that prohibits permitting “non-approved individuals” to access Company information without prior written Company approval (ALJD 29:32-33);
- a rule that classifies employee wage and salary information as confidential (ALJD 9:1-22, 32-38);
- two separate rules that prohibit disclosure of employee contact information (ALJD 12:34-36 and ALJD 15:6-9, 27-28);
- a rule that prohibits employees from making “detrimental” comments about the Company (ALJD 30:12-14);
- a rule that prohibits arguing with co-workers or supervisors, failing to treat others with respect and failing to demonstrate “appropriate teamwork” (ALJD 30:26-30); and
- a rule that requires employees to comply with unlawful work rules and to report to the Company those who do not comply (ALJD 31:10-12).

In its exceptions, T-Mobile challenges only two of the ALJ’s findings. First, it claims that the ALJ wrongly found that a paragraph of the “Commitment to Integrity” section of the Company’s Code of Business Conduct violates Section 8(a)(1) of the Act, although it doesn’t take issue with her finding that the previous paragraph of that same provision was unlawful. Second, it takes issue with the ALJ’s finding that Subsection 4.4 of the Company’s Acceptable Use Policy violates the Act.

II. STATEMENT OF FACTS

The ALJ reached her Decision upon a stipulated record, titled a “Stipulation of Record Concerning Policy Allegations and Submission to Administrative Law Judge.”² The parties stipulated, *inter alia*, that the written policies in question were, or are, maintained at all Company locations in the United States of America, and Puerto Rico. (Stip. ¶ 16).

The two work rules at issue in the Company’s exceptions are as follows:

Code of Business Conduct – Commitment to Integrity.

The “Commitment to Integrity” section of the Code of Business states:

[T]he acts listed below are unacceptable.

- Making slanderous or detrimental comments about the Company, its customers, the Company’s products or services, or Company employees.

- Arguing or fighting with co-workers, subordinates or supervisors; failing to treat others with respect; or failing to demonstrate appropriate teamwork.

(Stip. Tab 2 at p. 13).

Acceptable Use Policy – Information or Communication Resources.

Subsection 4.4 of the “Acceptable Use Policy” states,

Users may not permit non-approved individuals access to information or information resources, or any information transmitted by, received from, printed from, or stored in these resources, without prior written approval from an authorized T-Mobile representative.

(Stip. Tab 6 at p. 3 (Section 4, Paragraph 4)).

² The Stipulation, found at Joint Exhibit 2, shall hereinafter be referred to as “Stip. [paragraph number]” or “Stip. Tab __ at p. __.”

III. ARGUMENT.

A. The Administrative Law Judge Applied the Correct Legal Standard.

As correctly set out by the ALJ, the framework for determining whether a work rule chills the exercise of Section 7 rights is provided in *Lutheran Heritage Village – Livonia*, 343 NLRB 646, 646-47 (2004). If the rule does not explicitly restrict protected activities, a violation will be found when either “(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.” *See also Lafayette Park Hotel*, 326 NLRB 824, 825-27 (1998). The ALJ correctly found that employees would reasonably construe the excepted provision of the “Commitment to Integrity,” and the language challenged in Subsection 4.4 of the “Acceptable Use Policy,” to unlawfully prohibit Section 7 rights.

B. The Administrative Law Judge Correctly Found that the Challenged Provisions of T-Mobile’s “Commitment to Integrity” Section of its Code of Business Conduct Violates Section 8(a)(1) of the Act.

The ALJ found that T-Mobile’s Code of Business Conduct’s “Commitment to Integrity” policy unlawfully chills the exercise of employees’ Section 7 rights. In the first provision challenged by the Charging Party and Counsel for the General Counsel, T-Mobile prohibits “detrimental comments about the Company.” (Stip. Tab 2 at p. 13). The ALJ found that provision unlawful on its face “because employees would reasonably construe the language as prohibiting Section 7 protected activity.” (ALJD 30:12-14). T-Mobile did not file exceptions to this finding, thereby admitting that the provision is unlawful.

