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November 16, 2026

VIA DMM FILING

Ms. Michelle Zaludek, Esq.
Records Access Officer
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

RE: Matter No. 26-02101 - In the Matter of Annual Reporting for 2026 Pursuant to the Affordable Broadband Act

Dear Ms. Zaludek:

We represent T-Mobile USA, Inc. (T-Mobile) in this matter. Pursuant to the Affordable Broadband Act (ABA), T-Mobile has submitted a redacted version of its 2026 Affordable Broadband Act Annual Report (the 2026 Report) to the New York State Department of Public Service (DPS or the Department) in this matter. By this letter, T-Mobile respectfully requests confidential treatment for certain information contained in that filing pursuant to the trade secret and confidential commercial information exemptions set forth in the Freedom of Information Law (FOIL), Public Officers Law (POL) §§ 87 (2) (d) and 89 (5) (a) (1), and the Department's implementing regulations, 16 NYCRR § 6-1.3.

Specifically, T-Mobile seeks protection from public disclosure for information contained in Tabs b, c, and g of the 2026 Report. Those tabs set forth (1) the number of customers enrolled in T-Mobile's ABA plan, broken down by county (Tab b); (2) a description of T-Mobile's internal procedures, criteria, and controls for verifying customer eligibility for the ABA plan (Tab c); and (3) the number of T-Mobile customers in arrears, the percentage of customers in arrears enrolled in the ABA plan, the number of households whose service was terminated for non-payment, the number of customers whose service was terminated for non-broadband arrears, and the number of households whose service was restored after delinquency (Tab g) (collectively, the Confidential Information).

As explained below, the Confidential Information constitutes both trade secret and confidential commercial information, the public disclosure of which would reveal competitively sensitive, nonpublic business information and would be likely to cause substantial injury to T-Mobile's competitive position. Accordingly, the Confidential Information should be excepted from disclosure pursuant to Public Officers Law §§ 87 (2) (d) and 89 (5) (a) (1) and 16 NYCRR § 6-1.3.

ANALYSIS

I. Legal Standard

Public Officers Law § 87 (2) authorizes an agency to "deny access to records or portions thereof" that fall within an enumerated exemption. As relevant here, Section 87 (2) (d) protects records that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Consistent with the plain language of this provision, New York courts have construed this section to create two separate, independent FOIL exemptions: one that exempts records demonstrated to be trade secrets, and another that exempts records that are confidential commercial information and whose disclosure would cause substantial injury to the competitive position of the subject enterprise.[1]

A. Confidential Commercial Information

Under the confidential commercial information prong, a record is exempt where it is submitted by, or derived from information obtained from, a commercial enterprise and its disclosure "would cause substantial injury to the competitive position of the subject enterprise."[2] Because FOIL does not define that phrase, the New York Court of Appeals has adopted the standard developed under the analogous federal exemption, holding that whether substantial competitive harm exists "turns on the commercial value of the requested information to competitors and the cost of acquiring it through other means."[3] A showing of actual competitive harm is not required but "[r]ather, actual competition and the likelihood of substantial competitive injury is all that need be shown."[4] Where disclosure under FOIL "is the sole means by which competitors can obtain the requested information," the requisite injury is established; conversely, where the material is "available from other sources at little or no cost, its disclosure is unlikely to cause competitive damage."[5]

Under 16 NYCRR § 6-1.3 (b) (2), the New York State Public Service Commission (the Commission) has delineated factors to determine whether confidential commercial information

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1 *See Verizon New York, Inc. v New York State Pub. Serv. Commn.*, 23 NYS3d 446, 448-449 (3d Dept, 2016); *see also Rayner v New York State Dep't of Corr. & Cmty. Supervision*, 197 NYS3d 463, 467-468 (Sup Ct, Albany County, 2023).

2 POL § 87 (2) (d).

3 *Encore Coll. Bookstores, Inc. v Auxiliary Serv. Corp. of State Univ. of New York at Farmingdale*, 87 NY2d 410, 419-421 (1995).

4 *Encore*, 87 NY2d at 420-21.

5 *Id.* at 420.

"would be likely to cause substantial injury to the competitive position of the subject commercial enterprise."[6] Factors to be considered include, but are not necessarily limited to:

1. the extent to which the disclosure would cause unfair economic or competitive damage;
2. the extent to which the information is known by others and can involve similar activities;
3. the worth or value of the information to the person and the person's competitors;
4. the degree of difficulty and cost of developing the information;
5. the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
6. other statutes or regulations specifically excepting the information from disclosure.

