JD–16–15
Albuquerque, NM

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

T-MOBILE USA, INC.

and — Case 14-CA-106906

COMMUNICATION WORKERS
OF AMERICA

T-MOBILE USA, INC.

and

COMMUNICATION WORKERS OF AMERICA,
LOCAL 7011, AFL-CIO — Cases 28-CA-106758
28-CA-117479

METROPCS COMMUNICATIONS, INC.

and

COMMUNICATION WORKERS OF AMERICA — Case 02-CA-115949

T-MOBILE USA, INC.

Respondent

and — Cases 28-CA-128653
28-CA-129125
10-CA-128492

COMMUNICATION WORKERS
OF AMERICA, AFL-CIO

Olurotimi Solanke, Esq.,
for the General Counsel.
Mark Theodore, Esq.; Irina Constantin, Esq.,
for the Respondent.
Stanley M. Gosch, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

5 Christine E. Dibble, Administrative Law Judge. This case is before me on a stipulated record. The complaints allege that T-Mobile USA, Inc. (T-Mobile) and MetroPCS Communications, Inc (MetroPCS)[1] violated Section 8(a)(1) of the National Labor Relations Act (the NLRA or the Act) by promulgating and, or maintaining certain work rules and policies in its employee handbook, a Restrictive and Confidentiality Agreement, Code of Business Conduct,
10 and Employee Acknowledgment forms. The General Counsel alleges that specific language in the following sections is overly broad and/or discriminatory and therefore interferes with employees Section 7 rights. The language at issue is contained in the following documents and sections:

15 (1) T-Mobile's employee handbook (handbook) entitled "Employee Handbook Purpose."[2] (Albuquerque complaint 5(a)). [3]

(2) The section entitled "Confidentiality" of the Respondent's Restrictive Covenant and Confidentiality Agreement. (Albuquerque complaint 5(d)).
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(3) The "Confidentiality and Information Security" section of the Respondent's Code of Business Conduct. (Albuquerque complaint 5(e))

(4) The "Confidentiality and Information Security" section of T-Mobile's Code of Business
25 Conduct. (South Carolina complaint 6(D))

(5) The section entitled "Keeping Our Information Secure/Confidential and Proprietary Information," of T-Mobile's Code of Business Conduct. (Second Albuquerque complaint 5(b))

30 (6) T-Mobile's Code of Business Conduct section entitled "Confidentiality of Each Other's Information." (Second Albuquerque complaint 5(a))

(7) The "Confidentiality of Each Other's Information" section of T-Mobile's Code of Business Conduct. (South Carolina complaint 6(B)
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(8) The section of the handbook entitled "Business Practice – Internal Investigation." ((Albuquerque complaint 5(b))

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[1] Unless otherwise indicated, T-Mobile and MetroPCS will be referred to as "the Respondent" when discussing complaints that have been issued against both of them.

[2] The parties have stipulated to the effective dates of each section of the documents referenced in this section. See Jt. Exh. 2 (J-2).

[3] Unless otherwise indicated, the Second Consolidated Complaint in Cases 28-CA-106758, 28-CA-117479, 14-CA-106906, and 2-CA-115949 is referred to as the "Albuquerque Complaint"; Cases 28-CA-128653 and 28-CA-129125 are referred to as the "Second Albuquerque Complaint"; and Case 10-CA-1284 is referred to as the "South Carolina Complaint."

(9) The "Communication with the Media," section of T-Mobile's handbook. (South Carolina complaint 4(E))

(10) The "Recording in the Workplace – Audio, Video and Photography," section of T-Mobile's handbook. (South Carolina complaint 4(D), 6(D))

(11) The section of T-Mobile's handbook entitled "Wage and Hour Complaint Procedure." (South Carolina complaint 4(C))

(12) The "Workplace Conduct" section in T-Mobile's handbook. (South Carolina complaint 4(B))

(13) Section entitled "Legitimate Business Purposes" paragraph 3.3 (3.3) of T-Mobile's Acceptable Use Policy. (South Carolina complaint 5(C))

(14) Section entitled "Legitimate Business Purposes" paragraph 3.4 (3.4) of T-Mobile's Acceptable Use Policy. (South Carolina complaint 5(D))

(15) Section entitled "Security" paragraph 4.4 (4.4) of T-Mobile's Acceptable Use Policy. (South Carolina complaint 5(E))

(16) The "Commitment to Integrity" section of T-Mobile's Code of Business Conduct. (South Carolina complaint 6(C))

(17) The Respondent's Employee Acknowledgement Form. (Albuquerque complaint 5(f))

FINDINGS OF FACT

OVERVIEW OF THE RESPONDENT'S OPERATION

The Respondent operates a telecommunications company throughout the United States and Puerto Rico. T-Mobile, USA, Inc. merged with MetroPCS in May 2013 to create T-Mobile US, Inc. (TMUS). (Stipulation App., tab 5 at 6.) In addition to providing telecommunication services to corporate and residential clients, the Respondent also operates retail stores within the United States.

Based on the parties' stipulations, I find as follows

I. Procedural History

1. The Albuquerque complaint was issued by the General Counsel on March 31, 2014.[4] It alleges that the written policies set forth in paragraphs 5(a)-(b) and (d)-(g) violate Section

[4] The Albuquerque complaint consists of charges filed by Local 7011 on June 7, 2013, in Case 28-CA-106758, with a first amended charge filed on August 30, 2013; filed by Communication Workers of America (CWA) on June 11, 2013, in Case 14-CA-106906; filed by Communication Workers of

8(a)(1) of the Act. Paragraph 5(c) was withdrawn as part of a non-Board settlement approved by me.

2. The Respondent timely filed an answer on April 11, 2014, admitting that it had maintained the policies in paragraphs 5(a)-(b) and (d)-(g) of the Albuquerque complaint but denying that the policies violated the Act. The Respondent further admitted that MetroPCS adopted the policies referenced in paragraphs 5(d), (e) and (f) of the Albuquerque complaint in January 2014.

3. The Second Albuquerque complaint issued by the General Counsel on July 31, 2014, and alleges in paragraphs 5(a)-(b) and 7 that certain written policies are unlawfully overbroad.

4. The Respondent timely filed an answer on August 14, 2014, admitting that it had maintained the policy in paragraph 5(a) of the Second Albuquerque complaint, but denying that the policy violated the Act. The Respondent denied that it had maintained the policy set forth in paragraph 5(b) of the Second Albuquerque complaint, admitted that it maintained a similar policy but denied that the policy it maintained violated the Act.

5. The General Counsel moved to consolidate the Second Albuquerque complaint with the Albuquerque complaint on August 13, 2014. The Respondent filed an opposition on August 22, 2014. The administrative law judge ordered the two complaints consolidated on September 2, 2014.

6. On August 29, 2014, the General Counsel issued the South Carolina complaint, which alleges, in paragraphs 4-7, that certain written policies of the Respondent are unlawfully overbroad.

America, Local 7011, AFL-CIO (Local 7011) on November 21, 2013 in Case 28-CA-117479; and filed by CWA on October 29, 2013, in Case 2-CA-115949 with second and third amended charges filed on December 20, 2013 and January 23, 2014, respectively. Subsequently, an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing issued on March 31, 2014, for these cases. An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on July 31, 2014, based upon a charge and first amended charge in Case 28-CA-128653 filed by the Union against T-Mobile on May 14 and 16, 2014, respectively, and a charge and first amended charge in Case 28-CA-129125 filed by the Union against T-Mobile on May 22 and July 31, 2014, respectively. On September 2, 2014, upon motion of the General Counsel, I entered an order consolidating these cases for trial. The Union filed a charge and first amended charge on May 13 and 22, 2014, respectively, in Case 10-CA-128492, against T-Mobile, and a complaint issued on August 29, 2014. On September 9, 2014, upon motion of the General Counsel, I ordered Case 10-CA-128492 be consolidated with the previously consolidated cases for trial. The Respondent filed timely answers, denying all material allegations and setting forth its affirmative defenses to the complaints.

7. The General Counsel moved to consolidate the South Carolina complaint with the Albuquerque and Second Albuquerque complaints on August 29, 2014. The Respondent filed an opposition to this motion on September 4, 2014. The administrative law judge ordered the three complaints consolidated on September 9, 2014.

8. The Respondent will file an answer to the South Carolina complaint on September 12, 2014, admitting that it maintains the policies in question but denying that it has violated the Act in any manner.

9. The allegations which are subject to disposition by this Joint Stipulation are paragraphs 5(a)-(b) and (d)-(g) and 8 (as it pertains to par. 5) of the Albuquerque Complaint, paragraphs 5(a)-(b), and 7 of the Second Albuquerque complaint and paragraphs 4-7 of the South Carolina complaint, and each shall be severed from the ongoing litigation and submitted directly to the administrative law judge for disposition.

II. The Policies

1. The policies set forth in the Albuquerque, Second Albuquerque and South Carolina complaints are alleged to violate Section 8(a)(1) of the Act. True and correct copies of all the policies at issue are attached to the accompanying Appendix.

2. The written policies in question were or are maintained at all company locations in the United States of America, and Puerto Rico.

3. The effective dates of the written policies at issue are as follows:

a. Albuquerque complaint:

i. Paragraphs 5(a)-(b) - Employee Handbook: August 2012 through May 2013.

ii. Paragraph 5(d) - Restrictive and Confidentiality Agreement: May 3, 2010 through August 21, 2013.

iii. Paragraph 5(e) - Code of Business Conduct: May 2013 through the present.

iv. Paragraph 5(f) - Employee Acknowledgment Form: October 4, 2010 through the present.

v. Paragraph 5(g) - The Albuquerque Complaint states that the policies referenced in paragraphs (b), (d), (e) and (f) were adopted by MetroPCS on May 1, 2013. It is Respondent's position that only the policies referenced in paragraphs 5(d), (e) and (f) were adopted by MetroPCS, beginning January 2014.

b. Second Albuquerque complaint:

i. Paragraphs 5(a)-(b) - Code of Business Conduct: May 2013 through the present.

c. South Carolina complaint:

i. Paragraphs 4(a)-(e) - Employee Handbook: January 16, 2014 through the present.

ii. Paragraphs 5(a)-(e) - Acceptable Use Policy for Information and Communication Resources: May 18, 2011 through the present.

iii. Paragraphs 6(a)-(d) - Code of Business Conduct: May 2013 through the present.

III. JURISDICTION

1. T-Mobile is a telecommunications company engaged in business operations throughout the United States and Puerto Rico.

2. In conducting its operations during the 12-month period ending June 30, 2014, T-Mobile derived gross revenues in excess of $500,000 and performed services valued in excess of $50,000 in States other than the State of New Mexico.