In the subsequent paragraph, the “Commitment to Integrity” prohibits “[a]rguing ... with co-workers ... or supervisors; failing to treat others with respect; or failing to demonstrate appropriate teamwork.” (Stip. Tab 2 at p. 13). The ALJ found that:

[T]he second paragraph at issue violates the Act because it is so ambiguous that employees would reasonably construe the language as prohibiting Section 7 protected activity. Based on the plain language of the provision, employees could reasonably interpret it to prohibit heated discussions and arguments about terms and conditions of employment, arguments in support of or against unionization, or a myriad of other protected subjects. Moreover, there is no context for one to understand the Respondent's definition of "failing to treat others with respect" or "failure to demonstrate appropriate teamwork." The language in this rule is nearly identical to conduct rules which the Board, in other cases, has found to be so ambiguous and overbroad that employees would reasonably interpret the rule to prohibit Section 7 protected activities.

(ALJD 30:26-34).

Relying on a hyper-technical reading of one sentence of her Decision, and ignoring the larger context of the Company's repeated unlawful conduct throughout its work rules and its courtesy rules in particular, T-Mobile wrongly argues that the language at issue does not violate Section 8(a)(1) of the Act. T-Mobile also challenges three cases in a series of citations provided by the ALJ, failing to address additional cases that support her decision on this issue.

The ALJ correctly found that both challenged paragraphs of the "Commitment to Integrity" violate the Act. Prohibiting employees from "arguing ... with co-workers," "failing to treat others with respect" and "failing to demonstrate appropriate teamwork" are all provisions that go beyond establishing general civility standards, and each statement effectively chills the exercise of Section 7 rights by causing employees to reasonably believe that protest, criticism or mere disagreement will not be tolerated.

As the ALJ stated, similar rules repeatedly have been found by the Board to violate Section 8(a)(1). She gave three examples in a string cite, but many others exist as well. (*See* ALJD 30:34-41). For example, in *Knauz BMW*, 358 NLRB No. 164 (2012), a handbook rule directing employees not to be "disrespectful or use profanity or any other language which injures the image or reputation of the Dealership" was found unlawful. Similarly, in *First Transit*, 360 NLRB No. 742 (2014), the Board majority struck down a rule that prohibited "discourteous or

inappropriate attitude or behavior to passengers, other employees, or members of the public” and “disorderly conduct during working hours.”³ *See also, e.g., Purple Communications, Inc.*, 361 NLRB No. 43 (2014) (employer maintained overbroad work rule that prohibited employees from “causing, creating or participating in a disruption of any kind during working hours on Company property”); *Triple Play Sports Bar and Grille*, 361 NLRB No. 31, slip op. at 1, 6-8 (2014) (rule prohibiting employees from conducting “inappropriate discussions about the company, management, and/or co-workers” in any internet blogs, chat room discussions, emails, or other forms of communication was unlawfully overbroad); *2 Sisters Food Group*, 357 NLRB No. 168 (2011) (rule punishing employees for their “inability or unwillingness to work harmoniously with other employees” would reasonably be construed to chill the exercise of Section 7 rights); *Claremont Resort & Spa & Hotel*, 344 NLRB 832 (2005) (rule threatening employees with discipline for engaging in negative conversations about associates and/or managers would unlawfully inhibit discussions of employee complaints about managers); *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999) (rule unlawful prohibiting “loud, abusive or foul language” and “fighting, horseplay, threatening, insulting, abusing, intimidating, coercing or interfering with any guests, patrons or employees”); *Spartan Plastics*, 269 NLRB 546, 552 (1984) (rule barring employees from making “false, vicious, or malicious statement concerning any employee, supervisor, the Company, or its products” violates Section 8(a)(1)). Clearly Board precedent supports the ALJ’s conclusion that the challenged provision unlawfully prohibits Section 7 activity.

³ Interestingly, T-Mobile cites to *First Transit* to support its argument that work rules prohibiting “uncivil” and “insulting” conduct are not unlawful, but fails to acknowledge that portion of the decision in which the Board found unlawful the phrases “discourteous or inappropriate attitude” and “disorderly conduct during working hours.” (*See* T-Mobile Brief at 11).

