

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

**T-MOBILE USA, INC.,**

**Respondent,**

**and**

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

**Charging Party.**

**Case No. 28-CA-148865**

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**RESPONDENT'S REPLY BRIEF IN SUPPORT OF CROSS-EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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T-Mobile USA, Inc. (“T-Mobile,” the “Company” or “Respondent”) does not disagree that a proper remedy in a rules-related case generally includes a representation by the employer, via a notice to employees, that it will not promulgate unlawful rules in the future. The Company simply disagrees as to what formulation of the notice best effectuates this remedy. “While actively working” more aligns with the law and facts underlying the ALJ’s decision, as well as the decision’s intended purpose.

The allegation at issue arose from an ambiguity in the Company’s attempt to communicate to a senior representative that he should not engage in Union-related communications with employees who are actively handling customer calls (as one of the senior representative’s co-workers complained he had done), and to resolve the senior representative’s question concerning a prior Board notice posted pursuant to a settlement agreement. (ALJD at 15:28-16:26.)<sup>1</sup> The senior representative claimed that the complaining employee was not on the telephone with a customer and, as such, their Union-related conversation took place at an appropriate time. (*Id.*) The Company attempted to explain that even if not actually on the telephone, both the senior representative and other employees may be actively working or expected to be actively working and that, during such times, non-work communications are not permitted. (*Id.*) When prompted further by the senior representative, the Company endeavored to clarify that “working” for him meant “when you’re supposed to be supporting your team as a senior rep.” (*Id.*; *see also* ALJD at 24:19-20.) It is this definition that the ALJ found fault with because, in light of the senior representative’s job duties, the definition created an “ambiguity as to when [the senior representative] could speak about the Union.” (ALJD at 24:39-44.) (“I find

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<sup>1</sup> Specifically, the prior notice provided that the Company would not “discriminatorily disallow employees who wear Union T-shirts to remain at our facility after their shift and talk to fellow employees who are not on phone calls.” (ALJD at 15:47-16:4.)

that [T-Mobile's] definition of working as applied to [the senior representative] unlawfully placed restrictions on when he could discuss the Union.”)

In short, the ALJ concluded that, as in *Essex International*, the definition communicated to the senior representative made the Company's rule “susceptible” to an improper interpretation. *Essex Int'l, Inc.*, 211 NLRB 749, 750 (1974). Also as in *Essex International*, the employer could avoid the improper inference by clearly communicating that the rule does not prohibit discussion “when employees are not actively at work.” *Id.* (emphasis added). That is exactly what the “while actively working” formulation would do. Given that the allegation at issue arose out of an ambiguity, all the parties should have an interest in avoiding codification of further ambiguity that may lead to additional disputes. Utilizing the adjective “actively” furthers this interest; leaving the ALJ's decision as-is does not.

For all the foregoing reasons, the Board should sustain the Company's cross-exception.

Date: March 9, 2016

Respectfully submitted,

PROSKAUER ROSE LLP

By: /s/ Mark Theodore  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that: I am employed in the county of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On March 9, 2016, I served the following document, described as:

**RESPONDENT'S REPLY BRIEF IN SUPPORT OF CROSS-EXCEPTIONS TO THE  
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- (By Electronic Filing) By transmitting a true and correct copy thereof via electronic filing through the National Labor Relations Board's website.
- (By Email) By transmitting a true and correct copy thereof via electronic transmission to the email address listed on the attached Service List.
- (By Fax) By transmitting a true and correct copy thereof via facsimile transmission to the addressee.
- (By Mail) I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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Executed on March 9, 2016 at Los Angeles, California.

Robert Linton  
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Type or Print Name

  
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