3. At all material times T-Mobile has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. MetroPCS, is engaged in the sale of wireless communication devices and related services.

5. MetroPCS is a corporation affiliated with T-Mobile, with offices and retail stores located throughout the United States, including a retail store located at 1861 Lexington Avenue, New York, New York.

6. MetroPCS, in conducting its business operations during the 12-month period ending June 30, 2014, has performed services valued in excess of $50,000 in States other than the State of New York.

7. MetroPCS at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. At all material times, the Communication Workers of America (CWA or the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

9. Communication Workers of America, Local 7011, AFL-CIO (Local 7011) is a local chapter of the CWA headquartered in Albuquerque, New Mexico.

10. Local 7011 is a labor organization within the meaning of Section 2(5) of the Act.

IV. Discussion and Analysis

A. Legal Standards

The Board has held that if a rule specifically restrains Section 7 rights, the rule is invalid. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). See also *Waco, Inc*., 273 NLRB 746, 748 (1984) (work rule explicitly prohibits employees from discussing wages with coworkers a restriction on Section 7 rights). Even if the rule does not restrict specific Section 7 rights, it may still be unlawful if employees would reasonably interpret the rule to prohibit Section 7 activity. *Longs Drug Stores California, Inc*., 347 NLRB 500, 500-501 (2006); *Lutheran Heritage Village-Livonia*, supra at 647. In *Lutheran Heritage Village-Livonia*, 343 NLRB at 646, the Board stated, ". . . in determining whether a challenged rule is unlawful, the Board must . . . give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights." See also *Lafayette Park Hotel*, 326 NLRB 824, at 828 (1998) (citing *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992)).

The Board has established a framework for assessing whether an employer's confidentiality rule violates the Act. If the rule does not explicitly restrict Section 7 activities, then the fact-finder must analyze whether (1) employees would reasonably construe the language of the rule 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." *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 2 (2011); *Flex Frac Logistics, LLC,* 358 NLRB No. 127, slip op. at 16 (2012), enfd. 746 F.3d 205 (5th Cir. 2014).

B. The Respondent's Workplace Confidentiality Rules

The General Counsel alleges that the Respondent has promulgated and maintained a series of rules which require employees, in various forms, to keep confidential certain aspects of its business interests. Further, it is charged that these rules unlawfully infringe on employees' Section 7 activities and chill employees exercise of these activities.

1. T-Mobile's Employee Handbook Purpose

The General Counsel charges that T-Mobile violated the Act because a confidentiality rule in its handbook is overly broad. The section reads in pertinent part:

> This Employee Handbook is for the sole use by employees of T-Mobile and its U.S. based affiliates and subsidiaries. This Handbook is a confidential and proprietary Company document, and must not be disclosed to or used by any third party without the prior written consent of the Company.

(Stipulation App., tab 1 at 3.)

In his brief, the counsel for the General Counsel argues that the "classification of an employee handbook containing terms and conditions of employment as confidential and proprietary is anathema to the Act" noting that employees have an unrestricted right to discuss their "wages and working conditions." (GC Br. 12.) Last, the General Counsel contends the provision is invalid because it bars employees from disclosing the content of the handbook or allowing it to be used by "any third party without prior written consent of the Company." Id. at 12. The Respondent[5] counters that read within context, "it is apparent the provision was intended to prevent improper use of and/or reliance upon the manual by individuals who were not considered 'employees,' and not to preclude discussion about its contents." (R. Br. 16.)[6]

Based on the factors set out in *Lafayette Park Hotel*, supra, I do not find that the provision explicitly restricts Section 7 activities. There is also no substantive evidence that the rule was created in response to union activity. Moreover, nothing establishes that the rule was applied to restrict employees' exercise of their Section 7 activities. Notably, there is no evidence that any employee has been disciplined based on the rule. Notwithstanding, I must still decide whether employees would reasonably interpret the language of the rule as restricting the exercise of their Section 7 activities.

I find that the section at issue is so broadly written that it would chill employees in the exercise of their Section 7 rights. The language could reasonably be understood by employees as prohibiting them from sharing and discussing the handbook with union representatives or governmental investigative bodies. While I agree with the Respondent that employers have a legitimate interest in safeguarding their confidential and proprietary information, read in context, this rule also encompasses the disclosure and discussion of employee wages, disciplinary actions, performance appraisals, personnel documents, and other terms and conditions of employment. The Board has consistently held that this type of broadly worded rule is inconsistent with the Act. *Hyundai,* supra at 12 (work rule unlawful that prohibited "[a]ny unauthorized disclosure from any employee's personnel file"); *Battle's Transportation, Inc.*, 362 NLRB No. 17 (2015) (Board held employer's confidentiality agreement prohibiting employees from divulging "human resources related information" and "investigations by outside agencies").

Accordingly, I find that the Respondent violates Section 8(a)(1) of the Act because it promulgated and maintained the Employee Handbook Purpose provision identified above which is overly broad and discriminatory.

2. Confidentiality: Restrictive Covenant and Confidentiality Agreement

The General Counsel argues that a portion of a provision in the Respondent's Restrictive Covenant and Confidentiality Agreement (the RCCA) violates the Act because it is overly broad. The section reads in pertinent part:

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[5] In this section of the decision "the Respondent" refers to T-Mobile.

[6] The General Counsel's brief, the Respondent's brief, and the Union's/Local 7011 brief are identified as GC Br., R. Br., and CP Br., respectively.

> Confidentiality**.** Employee acknowledges and understands that Employee will be given access to certain confidential, secret and proprietary information and materials owned by Employer or which relate to Employer's Business, including but not limited to, all information not generally known to the public that relates to the business, technology, subscribers, finances, plans, proposals, or practices of Employer, and it includes, without limitation, the identity of all actual and prospective subscribers and customers, customer lists, files and all information relating to individual customers and subscribers, including their address and phone numbers, all business plans and proposals, all marketing plans and proposals, all technical plans and proposals, all research and development, all budgets, *wage and salary information***,** and projections, all non-public financial information, information on suppliers, and information on all persons for whom Employer performs services or to whom Employer makes sales during the course of Employer's business, and all other information Employer designates as "confidential" (hereafter the "Confidential Information"). Employer and Employee each acknowledge and agree that all Confidential Information shall be considered trade secrets of Employer and shall be entitled to all protections given by law to trade secrets. Confidential Information shall apply to every form in which information shall exist, whether written, film, tape, computer disk or other form of media, including original materials and any copies thereof.

(Stipulation App., tab 3 at 1.)

The General Counsel alleges the provision is facially invalid because it explicitly mandates that employees maintain the confidentiality of, among other subjects, wage and salary information of its employees. The Respondent counters that read "as a whole, rather than extracting the words 'wages and salary information' in isolation, it becomes apparent that the section is intended to cover and safeguard proprietary business information, rather than to preclude any employee's discussion of his or her wage rates." (R. Br. 25.) The Respondent also notes that the RCCA was amended to remove the phrase "wage and salary information" effective August 21, 2013.

I find that the provision at issue explicitly restricts employees' Section 7 right to discuss "wage and salary information" and thus is invalid. The Board has consistently held that nondisclosure rules which ban the disclosure and discussion of wage and salary information are invalid. The plain language of the provision at issue explicitly bans employees from engaging in protected activity. *Hyundai,* supra, 357 NLRB No. 80, slip op. at 18; *Double Eagle Hotel & Casino*, 341 NLRB 112 (2004); *Bettie Page Clothing*, 359 NLRB No. 96 (2013), affd. 361 NLRB No. 79 (2014); *Flamingo Hilton-Laughlin*, 330 NLRB 287, 288 fn. 3, 291 (1999).

I also find unpersuasive the Respondent's argument it should not be held liable for violating the Act because the language at issue was subsequently removed from the RCCA. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), sets forth the standard for effectively repudiating unlawful conduct. The repudiation must be "timely," "unambiguous," "specific in nature to the coercive conduct," and "free from other proscribed illegal conduct." *Passavant* supra at 138; *Douglas Division,*228 NLRB 1016 (1977), and cases cited therein at 1024. The Board has also held that in order to effectively repudiate the unlawful conduct, the employer must adequately publicize the repudiation to the affected employees, refrain from

engaging in the proscribed conduct post-publication, and assure employees that in the future the employer will not interfere with the exercise of their Section 7 rights. Id at 138-139. In a declaration from Marcine Hull, the Respondent's vice president of inclusion and human resources communications, submitted after the closing of the record, attesting that effective August 21, 2013, the Respondent removed the phrase "wage and salary information" from the section at issue. The General Counsel and the Union object to the declaration being admitted into evidence.[7] Even assuming I admitted Hull's declaration, I find that the record is still devoid of evidence that the Respondent did anything other than to remove the unlawful language from the RCCA. In short, the additional factors necessary for establishing a successful repudiation remain unfulfilled.

Accordingly, I find the provision identified above in the section entitled "Confidentiality" of the Respondent's RCCA violates Section 8(a)(1) of the Act.

3. Code of Business Conduct-Confidentiality and Information Security

The section at issue in the Albuquerque complaint paragraph 5(e) reads in pertinent part:

> We must ensure that the operations, activities, and business affairs of the Company and our customers are kept confidential to the greatest possible extent. Because of your work for us, you may have access to confidential information that belongs to the Company or to its customers. Confidential information includes private or proprietary business, technical, or trade secret information. It also includes certain employee and customer information, such as social security numbers, addresses and telephone numbers, and credit and bank account information. The policy against disclosure of confidential information is a broad one, and includes intentional and inadvertent disclosure. It also prohibits making unauthorized public statements or disclosures that are based on, or rely on, Company confidential information, regardless of the venue in which the statements are made (e.g., to a friend, in a chat room, on a website, or on a blog). Employees, officers, and directors may not access or review any confidential employee or customer information, including account and contact information, without a business need to do so and without prior authorization from the employee, customer, or a manager. If you acquire confidential information about T-Mobile, its business, its employees, or its customers, the information must be handled in strict confidence and is not to be discussed with anyone without a business need to know it.
> Employees are responsible for the internal security of such information. The responsibility to protect confidential information includes, without limitation, the following:

[7] The Respondent's motion to accept the declarations and additional submissions posthearing is denied. The declarations and posthearing documents are not newly discovered and/or unavailable at the time of the hearing and stipulation. A stipulation of fact is conclusive, foreclosing withdrawal or further dispute by a party joining in the stipulation after the judge accepts it, *Kroger Co.*, 211 NLRB 363, 364 (1974), except on a showing of "manifest injustice," *U.S. v. Kanu*, 695 F.3d 74 (D.C. Cir. 2012).