Notwithstanding this ample legal support for the ALJ's decision, T-Mobile attacks it by claiming that the *location* of the "Commitment to Integrity" policy – "located squarely within the *Conducting Business* section of the Company's Code of Business Conduct" – somehow justifies the work rules therein. But the location actually works against the Company's assertion. (*See* Brief in Support of T-Mobile's Exceptions (T-Mobile Brief), at 7 (emphasis in original)). T-Mobile claims that because the "Commitment to Integrity" policy lists several types of conduct that the Company finds unacceptable, an employee would not understand that rules prohibiting arguing with co-workers, failing to treat others with respect or failing to demonstrate appropriate teamwork would encompass protected Section 7 rights. (*Id.* at 9). But the fact that the ALJ found that one of the *previous paragraphs* on the same page in the same "Commitment to Integrity" policy unlawfully prohibits "detrimental comments," and the fact that T-Mobile failed to file an exception to the ALJ's decision on that earlier provision, demonstrate that the location of the language does not help establish that an employee would understand that the prohibitions listed therein did not apply to Section 7 activity. In fact, an employee interested in challenging a co-worker or supervisor about working conditions would undoubtedly fear doing so since the work rules prohibit making simple "detrimental comments," let alone arguing or failing to demonstrate teamwork.

Next, T-Mobile focuses on a single word in the ALJ's Decision and claims that her finding that the second challenged paragraph of the "Commitment to Integrity" policy is unlawful and must be in error. As cited above, the ALJ initially ruled that the language in question "violates the Act because it is so ambiguous that employees *would* reasonably construe the language as prohibiting Section 7 protected activity." (ALJD 30:26-27 (emphasis added)). In the next sentence, she states, "Based on the plain language of the provision, employees *could*

reasonably interpret it to prohibit heated discussions and arguments about terms and conditions of employment, arguments in support of or against unionization, or a myriad of other protected subjects.” (ALJD 30:28-30 (emphasis added)). T-Mobile spends an extraordinary amount of its Brief arguing that using the word “could” invalidates the ALJ’s finding that the “Commitment to Integrity” policy unlawfully prohibits Section 7 activity, notwithstanding the fact that she used the word “would” in the previous sentence. This claim is absurd and the ALJ’s finding should stand undisturbed.

By ignoring the first sentence – where the ALJ specifically found that employees “*would* reasonably construe the language as prohibiting Section 7 protected activity” – the Company has disingenuously attempted to create an issue where none exists. Clearly the ALJ saw the larger issue here – that employees would understand that their Section 7 rights were clearly restricted under the “Commitment to Integrity” policy. By using the word “would” in her first sentence, the ALJ has unambiguously conveyed that she thought it entirely likely – and not just a possibility – that employees would read the language at issue to restrict their Section 7 rights.

T-Mobile also claims that by prohibiting both “arguing” and “fighting” in the second challenged paragraph of the “Commitment to Integrity,” the Company has made clear to workers that it intended to prohibit “screaming matches or physical altercations.” (T-Mobile Brief at 10). Had T-Mobile sought to only prohibit screaming matches, it should have used more precise language. Instead, it prohibited “arguing,” a much more general term that is used to connote much less offensive conduct than a screaming match. In fact, Merriam-Webster’s Online Dictionary, which T-Mobile itself cites at page 12 of its Brief, provides as its primary definition of the word “argue,” “to give reasons for or against something: to say or write things in order to change someone's opinion about what is true, what should be done, etc.” (<http://merriam->

webster.com/dictionary/argue). By prohibiting employees from “arguing,” T-Mobile has thus effectively forced them to give up their rights to attempt to persuade their co-workers about a number of subjects, including disputes over work rules or the very existence of a union in their workplace. The Company clearly chose the wrong word if it sought to convey to its employees that screaming matches were prohibited, and that choice unlawfully restricts employees’ Section 7 rights.⁴

T-Mobile further claims that “failing to treat others with respect” and “failing to demonstrate appropriate teamwork” are legitimate demands. (T-Mobile Brief at 12-13). And while those demands might be legitimate in a vacuum, in the context of T-Mobile’s massively unlawful work rules – including an unlawful provision in one of the preceding paragraphs of the “Commitment to Integrity” policy – the ALJ correctly found those terms to unlawfully prohibit Section 7 protected activity.

C. The Administrative Law Judge Correctly Found that Subsection 4.4 of T-Mobile’s Acceptable Use Policy Violates Section 8(a)(1) of the Act.