B. Trade Secret

Under the trade secret prong, a record containing a "true" trade secret is exempt without any separate showing of competitive injury.[7] While FOIL does not define "trade secret," New York courts define it as "any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it."[8]

Courts apply a two-step, fact-intensive inquiry to evaluate trade secret status: the information must first fit that definition, and the court must then determine whether the information is "truly secret" by weighing six factors:[9]

1. the extent to which the information is known outside the business;
2. the extent to which it is known by employees and others involved in the business;
3. the extent of measures taken by the business to guard the secrecy of the information;
4. the value of the information to the business and its competitors;
5. the amount of effort or money expended by the business in developing the information; and

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6 16 NYCRR § 6-1.3 (b) (2).

7 *Verizon New York Inc.*, 23 NYS3d at 449.

8 *Id.* at 450-451 (alteration in original); *Ashland Mgmt. Inc. v Janien,* 82 NY2d 395, 407 (1993). The advantage over competitors need not be "substantial" to find the existence of a trade secret (*Verizon New York, Inc. v New York State Pub. Serv. Commn.,* 991 NYS2d 841, 855 [Sup Ct, Albany County, 2014], *affd*, 23 NYS3d 446 [3d Dept 2016]).

9 *Marietta Corp. v Fairhurst*, 754 NYS2d 62, 66 (3d Dept 2003).

6. the ease or difficulty with which it could be properly acquired or duplicated by others.[10]

Because an entity establishing a trade secret must make a sufficient showing on each of these factors, the courts have held it "wholly unnecessary and overly burdensome" to require a separate demonstration of substantial competitive injury once trade secret status is proven.[11]

C. Past Determinations of Confidential Commercial Information and Trade Secret Status Are Not Determinative of Present Requests for Such Status

FOIL exemption determinations are necessarily fact specific and depend on the particular evidentiary showing made in support of protection. The Court of Appeals has emphasized that the party seeking protection bears the burden of demonstrating that the records fall within the asserted exemption through a "particularized and specific justification," and, in the context of confidential commercial information, must present "specific, persuasive evidence" that disclosure would cause competitive injury rather than rely on speculation.[12] Because both the trade secret and confidential commercial information exemptions turn on a case-specific assessment of the nature of the information, its commercial value, the measures taken to preserve its secrecy, and the competitive consequences of disclosure, the applicability of those exemptions must be evaluated based on the facts and evidence presented in connection with the particular request at issue. A prior determination concerning different evidentiary submissions therefore cannot substitute for the independent analysis required under Public Officers Law § 87 (2) (d).

II. Disclosure of the Confidential Commercial Information Would Cause Substantial Competitive Injury

The Confidential Information is exempt from disclosure as confidential commercial information whose disclosure would cause substantial injury to T-Mobile's competitive position. T-Mobile faces actual competition for the customers the Confidential Information describes. Specifically, T-Mobile provides home broadband service in New York over its fixed wireless network and competes for the same households, including ABA-eligible households, with cable, fiber, other fixed wireless, and satellite providers. Commission data shows that more than 97 percent of locations in New York State are served by at least 2 internet service providers and that

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[10] *Ashland Mgmt. Inc.*, 82 NY2d at 407.

[11] *Verizon New York Inc.*, 23 NYS3d at 451.

[12] *Markowitz v Serio*, 11 NY3d 43, 51 (2008); *Standardbred Owners Assn., Inc. v New York State Gaming Commn.*, 233 NYS3d 185, 188 & n 1 (3d Dept 2025) (finding that an agency's POL § 87 [2] [d] exemption determination improperly rested on a prior determination without "assess[ing] the information at issue and 'present specific, persuasive evidence that disclosure will cause [those entities] to suffer a competitive injury'").

at least 11 providers offer ABA-compliant plans.[13] That the ABA plan is statutorily required does not end that competition; providers still compete to win and keep these customers.

The Confidential Information is not publicly available. T-Mobile does not disclose its ABA enrollment figures (Tab b), its internal eligibility verification procedures (Tab c), or its ABA-related arrears, termination, and restoration figures (Tab g) in any public filing or report, and none of that information is available from third-party sources. It is derived exclusively from T-Mobile's internal systems and operations, to which competitors have no access, and T-Mobile protects it through the measures described in Section III.B.3, *infra*. Where FOIL disclosure "is the sole means by which competitors can obtain the requested information, the inquiry ends here."[14]

Even if the information could be approximated elsewhere, disclosure would still likely cause substantial competitive injury. County-level enrollment data (Tab b) would show competitors where T-Mobile has succeeded in attracting low-income subscribers, allowing them to target marketing and switching incentives there. Arrears, termination, and restoration data (Tab g) would reveal T-Mobile's credit and collections experience, and therefore its cost of serving these customers. The verification procedures (Tab c) would give competitors a process T-Mobile developed at its own expense and expose its internal eligibility procedures. Acquiring comparable information without public disclosure would require identifying T-Mobile's ABA customers household by household, tracking their payment behavior over time, and building comparable verification procedures, at great cost and with incomplete results. Public disclosure would instead improperly allow competitors to obtain the information "without expending [their] resources, thereby reducing [their] cost of business."[15]

The same facts satisfy the factors in 16 NYCRR § 6-1.3 (b) (2). Disclosure would cause unfair competitive damage by handing competitors this windfall; the information is not known outside T-Mobile, and T-Mobile has no access to competitors' comparable information; it is valuable to T-Mobile and its competitors alike; it was costly to develop (*see* Section III.B.5, *infra*); and it cannot be obtained or duplicated without T-Mobile's consent.