• Do not use or reveal any confidential information that belongs to the Company or any of its customers, employees, vendors, or contractors except as required in the course of T-Mobile's business and only to the extent your job duties require that you do so.
• Have a signed nondisclosure agreement approved by the Legal Department in place before revealing any confidential information to any vendor, contractor, or person not employed by T-Mobile or one of its subsidiaries. Do not reveal any confidential information to anyone (including other Company employees) who does not have a valid T-Mobile business need to know the information. This includes revealing confidential information about the Company's future plans to people who might use that information for their own personal profit or benefit.
• Comply with the confidentiality agreement that you signed at the time of your hire and any subsequent confidentiality agreements.

(Stipulation App., tab 2 at 22.)

The General Counsel charges that this provision is facially invalid because it explicitly mandates that employees maintain the confidentiality of employees' contact information by prohibiting them from accessing or disclosing it without a business need to do so, and without prior authorization from the subject employee or manager. The General Counsel emphasizes this argument by stating "[t]he breath (sic) of the prohibition is underlined by the fact that it provides that even where employee information is obtained it may not be "discussed" with anyone without a business need to know. Mere discussion by an employee of a possible disclosure of contact information with a union representative is prohibited." (GC Br. 19.) The Respondent counters that a reading of the entire provision shows that the purpose of the policy is not to restrict Section 7 activity, but rather to "safeguard the confidentiality of private and proprietary information maintained by the Company. . . . ." (R. Br. 22.) The Respondent continues by noting, "It is clearly personal identifying information that the policy attempts to protect, and employees reasonably would understand that the policy is designed to safeguard that interest rather than preclude disclosure of information pertaining to wages, benefits or other terms and conditions of employment." (R. Br. 23.)

The Second Albuquerque complaint at paragraph 5(b) is almost identical to the provision above and is set forth in the complaint as:

Keeping Our Information Secure/Confidential and Proprietary Information. It is our duty to ensure that the operations, activities, and business affairs of the Company and our customers are kept confidential to the greatest possible extent. Because of your work for us, you may have access to confidential information that belongs to the Company or to its customers. Confidential information includes private or proprietary business, technical, or trade secret information. It also includes certain employee and customer information, such as social security numbers, addresses and telephone numbers, and credit and bank account information.

The policy against disclosure of confidential information is a broad one, and includes intentional and inadvertent disclosure. It also prohibits employees from

making public statements or disclosures that are based on, or rely on Company confidential information, regardless of the venue in which the statements are made (e.g., to a friend, in a chat room, on a website, or on a blog). Employees may not access or review any confidential employee or customer information, including account and contact information, without a business need to do so and without prior authorization from the employee, customer, or a manager.

If, during the course of employment, an employee acquires confidential information about T-Mobile, its business, its employees, or its customers, the information must be handled in strict confidence and is not to be discussed with anyone without a business need to know such information. Employees are responsible for the internal security of such information.

Employees' responsibility to protect confidential information includes, without limitation, the following:

• Do not use or reveal any confidential information that belongs to the Company or any of its customers, employees, vendors, or contractors except as required in the course of T-Mobile's business and only to the extent your job duties require that you do so.

• Have a signed nondisclosure agreement approved by the Legal Department in place before revealing any confidential information to any vendor, contractor, or person not employed by T-Mobile or its parent company.

• Do not reveal any confidential information to anyone (including other Company employees) who does not have a valid T-Mobile business need to know the information. This includes revealing confidential information about the Company's future plans to people who might use that information for their own personal profit or benefit.

(Second Albuquerque complaint, ¶ 5(b))

I find that portions of the above provisions explicitly restricts Section 7 activity by precluding the disclosure and discussion of employee contact information without a business need to do so and without prior authorization from the subject employee or a manager. As previously noted, the Board has consistently held employees have a Section 7 right to disclose and discuss contact information. Moreover, employees are not required to get an employer's permission prior to exercising their right to engage in Section 7 activities. *Brunswick Corp*., 282 NLRB 794, 795 (1987). The language at issue is analogous to a rule found unlawful in *Costco Wholesale Corp.,* 358 NLRB No. 106 (2012). The Board adopted the ALJ's ruling that the employer violated the Act by maintaining a rule prohibiting employees from disclosing employee contact information to any third party without the employee's prior consent or permission from the employer's legal department. Id. at 1. See also *Flex Frac Logistics, LLC,* 358 NLRB No. 127, slip op. at 1 (finding unlawful employer's rule prohibiting employees from disclosing "personnel information and documents" to non-employees with the threat of "termination" or "legal action" for violating the rule).

Even assuming that the provisions were not facially invalid, I find that employees would reasonably construe them as prohibiting activity protected by Section 7. The provisions are overbroad since they precludes employees from revealing employee contact information without distinguishing "between information obtained in the normal course of work or information obtained from Respondent's files or even between information obtained by employees from contact with or discussion with other employees." *Costco*, 358 NLRB No. 106, slip op. at 29. See also *Anserphone of Michigan, Inc.,* 184 NLRB 305, 306 (1970) (employee obtained names and contact information of employees from office manager, who was lawfully in possession of the information). Moreover, the provisions addressing the mandate that employees keep certain company information confidential, continues by noting that the Respondent has a broad nondisclosure policy, and prohibits employees from revealing "confidential information." It is not only overly broad but also ambiguous because it leaves employees to guess what information, other than those listed, is "confidential." Moreover, employees could interpret this provision as a prohibition against disclosing or discussing wages and salary, employee contact information, and other terms and conditions of employment. The case at hand is nearly identical to *Aroostook County Regional Opthamology Center*, 317 NLRB 218 (1995), where the Board found that the nondisclosure provision prohibiting the discussion or disclosure of "office business" could reasonably be interpreted "to include employees' terms and conditions of employment." Just as in *Aroostook*, the rule in this case is so broadly worded and ambiguous that I find it would chill employees in the exercise of their protected activities. While the Respondent might argue it had justifiable reasons for wanting to safeguard employees' personal information, including contact information, it cannot do so at the expense of employees' right to concertedly discuss their terms and conditions of employment and concertedly act to improve their workplace environment. The Board has repeatedly ruled that if a workplace rule is ambiguous, the ambiguity is resolved against the employer. *Bigg's Foods*, 347 NLRB 39 (2006).

Accordingly, I find that the provision identified above in the Respondent's Code of Business Conduct violates Section 8(a)(1) of the Act.

4. Code of Business Conduct-Confidentiality of Each Other's Information (Second Albuquerque complaint at par. 5(a); South Carolina complaint at para. 6(B))

Focusing on the provision "Confidentiality of Each Other's Information" the General Counsel contends that it is facially invalid because it "explicitly restrict the Section 7 rights of employees to freely exchange information with themselves or third parties such as union representatives, or even with a Board agent investigating an unfair labor practice charge." (GC Br. 35.)

The section at issue which is referenced under the Second Albuquerque complaint paragraph 5(a) reads in pertinent part:

> Confidentiality of Each Other's Information. T-Mobile acquires and retains the personal information of its employees in the normal course of business, for example, for the provision of employee benefits. Personal information about employees, including for example, home addresses, must not be disclosed or used by T-Mobile employees except in the proper performance of their duties.

> Q: I don't work directly with our customers. How do I know if the information I have access to should be kept confidential?
>
> A: No matter which area of T-Mobile you work in, you have a duty to protect the information about our customers, employees and the Company. You're entrusted to help ensure that only the appropriate people have access to the information you create, share and store.
>
> Unauthorized disclosure of confidential information, or even accessing customer information without the authority to do so, may subject you to legal liability and disciplinary action.
>
> When in doubt, contact your manager, Human Resources, the Chief Privacy Officer or the Privacy Mailbox.

(Stipulation App., tab 2 at 12.)

The section at issue which is referenced under the South Carolina complaint paragraph 6(B) and identical to the first paragraph second line of the above-referenced rule, reads in pertinent part:

> . . . . Personal information about employees, including for example, home addresses, must not be disclosed or used by employees except in the proper performance of their duties.

(Stipulation App., tab 2 at 12.)

Under the "Confidentiality and Information Security" provision of the Code of Business Conduct, the General Counsel alleges that it is unlawful because it explicitly mandates that employees maintain the confidentiality of employees' "home addresses" and by extension "telephone numbers and other contact information," by prohibiting them from accessing or disclosing it without a business need to do so and without prior authorization from the subject employee or manager. Id. T-Mobile argues that a reading of the entire provision, within context, shows that the purpose of the policy is not to restrict Section 7 activity but rather "[i]t is clearly personal identifying information that the policy attempts to protect, and employees reasonably would understand that the policy is designed to safeguard that interest rather than preclude disclosure of information pertaining to wages, benefits or other terms and conditions of employment." (R. Br. 23.) The Respondent[8] continues by noting, ". . . there is absolutely no relationship between information provided by employees either as customers or for purposes of obtaining benefits, and their terms and conditions of employment." (R. Br. 25.)

The Respondent posits an interesting argument that in their role as customers, employees' contact information is confidential. In this context, the Respondent argues, Section 7 does not give employees "unfettered use of such private information and the Company has a very

[8] In this section of the decision "the Respondent" refers to T-Mobile.

legitimate interest in ensuring that information obtained about employees under these circumstances is safeguarded." (R. Br. 24.) However, the Respondent fails to provide case law to support this proposition. Nonetheless, this argument does not overcome the additional bases on which the General Counsel rests its charge.

I find the provisions are unlawful even if it is addressing employee contact information as it relates to their benefits. Employee benefits are a term and condition of employment and employers cannot forbid employees from disclosing or discussing them with each other or third parties. *Hyundai*, supra, 358 NLRB No. 80 (found unlawful a provision that "[a]ny unauthorized disclosure of information from an employee's personnel file is a ground for discipline, including discharge."); *Costco*, 358 NLRB No. 106, slip op. at 1 (found unlawful a rule the precluded employees from divulging "private matters of members and other employees . . . includ[ing]topics such as, but not limited to, sick calls, leaves of absences, FMLA call-outs, ADA accommodations, workers' compensation injuries, personal health information, etc."). Even reading the rule within the context that the Respondent set out, it is irrelevant whether the employee information is retained in connection with their benefits since discussion and disclosure of the information is protected activity with few exceptions. See *Bettie Page Clothing*, 359 NLRB No. 96, slip op. at 8 (rule prohibiting the disclosure of wages or compensation to a third part or other employees unlawful); *Flex Frac Logistics, LLC*. 358 NLRB No. 127, slip op. at 1 (confidentiality rules prohibiting the disclosure of information "related to . . . personnel information and documents found unlawful); *Cintas Corp. v. NLRB*, 482 F.3d 463, 468-469 (D.C. 2007, enfg. 344 NLRB 943 (2005) (explaining that confidentiality rules that prohibit disclosure of "information concerning employees" are unlawful). It is clear that the rule forbids employees from disclosing employee contact information that they discover through their ordinary daily work duties or legally acquire the information from outside sources.