1. The Language and Context of Subsection 4.4 Would Reasonably Be Read by Employees as Prohibiting Them From Using T-Mobile Email Systems to Share with Co-Workers and a Union Terms and Conditions Information which is Exchanged on T-Mobile’s Email Systems or to Otherwise Engage in Concerted Activity by Email.

T-Mobile excepts to the ALJ’s rulings that Subsection 4.4 of Section 4 (Security) of its Acceptable Use Policy for Information and Communication Resources (Acceptable Use Policy or, simply, Policy)⁵ can reasonably be read by employees as prohibiting them from using T-Mobile email systems (which the Company allows them to use for work and personal purposes)

⁴ It is also irresistible to point out that T-Mobile has named the most important section of its Brief as “Argument,” but it undoubtedly did not intend to engage in a screaming match or physical altercation in its efforts to persuade in this case.

⁵The Acceptable Use Policy is located at Stip. Tab 6.

to share documents exchanged by T-Mobile email regarding working conditions, wages, benefits, or other terms and conditions of employment with each other and with a union, or to otherwise engage in concerted activity by email. (T-Mobile Brief at 18-19, citing ALJD 29:23-27). T-Mobile does not deny that such terms and conditions information is stored within its systems, or that such information is transmitted or processed through its email and other electronic information and communications systems.

But, T-Mobile asserts, when reasonably read in context by employees, it is clear that Subsection 4.4 has nothing to do with such information, instead governing no more than “physical access to and actions undertaken on” T-Mobile’s information technology systems. (T-Mobile Brief at p. 19).⁶ According to T-Mobile, then, the ALJ erred in concluding that the Acceptable Use Policy’s Security Section, and specifically Subsection 4.4, prohibits use and email transmission of such information, as opposed to prohibiting merely physical access to all of T-Mobile’s systems which store, process or transmit information.

Contrary to T-Mobile’s assertions, the ALJ’s conclusion was based soundly in the Policy’s text. She quoted the Policy’s description of its scope, set forth in Policy Section 2 (Scope), which explains that the Policy governs information and the systems holding the information. It provides that the Policy governs “all non-public T-Mobile *information and any* communication resource owned, leased or operated by or for T-Mobile.” (ALJD 29:13-14; Stip. Tab 6 at p. 1 (emphasis added)). In addition to this provision quoted by the ALJ, other provisions also reflect that, contrary to what T-Mobile now is maintaining, the Company wrote

⁶In support of this assertion, T-Mobile asserts facts not in the stipulated record. These include facts concerning T-Mobile’s security needs regarding information in its systems, its interests, the quantity of customer-related data in its systems, how it distributes User IDs and passwords or otherwise controls access to its systems, that there is some connection between a User ID and the scope of the employee’s access to information and systems, and related facts. (T-Mobile Brief at 17-18). The Board should disregard these unsupported fact assertions.

its policy to cover information stored, transmitted or processed in its systems. For example, the Policy's Scope Section lists the types of things that the Policy covers, and includes in this list "[i]nformation stored, transmitted or processed by the communications resources," noting that such "[i]nformation may be in any form including paper (physical) or electronic format." (Stip. Tab 6 at p. 1).

As another example, Policy Section 1 (Purposes) makes clear that the Policy's prohibitions were written to cover information, as well as systems, declaring that "[t]his T-Mobile policy on acceptable use of information and communication resources governs the ownership of T-Mobile information." (*Id.*).

Yet another example is set forth in the Policy's Security Section, within which sits the disputed Subsection 4.4. The second sentence of Subsection 4.2 re-emphasizes the Purpose and Scope Sections' declarations that the Policy reaches both information and systems. T-Mobile quotes a portion of this sentence in urging the Board to construe the Security Section as reaching only systems, not information, asserting that employees need only "take reasonable steps not to intentionally or inadvertently disclose . . . user [sic] ID's or passwords[] or leave communication resources unsecured." (T-Mobile Brief at 18). But, the words which T-Mobile's Brief's ellipses omit indicate that T-Mobile wrote the Security Section, like it did the Purpose and Scope Sections, to capture information, as distinct from the systems in which it is transmitted, processed or housed, within the Policy's prohibitions, including the prohibition in Subsection 4.4 on disclosure of that information. In its entirety, without ellipses, the second sentence in Subsection 4.2 reads, "Therefore, Users must take reasonable steps not to intentionally or inadvertently disclose *information, including* User ID's or passwords, or leave communication resources unsecured." (Stip. Tab 6 at p. 2 (emphasis added)).