Accordingly, I find that the provision identified above in the Respondent's Code of Business Conduct violates Section 8(a)(1) of the Act.

C. Employee Handbook: "Business Practice –Internal Investigation"

The General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, or enforcing a provision in the handbook that requires employees to fully cooperate in an internal investigation and prohibits those employees involved in the investigation from discussing the ongoing investigation, under threat of discipline, including dismissal. The Respondent counters that it removed the offending provision from the Internal Investigations policy effective August 2, 2013. Moreover, the Respondent argues that it had legitimate business justifications for the rule "which, coupled with the fact that the confidentiality requirement is narrowly tailored and would not reasonably be read to encompass Section 7 activity . . . ." (R. Br. 17.)

In order to justify a rule prohibiting employee discussions of ongoing investigations, the Respondent must show that it has a legitimate business justification. In *Hyundai America Shipping Agency*, supra, 357 NLRB No. slip op. at 15, the Board held there was no legitimate and substantial justification when an employer promulgates a blanket prohibition against employees discussing matters under investigation. The rule read, in pertinent part, that "employees should only disclose information or messages from [Hyundai's electronic communications] system to authorized persons." Id., slip op. at 11. See also *Banner Estrella*

Medical Center, 358 NLRB No. 93, slip op. 2 (2012) (the Board quoting from *Hyundai America Shipping Agency*, "Rather, in order to minimize the impact on Section 7 rights, it was the Respondent's burden 'to first determine whether in any give[n] investigation witnesses need [ed] protection, evidence [was] in danger of being destroyed, testimony [was] in danger of being fabricated, or there [was] a need to prevent a cover up.'"). Id.

Therefore, the question is whether the Respondent's stated business reasons outweigh the employees' exercise of their Section 7 rights. The Respondent must show, for example, that the rule was necessary because witnesses needed protection, evidence was in danger of being destroyed, and/or testimony was likely to be fabricated.

The provision at issue reads in relevant part:

> As appropriate, T-Mobile will investigate complaints of harassment, discrimination or retaliation in the workplace or complaints alleging noncompliance with policies or legal requirements. The Company may also investigate suspected employee misconduct, threats of violence or unsafe conduct and allegations of other improper activity.
>
> 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 additional performance improvement action up to and including dismissal. To ensure the integrity of investigations, employees must maintain the confidentiality of the names of the employees involved in the investigations, whether as complainants, subjects or witnesses. Conduct that interferes with, undermines, impedes or is otherwise detrimental to any internal investigation is prohibited.

(Stipulation App., tab 1 at 38.)

Again as I noted earlier in the decision, the parties have stipulated that from August 2012 through May 2013, the Respondent's handbook contained language informing all employees they are required to "fully" cooperate in internal investigations and "maintain the confidentiality of the names of the employees involved in the investigations, whether as complainants, subjects or witnesses." (Stipulation App., tab 1 at 38.). In defending the legality of the rule, the Respondent contends that it was enacted to promote collaboration and participation in the investigation, ensure the integrity of the investigation, protect sensitive information from being disclosed, and create an environment where investigation participants could speak freely. Further, the Respondent argues that the limited scope of the confidentiality provision would not reasonably be construed by employees to "prevent the discussion of actual terms and conditions of employment, or the enlisting of others' support as part of an investigation." (R. Br. 17-18.)

I do not find the Respondent's arguments persuasive. The Respondent did not assert or present evidence that it conducted an analysis to determine if the integrity of its investigations would have been threatened without issuing the blanket confidentiality rule against divulging the names of employees involved in an investigation. For example, there is no evidence that during investigations there have been instances of witnesses being coerced and, or intimidated with threats of physical harm by those involved in the internal investigation or attempts by those involved in the investigation to fabricate or destroy evidence. I agree with the General Counsel's

assertion, "While in the work rule here the directive not to discuss the names of the complainants, witnesses or subjects of an investigation is prefaced by a recited need to maintain integrity of investigations, there is no demonstrated correlation between disclosure of identities of persons connected to an investigation and integrity of an investigation, regardless of how mundane the subject of the investigation." (GC Br. 14.)

I find that the Respondent produced no evidence to show that the integrity of the investigations would have been in danger absent the confidentiality provision. On the contrary, the evidence shows that the Respondent has promulgated, maintained, and enforced a blanket rule that prohibits its employees from disclosing the names of employees involved in the Respondent's internal investigations without first determining if the particular investigation warrants such a prohibition. This is clearly a restraint on employees' Section 7 right to speak with fellow employees to obtain evidence in support of a defense against the charges.

In its brief the Charging Party Union also argues that that the Respondent's policy violates Section 8(a)(1) of the Act by unlawfully threatening employees with discipline if they do not cooperate in internal investigations. Noting, "[r]ules threatening employees with discipline for failure to cooperate in internal investigations, without allowing for *Johnnie's Poultry*[9] assurances, have the reasonable tendency to discourage employees from engaging in protected activity and are therefore unlawful. *Beverly Health & Rehabilitation Services*, 332 NLRB 347 (2000) enfd. 297 F.3d 468 (D.C. Cir. 2012)." The Respondent counters, however, that the Albuquerque Complaint and the counsel for the General Counsel in his brief do not raise an allegation of "unlawfulness with respect to language providing that employees are expected to cooperate in investigations." (R. Br. at 17 fn. 7.) I agree with the Respondent. Counsel for the General Counsel does not raise this argument in its brief; and the complaint does not specify that the language requiring employees to cooperate in investigations is unlawful. The complaint simply sets out the entirety of the provision and but for the argument posited by counsel for the General Counsel in his brief, the Respondent would be left to guess at what portion of the provision the General Counsel alleges is unlawful. That is not the Respondent's burden to bear. Consequently, I find that the issue of whether the policy is unlawful because it threatens employees with discipline if they do not cooperate in internal investigations is not before me.

I therefore conclude that the Respondent has failed to demonstrate that a legitimate and substantial justification exists for promulgating and enforcing a blanket rule that restricts employees from exercising their Section 7 rights. Accordingly, I find that the Respondent has violated Section 8(a)(1) of the Act by unlawfully maintaining an overly broad and discriminatory rule in its handbook which prohibits employees from, and threatens them with discipline for disclosing the names of employees involved in internal investigations.

D. Employee Handbook: "Communications with the Media"

The General Counsel argues that T-Mobile's rule that expressly prohibits employees from directly addressing media inquiries is overly broad because it restricts employees' ability to speak directly to the media on matters that may pertain to "a labor dispute or employee terms and conditions of employment." (GC Br. 26.) The Respondent[10] counters that the media policy does not preclude employees from contacting the media "for purposes of communicating about terms

[9] *Johnnie's Poultry Co*., 146 NLRB 770, 774, 775 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965).
[10] In this section of the decision, "the Respondent" refers to T-Mobile.

and conditions of employment, labor disputes or any other topic." In support of its position, the Respondent notes that an internet search will reveal that T-Mobile employees have not been afraid to speak publicly about the Company and have done so repeatedly in the public arena. Further, the Respondent insists that a "reasonable interpretation" of the rule is that it only applies to "official" inquiries from the media for a "Company" spokesperson. (R. Br. at 18.)

The rule at issue states in relevant part:

> All inquiries from the media must be referred without comment to the Corporate Communications Department.

(Stipulation App., tab 5 at 30.)

The Board has consistently held employer's work rules which are ill defined and overbroad violate Section 8(a)(1) of the Act. In T*rump Marina Casino Resort*, 355 NLRB 585, (2010), the Board upheld the administrative law judge's decision that the employer's rule prohibiting employees from releasing statements to news media without prior authorization and designating that only certain company employees were allowed to speak with the media violated the Act. *Trump Marina Casino Resort* is one of several Board cases holding that Section 7 of the Act protects employees' communications to the public and, by extension, the media. See also *Interbake Foods, LLC*, Case No. 05-CA-033158, et al., 2013 NLRB LEXIS 583 (N.L.R.B. Div. of Judges, Aug. 30, 2013), adopted, 2013 NLRB LEXIS 674 (N.L.R.B. Oct. 29, 2013) (employer's policy violated the act because it restricted employees' ability to communicate with the news media about their terms and conditions of employment); *Sheraton Anchorage*, 359 NLRB No. 95, slip op. at 3 fn. 8 (2013) (Board held that Respondent's rule prohibiting employees from communicating "any information" about themselves to the media violated the Act) *Double Eagle Hotel & Casino*, 341 NLRB 112 at 115 (the Board adopted the administrative law judge's finding that a section of the employer's handbook's "Communications" rule was unlawful because it prohibited employees from "provid[ing] information about the company to the media.").

I find unpersuasive the Respondent's arguments that the rule does not violate the Act because it was intended to prohibit employees, other than the "Corporate Communications Department," from providing an official company response to inquiries received from the media. Likewise, the Respondent's contention that employees have not construed the policy as inhibiting their Section 7 rights because an internet search would reveal that the Respondent's employees regularly speak publicly about the Company also fails because it is not supported by any objective evidence. The rule does not define or clarify the parameters of its prohibition on communications with the media. The overly broad rule mandates that ***all*** inquiries be directed to the Respondent's corporate communications department. This rule could reasonable be viewed by employees as encompassing inquiries about wages, labor disputes, and other terms and conditions of employment. I find that the rule, as it appears in the handbook, is overly broad and could reasonably be perceived as inhibiting Section 7 activity.

Accordingly, I find that the Respondent's rule limiting employees' communication with the media, as presented in the handbook, is so broad as to restrict employees in concerted protected activity and thus violates Section 8(a)(1) of the Act.

E. Employee Handbook: "Recording in the Workplace"

The T-Mobile maintains a rule in its handbook that prohibits employees from using photographic, audio, video, or any other recording devices in the workplace without authorization from a manager, the human resources department, or the legal department. The General Counsel charges that the rule is overbroad and invalid on its face. The General Counsel argues, "The taking of photographs, audio and video recording may be protected where engaged in concertedly by employees. Respondents' photography, audio and video recording policy makes no allowance for this possibility." (GC Br. 25.) The Respondent[11] denies that its rule is unlawful and states that it only forbids "recording people or confidential information." The Respondent contends that Board precedent supports the lawfulness of similar policies when the restriction has no discriminatory intent or application. (R. Br. 12-13.)

The policy prohibiting recording in the workplace provides:

> To prevent harassment, maintain individual privacy, encourage open communication, and protect confidential information employees are prohibited from recording people or confidential information using cameras, camera phones/devices, or recording devices (audio or video) in the workplace. Apart from customer calls that are recorded for quality purposes, employees may not tape or otherwise make sound recording of work-related or workplace discussions. Exceptions may be granted when participating in an authorized TMUS activity or with permission from an employee's Manager, HR Business Partner, or the Legal Department. If an exception is granted, employees may not take a picture, audiotape, or videotape others in the workplace without the prior notification of all participants.

(Stipulation, App., tab 5 at 28; South Carolina complaint par. 4(D))

The South Carolina complaint at paragraph 6(D) and the Albuquerque Complaint at paragraph 5(e) contain identical language, but the South Carolina Complaint also includes the following language which is at issue:

- Apart from customer calls that are recorded for quality purposes, do not tape or otherwise make sound recordings of work-related or workplace discussions without the permission of all participants and Human Resources or the approval of the Legal Department. Failure to request and receive such permission violates Company policy and may violate the law.

(Stipulation Appendix, Tab 2 at 22; South Carolina Complaint paragraph 6(D)).

A threshold question is whether the work rules explicitly restrict Section 7 rights. Although the General Counsel charges that they are facially invalid, I do not agree. The Board has not held, and no cases have been cited, that making recordings in the workplace is a

[11] In this section of the decision, "the Respondent" refers to T-Mobile.

protected right. Although cited by the Union to support this proposition, *Hawaii Tribune-Herald,* 356 NLRB No. 63, slip op. at 1 (2011) is inapposite because the employer in that case did not have a rule prohibiting making recordings of conversations in the workplace. Therefore, the Board limited its holding to those instances in which employees were recording in the workplace while engaged in protected activity, and the employer ***had not*** adopted a work rule to prohibit such action. (Emphasis added.) The Board noted that where the Respondent has no rule barring such recording," there was no showing of employee misconduct sufficiently egregious to remove it from the protection of the Act." *Id.* See also *Opryland Hotel*, 323 NLRB 723, 723 fn. 3 (1997) (an employee terminated for secretly recording conversations in the workplace had not forfeited the remedy of reinstatement because the employer had no "rule, prohibition, or practice against employees using or possessing tape recorders at work"). The Union also cites *Gallup, Inc.*, 334 NLRB 366 (2001), to support its argument that the Respondent's rule violated the Act. However, *Gallup, Inc.* differs in that the employer unlawfully created the rule banning audio or video taping at work in response to union organizing efforts. There is no substantive evidence in the case at hand to support a finding that the Respondent developed this rule in response to union organizational activities or to restrict Section 7 rights. While the Union might argue that the organizing campaign has caused the Respondent to express union animus, there is no evidence that any such alleged animus was the reason the Respondent developed the rule at issue. See, *Lafayette Park* at 826 (relying in part on the absence of evidence of union animus to find that a rule did not violate Section 8(a)(1)).

The General Counsel argues that the work rule unlawfully bans employees from using camera phones/devices, or audio and recording devices in the workplace to assist, support, and get evidence in support of a union organizing campaign or other protected concerted activity. It is undisputed that the Respondent's handbook does contain a prohibition against possession of recording devices in the workplace. While the General Counsel argues that the policy is overbroad and invalid on its face, I find there is no factual or legal evidence to support this contention. The policy explicitly sets forth valid, nondiscriminatory, rationales for its existence. Concerns for safety, maintenance of a harassment free work environment, protection of trade secrets, and a workplace free from unnecessary distractions are all valid reasons for promulgating the rule. The policy expresses a rationale narrowly tailored to address these concerns; and there is no evidence of it being applied in a discriminatory manner. It is not unreasonable for the Employer to fear that a workplace with surreptitiously recorded conversations would foster hostility, suspicions, low morale, and impede free and open discussion among members of its work force. It would certainly hinder the open lines of communication between supervisors and employees because of fears that discussions could be secretly recorded for use against them at a later date. These are a few examples of the type of acts that the rule is directed at preventing. In addition to determining that the Recording in the Workplace policy is valid on its face, I have concluded that there is no evidence (or allegation) that it has been applied in a discriminatory manner.

The Union also cites several recent ALJ decisions and a couple of General Counsel advice memoranda supporting the proposition that blanket rules prohibiting employees from recording in the workplace are overbroad and violate Section 8(a)(1). Although I have considered them, those authorities have no precedential value.

Accordingly, I find that the Respondent's "Recording in the Workplace – Audio, Video, and Photography" rule does not violate Section 8(a)(1) of the Act. Therefore, I recommend the dismissal of this charge.

F. Employee Handbook: "Wage and Hour Complaint Procedure"

The T-Mobile maintains a provision in the handbook that governs the procedure for complaints related to wage and hour matters.

The language at issue provides as follows:

> Employees who feel they have not been paid all wages or pay owed to them, who believe that an improper deduction was made from their salary, or who feel they have been required to miss meal or rest periods, must immediately notify a Manager or HR Business Partner, or contact the Integrity Line at . . . Employees who violate wage and hour laws and/or TMUS wage and hour policies may receive performance improvement action up to and including termination.

(Stipulation, App., tab 5 at 20.)

The General Counsel argues that the provision in the handbook is "unlawfully overbroad as employees will reasonably interpret it as discouraging them from pursuing wage discrepancy and work hour issues except through the complaint procedure set up which require immediate notification of management." (GC Br. 23.) The Respondent[12] denies that its rule is unlawful; and contends that it is only meant to "protect employees and to prevent and/or correct any errors in the calculation and payment of their wages." (R. Br. 10.) The Respondent counters that the rule does not require employees to waive rights they might have to pursue wage and hour complaints in other venues. Moreover, the Respondent notes, ". . . nothing in the policy prevents employees from discussing their concerns with their co-workers, friends, family members or the Union." (R. Br. 11.)

Each party cites *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990) and *U-Haul Co. of California*, 347 NLRB 375 (2006) to support its position. In *U-Haul Co. of California*, the Board found lawful a statement in the employer's employee handbook requiring employees to bring work-related complaints to their supervisor and if unresolved then elevate the complaint to the company's president and chairman of the board. The Board concluded that the statement was an expectation rather than a "command" that employees bring workplace complaints to management without the threat of discipline for failure to do so. Id. at 378-379. Further the Board wrote,

> Second, even if the disputed statement could be read as a direction to employees to present their workplace problems to Respondent's managers, or at least an encouragement to do so, the handbook does not foreclose employees from also using other avenues (e.g., the union fellow employees, the NLRB.) In addition, the handbook does not state that the employee must go to management before

[12] In this section of the decision, "the Respondent" refers to T-Mobile.

> using other avenues. Further, there is no evidence that the statement has been applied to foreclose such access.

Id. at 378-379.

5 In *Kinder-Care Learning Centers,* supra, the employer had a rule prohibiting employees from discussing their terms and conditions of employment with parents of children enrolled in the school. An employee may also have been a parent because employees were allowed to enroll their children at a 50-percent discount. Therefore, the rule would prohibit an employee from discussing their terms and condition of employment with other employees if one or both of the
10 employees were also parents of children enrolled at the employer's facility. The Board found the rule was unlawful because,

> . . . [W]e find that the Respondent's rule does not merely state a preference that the employees follow its policy, but rather that compliance with the policy is
> 15 required. We further find that this requirement—which has no basis in either the language or the policy of the Act—reasonably tends to inhibit employees from bringing work-related complaints to, and seeking redress from, entities other than the Respondent, and restrains the employees' Section 7 rights to engage in concerted activities for collective bargaining or other mutual aid or protection.

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Id. at 1172.

Although the rule at issue does not on its face prohibit employees from taking outside action to address wage-related complaints, it does require employees to notify a manager, human
25 resources, or call the integrity line. Moreover, employees are threatened with disciplinary action, including termination, for failure to comply with the rule. While I find that the Respondent can lawfully require employees to follow internal protocols for work-related complaints, including wage and benefit disputes, the employer must also make clear that the internal process does not preclude employees from seeking remedies or discussing the disputes with other employees or
30 third-parties. Based on the clear language of the rule, it is apparent that employees are required to address complaints about wages through the Respondent's internal complaint process. This requirement, in combination with the threat of discipline for failing to adhere to the rule, would "reasonably tend to inhibit employees from bringing wage-related complaints to, and seeking redress from, entities other than the Respondent, and restrains the employees' Section 7 rights to
35 engage in concerted activities for collective bargaining or other mutual aid or protection." *Kinder-Care,* supra at 1172. The Respondent's rule tends to inhibit employees from banding together by requiring that the employee initiate the internal process first and immediately, before getting assistance from or discussing it with a third-party or outside entity. "Faced with such a requirement, some employees may never invoke the right to act in concert with other employees
40 or to seek the assistance of a union, because they are unwilling to first run the risk of confronting the Respondent on an individual basis." *Kinder-Care,* supra at 1172.

Accordingly, I find that the stipulated portion of the Respondent's work and hour complaint procedure violates Section 8(a)(1) of the Act.

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G. Employee Handbook: "Workplace Conduct"

The provision at issue reads in pertinent part:

5 Employees are expected to maintain a positive work environment by communicating in a manner that is conducive to effective working relationships with internal and external customers, clients, co-workers, and management.

(Stipulation, App., tab 5at 15.)

10

The General Counsel charges that portions of T-Mobile's Code of Business—Workplace Conduct violates the Act because the provision at issue uses "ambiguous and vague" terms that fails to define with clarity the conduct that is objectionable to the Respondent. (GC Br. 21.) The Respondent[13] argues that the Board has consistently upheld similar policies; and reasonable
15 employees would construe this provision as "intended to promote a civil and decent workplace." (R. Br. 9-10.)

The General Counsel contends that use of the terms "positive work environment" and the need for employees to "communicate in a manner that is conducive to effective working
20 relationships" encompasses conduct that is likely to be viewed subjectively and as a "matter of opinion." Consequently, employees would have no guidelines for determining what type of conduct the Respondent finds objectionable, and therefore it would chill the exercise of their Section 7 rights. I must agree, however, with the Respondent that the policy merely establishes the Respondent's expectation for professional behavior in the work environment.