Similarly incomplete is T-Mobile's Brief's quotation of a passage in Subsection 4.3 in support of its context argument. T-Mobile quotes the passage in support of its assertion that the Company's issuance of passwords and User identifications demonstrates that physical access to systems, not the use of information in those systems, is the sole, intended object of the Security Section's prohibitions,⁷ asserting that the passage only instructs employees to "use [] a password on all devices[] and computer equipment" to prevent unauthorized access to those devices and equipment. (T-Mobile Brief at 18). But this quotation omits the language preceding the passage. The omitted language further underscores that T-Mobile actually intends that information, not just devices or equipment, is to be protected from "unauthorized access," for it states:

Users of T-Mobile information and information assets are required to protect information and information assets against unauthorized access by using a password on all devices, and computer equipment.

(Stip. Tab 6 at 2 (emphasis added)). Thus, the Policy's text cannot sustain T-Mobile's argument that, reasonably read, the Security Section's context shows its applicability to T-Mobile systems, not the information stored or processed within those systems or transmitted through them.

Not only do the words of the Policy support the ALJ's findings, and undercut T-Mobile's argument that the Security Section prohibits only physical access to and actions undertaken on its systems, but Subsection 4.4's placement within the Policy also supports the ALJ's findings and undercuts T-Mobile's argument. Subsection 4.4 is preceded by two other Policy provisions which the ALJ found to be overly broad, Subsections 3.3 and 3.4, which reside within Policy Section 3, entitled "Legitimate Business Purposes." (ALJD, 26:32 - 28:30). T-Mobile apparently concedes that these two provisions are unlawful, as it did not except to the ALJ's rulings

⁷As discussed in footnote 6 above, T-Mobile's Brief's assertions of facts in support of this contention are not found in the record and should be disregarded by the Board.

concerning these two provisions. (*See* Respondent’s Exceptions to the Decision of the Administrative Law Judge (“T-Mobile Exceptions”) at 2-3). Thus, by the time that an employee-reader arrives at Subsection 4.4, the employee already has been subjected to provisions which chill the exercise of Section 7 rights. And, one of those, Subsection 3.3, itself makes clear that both “T-Mobile *information or communication resources*” are subject to the unlawful prohibition against any use that could be “disruptive, offensive, or harmful to morale.” (Stip. Tab 6 at p. 1 (emphasis added); ALJD 26:32 – 28:30).

In the end, though, T-Mobile does not have the conviction of its argument. Simultaneously with arguing that its Policy’s Subsection 4.4 does not seek to prohibit employees’ Section 7-protected use of terms and conditions information, T-Mobile attempts to persuade the Board that, indeed, it may do just that as no prior Board precedent constrains its “authority over the information exchanged via all its information resources,” including its email system. (T-Mobile Brief at 21-22). Of course, there is Board precedent that T-Mobile cannot lawfully muzzle employees’ exchange and use of information concerning their terms and conditions of employment, not even if the modes of exchange and use are through its electronic information or communications systems. *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 1, 11-12 (2011) (Board adopted ALJ’s finding that a policy prohibiting disclosure of terms and conditions information housed in employer’s communications systems was overly broad).

T-Mobile appears to argue that Policy Section 3, Subsection 3.2’s grant of “[i]ncidental and infrequent personal use of T-Mobile’s information resources by approved Users,” provided such use does not interfere with “legitimate business purposes,” suffices to inform employees that no other language in the Policy places any limits on their Section 7 rights. (T-Mobile Brief at

20).⁸ However, this argument overlooks that Section 3 is the Section that defines what constitutes the “legitimate business purposes” with which the personal use must not interfere, and does so in a manner twice found unlawful by the ALJ, findings with which T-Mobile has no quarrel. (ALJD, 26:32 – 28:30; T-Mobile Exceptions at pp. 2-3).

2. The ALJ Correctly Applied *Purple Communications* and Other Precedent when Finding that the Acceptable Use Policy’s Subsection 4.4 is Overly Broad.