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In *Lutheran Heritage Village* the Board stated, "Where as here, the rule does not refer to Section 7 activities, we will not conclude that a reasonable employee would read the rule to apply to such activity simply because the rules *could* be interpreted that way. To take a different analytical approach, would required the Board to find a violation whenever the rule could
30 conceivably be read to cover Section 7 activity, even that reading is unreasonable. We decline to take that approach." 343 NLRB at 647. Likewise, in *Costco*, supra at 25-26, a rule requiring employees to maintain "appropriate business decorum" was found lawful in the absence of evidence that the rule was applied discriminatorily or was adopted in response to protected activity. See also, *Lafayette Park Hotel*, supra at 826; *Cooper River of Boiling Springs, LLC*,
35 360 NLRB No. 60 (2014) (rule prohibiting "[i]insubordination to a manager or lack of respect and cooperation with fellow employees or guests," which "includes displaying a negative attitude that is disruptive to other staff or has a negative impact on guest" did not violate the Act).

40 In this instance, the rule clearly does not refer to Section 7 activities, and there is no evidence that it was applied in a discriminatory manner or adopted in response to union activity. Within the context of the policy, all employees would understand a prohibition against fighting to mean a physical altercation and by any standard, including the Act, fighting would be inappropriate in the workplace. I do not believe that the rule can reasonably be read as
45 pertaining to Section 7 activity. In the words of the Board, "To ascribe such a meaning to these

[13] In this section of the decision, "the Respondent" refers to T-Mobile.

words is, quite simply, farfetched. Employees reasonably would believe that this rule was intended to reach serious misconduct, not conduct protected by the Act." *Lafayette Park Hotel*, supra at 827. The General Counsel's reliance on *Hills & Dales General Hospital*, 360 NLRB No. 70 (2014) is unpersuasive. The rule in *Hills & Dales* restricted employees actions outside of
5 the workplace by requiring them to "represent [the Respondent] in the community in a positive and professional manner." Id., slip op. at 2. Reading the policy at issue within context, an employee would clearly understand that it pertains to actions in the workplace; and Board precedent has held that workplace rules requiring employees to treat each other, including supervisors, with respect and behave professionally are an attempt to encourage a "civil and
10 decent workplace." See *Costco*, supra at 26-27 (quoting *Lutheran Heritage Village-Livonia*, 343 NLRB 648). Even assuming the rule encompasses actions outside the workplace, the Board found lawful a rule nearly identical to the one at issue but that addressed off-duty conduct. See *Flamingo Hilton-Laughlin*, supra at 289; *Lafayette Park Hotel*, supra at 827.

15 Accordingly, in the absence of evidence of discriminatory application of the rule or that it was adopted in response to protected conduct, I find maintenance of the rule does not violate Section 8(a)(1) of the Act. Therefore, I recommend dismissal of this complaint.

H. Acceptable Use Policy:"Legitimate Business Purposes" & "Security"

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T-Mobile's Acceptable Use Policy for Information and Communication (Acceptable Use Policy) at sections 3.3, 3.4, and 4.4 prohibit using its information or communication resources in ways it considers to be "disruptive, offensive, or harmful"; prohibit using its information or communication resources to advocate, disparage, or solicit for political causes or non-company
25 related outside organizations; and prohibit users from allowing "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." (Stipulation App., tab 6 at 2-5.)

30 The General Counsel charges that the policies violate the Act because *Register Guard*,[14] a decision in which the Board ruled an employer my deny employees access to its email and communications resources for non-job related solicitations, should be overturned. Furthermore, the General Counsel argues that if *Register Guard* is overturned, the remaining acceptable use policies are unlawful because Section 3.3 is overly broad "as it leaves far too much uncertainty
35 as to what precise conduct is prohibited"; and Section 4.4 will reasonably be interpreted to reach protected, concerted activities because "on its face [it] prohibit(s) an employee from obtaining any work polices stored or accessed through Respondents' systems and providing such information to a union representative." (GC Br. 29-30.) The Respondent[15] counters that *Register Guard* was Board precedent at the time the charge was filed and it should be controlling in this
40 matter. Further, the Respondent argues that there is no allegation or evidence that it applied discriminatorily any of the policies at issue. Finally, the Respondent contends that the case relied on by the General Counsel, *Beth-Israel v. NLRB*, 437 U.S. 483, 490 (1978), is inapposite. I find that the General Counsel's argument prevails in this instance.

[14] 351 NLRB 1110 (2007).
[15] In this section of the decision, "the Respondent" refers to T-Mobile.

Register Guard held that the employer's policy prohibiting use of its electronic communications system did not violate the Act as long as it was applied equally. The Board noted, an employer "may lawfully bar employees' non work-related use of its [communications] system[s], unless [the employer] acts in a matter that discriminates against Section 7 activity." 351 NLRB at 1111. Neither email access by non-employees, nor access to any other type of electronic communications system, were addressed by the Board because those issues were not before it. Id.

In *Purple Communications, Inc.*, 361 NLRB No. 126 (2014) the Board overturned *Register Guard* and established a new standard for assessing the validity of employer's rules restricting employees use of its email system. The Board articulated several reasons for its decision to overrule *Register Guard*. It found that *Register Guard* gave too much weight to employer's property rights over employees' "core Section 7 right to communicate in the workplace about their terms and conditions of employment"; the majority in *Register Guard* did not understand the importance of email as a way for employees to engage in protected communications, and its dramatic increase in usage since *Register Guard* was decided; and the majority in *Register Guard* wrongly placed more weight on the Board's equipment decisions than "those precedents can bear." Id., slip op. at 5. The Board held "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." Id., slip op. at 1. The decision's scope is limited to (1) employees who have already been authorized access to the employer's email system in the course of their work; and it does not require employers to provide email access; (2) an employer may justify a total ban on nonwork use of email, including Section 7 use of nonworking time, by demonstrating that "special circumstances" make the ban necessary to maintain production or discipline; and (3) absent justification for a total ban, the employer may apply uniform and consistently enforced controls over its email system to the extent such controls are necessary to maintain production and discipline. In other words, the new standard presumes that employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on nonworking time. An employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights. The Board noted, however, that "an employer contending that special circumstances justify a particular restriction must demonstrate the connection between the interest it asserts and the restriction. The mere assertion of an interest that could theoretically support a restriction will not suffice." *Purple Communications*, supra, slip op. at 14 and fn. 68. In other words, the justification must be rooted in an actual interest that the employer has demonstrated is in need of protection.

Moreover, the Board determined that *Purple Communications* should be applied retroactively in accordance with its usual practice to apply new policies and standards "to all pending cases in whatever stage" if doing so would not cause a "manifest injustice."[16]

In accordance with *Purple Communications*, supra, I must first determine whether the employees at issue have already been granted access to the Respondent's email system in the

[16] *Pattern Makers (Michigan Model Mfrs.)*, 310 NLRB 929, 931 (1993); *Machinists Local 2777 (L-3 Communications)*, 355 NLRB 1062, 1069 fn. 37 (2010).

course of their work. The Respondent's acceptable use policy for information and communication resources extends to "all Users (e.g., T-Mobile employees, contingent staff, and other third-parties doing business on behalf of T-Mobile) who have access to T-Mobile's information and/or communication resources." (Stipulation App., tab 6 at 1.) There is no contention by any of the parties that it is not applicable to the employees who are the subject of the complaints at issue. Therefore, the remaining question is whether the Respondent may "justify a total ban on nonwork use of email, including Section 7 use on nonworking time, by demonstrating that special circumstances make the ban necessary to maintain production or discipline." *Purple Communications*, supra, slip op. at 1.

The Respondent allows employees to have "incidental and infrequent personal use" of its email system. However, employees' personal use of the Respondent's email system cannot "interfere with an employee's productivity or ability to efficiently and fully perform job responsibilities." (Stipulation App., tab 5 at 26.) Access by employees to the Respondent's information and communications resources is restricted to "those resources, for which [employees] have prior permission and a TMUS business need to access." Id. The Respondent asserts that the acceptable use provisions at issue "all aim to ensure that T-Mobile's communications systems, which are property of the Company, are not used for nonbusiness-related causes, or for unlawful or offensive reasons or by non-approved individuals." (R. Br. 19.) Despite the Respondent's assertions, the record is devoid of evidence that there is a connection between the Respondent's interest in ensuring its email system is not used for unlawful or offensive reasons or by nonauthorized individuals. Moreover, the Respondent did not seek leave to submit supplemental evidence post-*Purple Communications* to establish that its interests in production and discipline override employees' Section 7 rights. Therefore, I find that the Respondent has failed to establish that special circumstances justify its specific restrictions on employees' use of its email system.

The Board determined that the new standard established in *Purple Communications* should be applied retroactively. Consequently, the Respondent's argument against retroactive application of its standard fails on this point.

1. Acceptable Use Policy – Section 3.3 and 3.4

The General Counsel argues that sections 3.3 and 3.4 of the T-Mobile's Acceptable Use Policy are both unlawfully overbroad. Section 3.3 of the policy reads in pertinent part:

> Using T-Mobile information or communication resources in ways that could reasonably be considered disruptive, offensive, or harmful to morale is prohibited.

(Stipulation App., tab 6 at 1 (sec. 3, para. 3))

The General Counsel alleges that the words "disruptive, offensive, or harmful to morale" fail to precisely define what conduct is prohibited, and "would leave an employee uncertain as to whether certain Section 7 activities are permissible." (GC Br. 31.) The Respondent[17] denies that

[17] In this section of the decision, "the Respondent" refers to T-Mobile.

a reasonable interpretation of the provisions would implicate Section 7 rights if read within the context of the entire Acceptable Use Policy provisions.

I find that section 3.3 is overbroad in violation of the Act because the provision fails to define or offer employees clarification on the specific type of speech that would violate the Respondent's policy. While *Purple Communications* emphasizes that employers are not required to provide email access to its employees in the course of their work, once it has done so employees are entitled to use the system for statutorily protected discussions about their terms and conditions of employment during nonworking time, absent a showing by the employer of special circumstances that justify specific restrictions. Therefore, an employer cannot, with a few exceptions, withhold from employees access to its email system based on the content of their emails. In this instance, the rule fails to define the areas of permissible and impermissible language with specificity by not defining the meaning of "disruptive, offensive, or harmful to morale" or making clear that the provision is not intended to infringe on employees' right to engage in Section 7 activity. Consequently, I find that the provision would reasonably tend to chill employees in the exercise of their Section 7 activities. For example, employees would be discouraged from emailing coworkers about methods of addressing objectionable terms and conditions of employment, criticizing management's actions, or emailing complaints to their union or employee representative protesting their terms and conditions of employment. See *Costco Wholesale Corp.*, 358 NLRB No. 106, slip op. at 2 (2012) (rule unlawful that subjected employees to discipline, including termination, for any electronic posting that damaged the company, defamed any individual, or damaged any person's reputation). Regarding the case at hand, the General Counsel rightly notes that "it is not difficult to entertain the possibility that some employees will make statements critical of Respondents or statements in favor of unionization that though polarizing in the workplace and likely to create schism are nonetheless protected communications. Respondent's policy admits of no limitations that would give employees some assurance that their Section 7 rights remain uninhibited." (GC Br. 32-33.)

Section 3.4 of the Acceptable Use Policy lists various restrictions on employees' uses of the Respondent's information and communication resources. Section 3.4 reads in relevant part:

> Any use that advocates, disparages, or solicits for religious causes, political causes, or non-company related outside organizations.

(Stipulation App., tab 6 at 2.)

The General Counsel contends that the provision is overly broad because "it sweeps within its prohibition "advocating," "disparaging," or "soliciting" for "political causes" or "non-company" outside organizations. These reasonably may be interpreted by employees to apply to protected Section 7 activities relating to mundane union organizing activity." (GC Br, 33.) However, the Respondent counters that *Register-Guard* is controlling; and there are no allegations or evidence of discriminatory application of section 3.4.

I agree that this language is unlawfully overbroad. Since *Register-Guard* has been overturned by *Purple Communications* and applied retroactively by the Board, the Respondent's first argument fails. Although section 3.4 of the Acceptable Use Policy does not explicitly restrict Section 7 rights, I find that employees would reasonably interpret the rule to prohibit

Section 7 activity. The Board established standards for assessing whether work rules are unlawfully overbroad. In *Lafayette Park*, supra, the Board held, "The appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice even absent evidence of enforcement." Id. at 828. The Board further opined in *Albertson's, Inc.*, 351 NLRB 254, 259 (2007), "In determining whether an employer's maintenance of a work rule reasonably tends to chill employees in the exercise of Section 7 rights, the Board will give the work rule a reasonable reading and refrain from reading particular phrases in isolation."

While section 3.4 of the Respondent's Acceptable Use Policy does not explicitly restrict Section 7 activities, it is clear that an employee reading the provision could reasonably construe it as restricting his or her rights to engage in protected concerted activities, including unionizing efforts. Advocating on behalf of unionization and disparaging management's actions as they pertain to terms and conditions of employment are the epitome of Section 7 activity. If employees were engaged in a contentious relationship with management over terms and conditions of employment or in the middle of a union organizing campaign, it is not unreasonable for employees to believe that this provision would apply to their efforts. For example, CWA is a "non-company organization", and section 3.4 does not clearly exclude protected communications with CWA, any other union, or "non-company organization" involved a unionization effort. Second, the term "political causes" as used in the provision is ambiguous; as to the nature of what type of "causes" the Respondent deems are "political." The Respondent's perception of "political causes" might be more expansive or restrictive than one, more, or all of its employees. The provision does not give parameters within which to judge the meaning of that term, via examples or a clarifying definition. The Board has consistently held that ambiguous work rules are construed against the employer, and so it shall be in this case. *Flex Frac Logistics,* 358 NLRB No. 127, slip op. at 2; *Brunswick Corp.*, 282 NLRB 794 (1987).

Accordingly, I find that sections 3.3 and 3.4 of the Respondent's Acceptable Use Policy violate Section 8(a)(1) of the Act.

2. Acceptable Use Policy – Section 4.4

Section 4.4 reads:

> 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.

(Stipulation App., Tab 6 at 3.)

The General Counsel contends that if *Register-Guard* is overturned, section 4.4, which also applies to MetroPCS, violates the Act because the policy "would on its face prohibit an employee from obtaining any work policies stored or accessed through Respondents' systems

and providing such information to a union representative." (GC Br. 30.) Again, the Respondent[18] counters that the provision's intent is to ensure that its communications systems are not used by nonapproved individuals and "would not reasonably be read to restrict, any rights guaranteed to employees." (R. Br. 20.)

Since *Register-Guard* has been overturned by the Board and a new standard established under *Purple Communications*, I must find that section 4.4 of the Respondent's Acceptable Use Policy violates the Act under the new standard.

Although the provision at issue does not explicitly prohibit employees from allowing union representatives access to information from or stored in the Respondent's email systems, it does not clarify that union representatives or other individuals engaged in concerted protected activities are excluded from this provision. The provision covers "all non-public T-Mobile information and any communication resource owned, leased, or operated by or for T-Mobile, and computers or devices, including those belonging to employees or contractors to the extent that these resources are used for T-Mobile business purposes." (Stipulation App., tab 6.) Consequently, documents that employees want to share with their union representatives about working conditions, wages, benefits, or other terms and conditions of employment would fall within the provision's restrictions. Likewise, employees who have authorization to use the email system would be prohibited from engaging in concerted activity with fellow employees who have not received prior written approval from the Respondent to access information or "any information transmitted by, received from, printed from, or stored in these resources. . . ." (Stipulation App., tab 6.) The Respondent's rule as written would reasonably be read by employees to prohibit them from disclosing information exchanged on the Respondent's email system which pertains to documents or discussions of wage and salary information, disciplinary actions, performance evaluations, and other subjects that are protected discussions among coworkers and, or their representatives under Section 7 of the Act. See *Hyundai*, slip op. at 1, 11-12 (the Board adopted the administrative law judge's finding that the employer's rule "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."

Accordingly, I find that section 4.4 of the Respondent's Acceptable Use Policy, which was also used by MetroPCS, is overbroad in violation of Section 8(a)(1) of the Act.

I. Code of Business Conduct: "Commitment to Integrity"

A provision, "Commitment to Integrity" in T-Mobile's Code of Business Conduct sets out unacceptable conduct for employees. The language at issue provides as follows:

> 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

[18] In this section, "the Respondent" refers to T-Mobile.

(Stipulation App., tab 2 at13.)

The General Counsel alleges that the provision which addresses "detrimental comments" is overbroad because "this rule fails to define or otherwise limit the meaning of "detrimental" as used in this work rule so it may be reasonably clear to employees what conduct is prohibited." (GC Br. 36.) Further, the General Counsel contends that a second provision is also ambiguous and overbroad because it fails to specifically define the type of conduct or subject that is prohibited. (GC Br. 38.) The Respondent[19] reiterates its position that its work rules cannot be reasonably interpreted by employees as restricting activities that are protected by Section 7 of the Act.

I find that the paragraph prohibiting "detrimental comments" about the Respondent is unlawful on its face because employees would reasonably construe the language as prohibiting Section 7 protected activity. In numerous decisions, the Board has consistently held that rules precluding negative conversations about coworkers or mangers are facially invalid. In *Hills & Dales General Hospital*, 360 NLRB No. 70 (2014), the Board again reiterated this proposition by finding unlawful the employer's rule prohibiting "negative comments" about coworkers and managers and engaging in "negativity." The rule at issue is similar to *Hills & Dales General Hospital* and other Board cases that have consistently held such rules are unlawful because of their ambiguous and overbroad nature. See, e.g., *Claremont Resort & Spa*, 344 NLRB 832, 832 (2005) (rule prohibiting negative comments about coworkers and managers unlawful on its face); *2 Sisters Food Group*, 357 NLRB No. 168, slip op. at 2 (2011) (rule held unlawful because threatened employees with discipline for the "inability or unwillingness to work harmoniously with other employees").

Similarly, the 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. See, e.g., *Roomstore*, 357 NLRB No. 143, slip op. at 1 (2011) (employer violated the Act by establishing and enforcing a rule that "prohibit[s] any type of negative energy or attitudes" because it is unlawfully overbroad); *University Medical Center*, 335 NLRB 1318, 1321 (2001) (unlawfully overbroad rule that prohibited "insubordination…or other disrespectful conduct towards service integrators and coordinators and other individuals"); *Hills & Dales General Hospital*, slip op. at 2 (Board found unlawful work rule mandating that employees "represent [the employer] in the community in a positive and professional manner").

Accordingly, I find that the provisions identified above in the Respondent's Code of Business Conduct – Commitment to Integrity violate Section 8(a)(1) of the Act.

[19] In this section of the decision, "the Respondent" refers to T-Mobile.

J. Employee Acknowledgment Form

It has been stipulated to by the parties that T-Mobile and MetroPCS share the Employee Acknowledgment Form at issue. (Stipulation App., tab 4.) The General Counsel argues that the form violates the Act "because it requires employees to comply with the overbroad and discriminatory rules and tasks employees with assisting in enforcement of the work rules." (GC Br. 20.) The Respondent demands that the allegation be dismissed because the General Counsel admits the language of the form is not, "in of itself, unlawful." (R. Br. 26.)

I find that the Employee Acknowledgment Form violates the Act because it requires employees to comply with the rules that I have previously found were overly broad and discriminatory. The form also requires employees to report violations of those rules and cooperate and participate in "any investigation conducted by the Company or its designees related to these issues." Stipulation App., tab 4.) As in the case of the rules I found were overly broad and discriminatory, the requirement that employees comply with and participate in the enforcement of such policies and rules would have a chilling effect on employees' exercise of their Section 7 rights.

Accordingly, I find that the Employee Acknowledgement Form at issue violates Section 8(a)(1) of the Act.

Conclusions of Law

1. The Respondent, T-Mobile USA, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, MetroPCS Communications, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Communication Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

4. The Communication Workers of America, Local 7011, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent violated Section 8(a)(1) of the Act by:

(a) Maintaining a rule in the Employee Handbook Purpose section of its handbook stating that the handbook is a proprietary and confidential document which may not be disclosed to or used by any third party without our written consent.

(b) Maintaining in the Business Practice-Internal Investigation section of the Respondent's handbook a rule that requires our employees to maintain the confidentiality of the names of employees involved in investigations as complainants, subjects or witnesses.

(c) Promulgating and maintaining in its handbook a Wage and Hour Complaint Procedure that suggests that the only method of addressing a wage payment or improper deduction dispute

or dispute of rest and meal periods is to contact a manager or HR business partner, or the Respondent's integrity line.

(d) Promulgating and maintaining a Communications with the Media Employee policy in the handbook that requires employees to refer all media inquiries to the Respondent without comment, and without informing employees that they may choose to speak to the media on issues concerning their wages, hours, and working conditions, or a union organizing campaign.

(e) Promulgating and maintaining an Acceptable Use Policy with ambiguous language that prohibits the use of the Respondent's information or communications resources in ways that could be considered disruptive, offensive, or harmful to morale, and prohibits use that advocates disparages, or solicits for political causes, or noncompany-related outside organizations, and promulgating and maintaining as part of the Acceptance Use Policy a prohibition against permitting nonapproved individuals to access information or information resources, or any information transmitted by, received from, printed from, or stored in these resources, without the Respondent's prior written approval.

(f) Maintaining a rule that requires employees to sign a Restrictive and Confidentiality Agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.