T-Mobile complains that the ALJ improperly applied to Subsection 4.4 the Board’s holding in *Purple Communications*, 361 NLRB No. 126 (2014), asserting that, whereas *Purple Communications* concerned a prohibition on the use of just email, Subsection 4.4 applies to all of its systems, including email. However, merely because Subsection 4.4’s prohibitions extend to other systems in addition to email does not privilege T-Mobile to apply those prohibitions to email. As the Policy articulates no email exceptions to its prohibitions, it therefore applies to email, and in so doing, does indeed, as the ALJ properly found, infringe upon employees’ exercise of their “right to use the email system to engage in Section 7-protected communications on non-working time” (*Purple Communications* slip op. at 14) in violation of Section 8(a)(1). (ALJD 29:10-30).

Additionally, T-Mobile complains that the ALJ’s reliance upon *Purple Communications* was misplaced because, under *Purple Communications*, an employer still may prohibit access to systems as it sees fit, and Subsection 4.4’s focus is the control of access to systems, not the prohibition of protected activities. (T-Mobile Brief at 21). However, this argument is without merit, as it, like T-Mobile’s context argument discussed above, is founded upon the

⁸T-Mobile mistakenly cites the section as Subsection 2.2, but there is no such Subsection in the Policy. (Stip. Tab 6, p. 1).

unsupportable contention that the Policy does not, and is not intended to, prohibit any use of information. Moreover, contrary to T-Mobile's assertions, T-Mobile's choices concerning which employees may have access to which of its systems is not at issue in this case, as demonstrated by the complaint allegations and the absence from the record of any facts regarding how T-Mobile selects who will have access to which systems.

The ALJ properly relied not just upon *Purple Communications* in finding Subsection 4.4 to be overly broad, but also properly relied upon *Hyundai America Shipping Agency*, 357 NLRB No. 80. (ALJD 29:27-30). In *Hyundai*, the Board found unlawful a policy which applied to all of the employer's communications and information systems which had the same object as Subsection 4.4 does, here – preventing information stored in those systems from getting into the possession of those whom the employer regards as unauthorized users. The policy provided that “employees should only disclose information or messages from these [sic] systems to authorized persons.” *Hyundai*, slip op. at 11. The Board adopted the administrative law judge's finding that, as this policy “failed to limit the prohibition on the disclosure of information to those matters that are truly confidential, and which do not involve terms and conditions of employment,” it was overly broad, in violation of Section 8(a)(1). *Hyundai*, slip op. at 12. As Subsection 4.4's prohibitions on information use do not distinguish terms and conditions information from truly confidential information stored, processed in, or transmitted through, any and all of its systems, the ALJ correctly found that Subsection 4.4 is invalid under *Hyundai*.⁹ Put another way, Subsection 4.4 is invalid based upon the same reasoning, and the same legal authorities relied upon by the ALJ in finding overly broad, the confidentiality rule prohibiting

⁹T-Mobile does not deny that many, or even all, of its communications systems store, process or transmit terms and conditions information.

employees' disclosure of any part of T-Mobile's handbook, particularly as the handbook itself is one of the documents setting forth terms and conditions information that is stored in an electronic T-Mobile communications system.¹⁰ (ALJD 7:37 – 8:30).

IV. CONCLUSION

For the foregoing reasons, the Union opposes the exceptions sought by T-Mobile and respectfully requests that the Administrative Law Judge's Decision as concerns the "Commitment to Integrity" in the Company's Code of Business Conduct, and Subsection 4.4 of the Acceptable Use Policy, be upheld.

Dated: May 6, 2015

Respectfully submitted,


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¹⁰The information covered by the Acceptable Use Policy's prohibitions includes T-Mobile's handbooks and personnel policies, which the Company maintains in its intranet, known as the OneVoice system. (See Stip. Tab 6, p. 1 (Section 2 Scope)); Stip. ¶17(c)(i), Tab 5, p. 7 (January 2014 handbook explains that OneVoice is T-Mobile's intranet); Stip. ¶17(a)(i), Tab 1, p. 3 and ¶17(c)(i), Tab 5, p. 6 (handbooks and personnel policies are located in OneVoice).

CERTIFICATE OF SERVICE

This is to certify service of the above and foregoing OPPOSITION TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE has been forwarded to the parties below by e-filing and e-mail on the 6th day of May, 2015 as follows:

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