(g) Maintaining in its Code of Business Conduct a Confidentiality and Information Security work rule that prohibits disclosure of employee information that is defined to include employee addresses, telephone numbers, and contact information, and prohibits employee access to such employee information without a business need to do so and without the Respondent's prior authorization or consent of employees.

(h) Maintaining in its Code of Business Conduct maintain a Confidentiality of Each Other's Information rule that prohibits employees from disclosing employee information, such as employee addresses and other contact information, except for a business purpose, and suggests employees may be disciplined or subject to legal action if they disclose such information for other than a business reason.

(i) Maintaining in its Code of Business Conduct an ambiguous Commitment to Integrity rule that makes unacceptable making detrimental comments about the Respondent or its products and services, customers, or employees, and that makes unacceptable arguing with coworkers, subordinates, or supervisors, or failing to treat others with respect, or failing to demonstrate appropriate team work.

(j) Maintaining a work rule that requires employees to sign Employee Acknowledgement Forms that require them to comply with unlawful work rules or require them to report to the Respondent employees who do not comply with any of those work rules and policies that have been found to be unlawful.

6. The above violations are an unfair labor practices that affects commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent has not violated the Act except as set forth above.

8. I recommend dismissing that portion of the consolidated complaints which allege that the Respondent violated Section 8(a)(1) of the Act when:

(a) It promulgated and maintained an ambiguous rule in the handbook section entitled Workplace Conduct that requires employees to maintain a positive work environment by communicating in a manner conducive to effective working relationships with internal and external customers, clients, co-workers, and management.

(b) It promulgated and maintained a rule in the handbook entitled Recording in the Workplace-Audio, Video, and Photography that prohibits all use of camera phones, cameras, and audio and video recording devices to record work related or workplace discussions, and requires employees to seek the Respondent's permission prior to engaging in photography, audio, and video recordings in the workplace.

REMEDY

Having found that the Respondent has engaged in a certain unfair labor practice, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I concluded that various provisions in the Respondent's Employee Handbook, Code of Business Conduct, Employee Acknowledgment Form, and its Restrictive and Confidentiality Agreement are unlawful, the recommended order requires that the Respondent revise or rescind the unlawful rules, and advise its employees in writing that the said rules have been so revised and rescinded.

Further, the Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, T-Mobile USA, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

[20] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Maintaining a rule in the Employee Handbook Purpose section of our handbook stating that our handbook is a proprietary and confidential document which may not be disclosed to or used by any third party without our written consent.

5 (b) Maintaining in the Business Practice-Internal Investigation section of our handbook a rule that requires our employees to maintain the confidentiality of the names of employees involved in investigations as complainants, subjects, or witnesses.

(c) Promulgating and maintaining a policy in the Wage and Hour Complaint Procedure
10 section of its handbook which suggests that the only method of addressing a wage payment or improper deduction dispute or dispute of rest and meal periods is to contact a manager, or HR business partner, or our integrity line.

(d) Promulgating and maintaining a Communications with the Media Employee policy in
15 the handbook that requires you to refer all media inquiries to us without comment, and without informing you that you may choose to speak to the media on issues concerning your wages, hours, and working conditions, or a union organizing campaign.

(e) Promulgating and maintaining an Acceptable Use Policy with ambiguous language
20 that prohibits the use of our information or communications resources in ways that could be considered disruptive, offensive or harmful to morale, and prohibits use that advocates disparages, or solicits for political causes, or noncompany-related outside organizations, and promulgating and maintaining as part of the Acceptance Use Policy a prohibition against permitting nonapproved individuals to access information or information resources, or any
25 information transmitted by, received from, printed from, or stored in these resources, without our prior written approval.

(f) Maintaining a rule that requires employees to sign a Restrictive and Confidentiality Agreement that classifies employee wage and salary information as confidential and proprietary
30 information not subject to disclosure.

(g) Maintaining in our Code of Business Conduct a Confidentiality and Information Security work rule that prohibits disclosure of employee information that is defined to include employee addresses, telephone numbers, and contact information, and prohibiting employees
35 access to such employee information without a business need to do so and without our prior authorization or consent of employees.

(h) Maintaining in our Code of Business Conduct a Confidentiality of Each Other's Information rule that prohibits you from disclosing employee information, such as employee
40 addresses and other contact information, except for a business purpose, and suggests you may be disciplined or subject to legal action if you disclose such information for other than a business reason.

(i) Maintaining in our Code of Business Conduct maintain an ambiguous Commitment to
45 Integrity rule that makes unacceptable making detrimental comments about our Company or its products and services, our customers, or employees, or that makes unacceptable arguing with

coworkers, subordinates, or supervisors, or failing to treat others with respect, or failing to demonstrate appropriate team work.

(j) Maintaining a work rule that requires you to sign Employee Acknowledgement Forms that require you to comply with unlawful work rules or require you to report to us employees who do not comply with any of our work rules and policies that have been found to be unlawful.

(k) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purpose and policies of the Act.

(a) Within 14 days from the date of the Board's Order, revise or rescind the rules and/or documents found to be unlawful as set forth above.

(b) Within 14 days after service by the Region, post at its facilities nationwide copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 3, 2010.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. March 18, 2015

Christine E. Dibble (CED)
Administrative Law Judge

21 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain a rule in our Employee Handbook stating that our Employee Handbook is a proprietary and confidential document which may not be disclosed to or used by any third party without our written consent.

WE WILL NOT maintain in the Business Practice-Internal Investigation section of our Employee Handbook a rule that requires our employees to maintain the confidentiality of the names of employees involved in investigations as complainants, subjects or witnesses.

WE WILL NOT promulgate and maintain a policy in our Employee Handbook Wage and Hour Complaint Procedure section that suggests that the only manner to address a wage payment or improper deduction dispute or dispute of rest and meal periods is to contact a manager or HR business partner, or our integrity line.

WE WILL NOT promulgate and maintain a Communications with the Media provision in the Employee Handbook policy that requires you to refer all media inquiries to us without comment, without informing you that you may choose to speak to the media on issues concerning your wages, hours, and working conditions, or a union organizing campaign.

WE WILL NOT promulgate and maintain an Acceptable Use Policy with ambiguous language that prohibits use of our information or communications resources in ways that could be considered disruptive, offensive, or harmful to morale, and use that advocates disparages, or solicits for political causes, or noncompany-related outside organizations, and **WE WILL NOT** promulgate and maintain as part of the Acceptance Use Policy a prohibition against permitting nonapproved individuals to access information or information resources, or any information transmitted by, received from, printed from, or stored in these resources, without our prior written approval.

WE WILL NOT maintain a rule that requires employees to sign a Restrictive and Confidentiality Agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.

WE WILL NOT in our Code of Business Conduct maintain a Confidentiality and Information Security work rule that prohibits disclosure of employee information that is defined to include employee addresses, telephone numbers, and contact information, and **WE WILL NOT** prohibit employee access to such employee information without a business need to do so and without our prior authorization or consent of employees.

WE WILL NOT in our Code of Business Conduct maintain a Confidentiality of Each Other's Information rule that prohibits you from disclosing employee information, such as employee addresses and other contact information, except for a business purpose, and suggests you may be disciplined or subject to legal action if you disclose such information for other than a business reason.

WE WILL NOT in our Code of Business Conduct maintain an ambiguous Commitment to Integrity rule that makes unacceptable making slanderous or detrimental comments about our company or its products and services, our customers, or employees, or that makes unacceptable arguing with co-workers, subordinates, or supervisors, or failing to treat others with respect, or failing to demonstrate appropriate team work.

WE WILL NOT maintain a work rule that requires you to sign Employee Acknowledgement Forms that require you to comply with unlawful work rules or require you to report to us employees who do not comply with any of our work rules and policies that have been found to be unlawful.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL revise or rescind the unlawful provisions of our Employee Handbook, Code of Business Conduct, Restrictive and Confidentiality Agreement, Acceptable Use Policy for Information and Communication Resources, and Employee Acknowledgement Form, and **WE WILL** advise our employees in writing that we have done so and that the unlawful rules will no longer be enforced, and the unlawful agreements will be removed from their personnel records.

WE WILL allow each employee the opportunity to sign a revised Restrictive and Confidentiality Agreement, and an Employee Acknowledgement Form that does not contain the provisions that have been found unlawful.

WE WILL furnish you with inserts for the current Employee Handbook, Code of Business Conduct, and Acceptable Use Policy for Information and Communication Resources that (1) advise you that the unlawful paragraphs in the rules have been rescinded, or (2) provide the language of lawful rules, or **WE WILL** publish and distribute a revised Employee Handbook, Code of Business Conduct, and Acceptable Use Policy for Information and Communication

Resources that (1) does not contain the unlawful paragraphs, or (2) provides the language of lawful rules.

T-MOBILE USA, INC.
(Employer)

Dated __________________ By ____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-106758 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain in the Business Practice-Internal Investigation section of our Employee Handbook a rule that requires our employees to maintain the confidentiality of the names of employees involved in investigations as complainants, subjects or witnesses.

WE WILL NOT maintain a rule that requires employees to sign a Restrictive and Confidentiality Agreement that classifies employee wage and salary information as confidential and proprietary information not subject to disclosure.

WE WILL NOT in our Code of Business Conduct maintain a Confidentiality and Information Security work rule that prohibits disclosure of employee information that is defined to include employee addresses, telephone numbers, and contact information, and **WE WILL NOT** prohibit employee access to such employee information without a business need to do so and without our prior authorization or consent of employees.

WE WILL NOT maintain a work rule that requires you to sign Employee Acknowledgement Form that require you to comply with unlawful work rules or require you to report to us employees who do not comply with any of our work rules and policies that have been found to be unlawful.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL revise or rescind the unlawful provisions of our Employee Handbook, Code of Business Conduct, Restrictive and Confidentiality Agreement, and Employee Acknowledgement Form, and **WE WILL** advise our employees in writing that we have done so and that the

unlawful rules will no longer be enforced, and the unlawful agreements will be removed from their personnel records.

WE WILL allow each employee the opportunity to sign a revised Restrictive and Confidentiality Agreement, and an Employee Acknowledgement Form that does not contain the provisions that have been found unlawful.

WE WILL furnish you with inserts for the current Employee Handbook, and Code of Business Conduct (1) advise you that the unlawful paragraphs in the rules have been rescinded, or (2) provide the language of lawful rules, or **WE WILL** publish and distribute a revised Employee Handbook and Code of Business Conduct that (1) does not contain the unlawful paragraphs, or (2) provides the language of lawful rules.

METROPCS COMMUNICATIONS, INC.
(Employer)

Dated ____________________ By ____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-106758 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.