III. The Confidential Information Is a Trade Secret

1. The Confidential Information Meets the Definition of a Trade Secret

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[13] Case 22-M-0313, *In the Matter of the Commission's Broadband Study and Mapping Pursuant to the Broadband Connectivity Act*, Order Authorizing the Release of the 2026 Report on the Availability and Cost of High-Speed Broadband Services in New York State (issued June 11, 2026), at 4 & n 10 (stating that 97.2% of locations in New York State are "served," with "served" being defined as a "location with at least two Internet Service Providers and at least one such Internet Service Provider offers high-speed internet service").

[14] *Encore*, 87 NY2d at 420.

[15] *Id.* at 421.

Each tab in the 2026 Report is a compilation of information used in T-Mobile's business. Tabs b and g compile data drawn from T-Mobile's customer account, billing and payment, and collections systems, which T-Mobile extracted, matched to ABA enrollment, organized by county, and arranged in the Department's template. Tab c compiles the procedures and review criteria T-Mobile developed to determine ABA eligibility. T-Mobile uses this Confidential Information to assess credit and delinquency risk, monitor its service to low-income customers, and process every ABA application it receives. The Confidential Information gives T-Mobile an advantage over competitors who do not know it: T-Mobile knows where its ABA plan is being utilized, and how to enroll customers efficiently while controlling proper enrollment. Therefore, and as detailed further below, the Confidential Information is a trade secret and exempt from disclosure under FOIL.

2. <u>The Confidential Information Is Secret</u>

Each of the six trade secret factors confirms that the Confidential Information is secret.

a. The Extent to Which the Confidential Information Is Known Outside of the Business

The Confidential Information is not known outside T-Mobile. T-Mobile does not publish its ABA enrollment figures (Tab b), its internal eligibility verification procedures (Tab c), or its ABA-related arrears, termination, or restoration figures (Tab g). None of this information appears in T-Mobile's Securities and Exchange Commission filings, earnings releases, or other public reporting, none can be derived from them, and none is available from public filings, third-party sources, or market reports.

b. The Extent to Which Confidential Information Is Known by Employees and Others Involved in the Business

Within T-Mobile, access to the Confidential Information is limited to employees with responsibility for the functions that require it. The enrollment and payment data compiled in Tabs b and g is available only to personnel with financial, operational, analytical, or regulatory responsibilities who need it to perform specific job duties. The full verification procedures described in Tab c are known only to T-Mobile personnel involved in enrollment procedures and compliance. None of the information is broadly disseminated within T-Mobile, and the 2026 Report itself was prepared by a limited team of employees.

c. The Extent of Measures Taken by the Business to Guard the Secrecy of the Confidential Information

T-Mobile takes the following measures to protect the Confidential Information in all three tabs:

1. The information is maintained in internal systems subject to access controls, and access is restricted by role and business need.

2. T-Mobile requires employees to protect the company's confidential and proprietary information and prohibits its disclosure outside the company without authorization.
3. Employees, contractors, and vendors are bound by confidentiality obligations that continue after the relationship ends.
4. T-Mobile investigates suspected mishandling of confidential information, and imposes discipline up to and including termination.
5. T-Mobile is designating the Confidential Information as confidential when it files the Report and is submitting it through the Department's secure filing platform.

These measures are consistent with industry practice for safeguarding competitively sensitive business information, and they are the reason the Confidential Information is not available to the public.

d. The Value of the Confidential Information to the Business and Its Competitors

The Confidential Information is valuable to T-Mobile. T-Mobile operates in a highly competitive broadband market in New York. Competition exists with respect to customer acquisition, pricing strategies, service delivery and operational performance. Tab b would reveal T-Mobile's performance county by county and identify the most promising areas for competitive activity against T-Mobile. Tab g would reveal T-Mobile's customers' payment behavior and the costs and risks of serving the segment, a key input to pricing and credit strategy. Tab c would give competitors a developed and tested verification process without the cost of building one. The granularity of the enrollment and customer data therefore makes it valuable to both T-Mobile and its competitors.

e. The Amount of Effort or Money Expended by the Business in Developing the Confidential Information

The information in Tabs b and g is generated by systems T-Mobile built and maintains at substantial cost over many years: enterprise-scale billing and payment systems, customer account management platforms, and analytics and reporting tools. Developing and maintaining those systems has required enterprise-scale technology infrastructure, personnel across multiple business functions, and ongoing resources to keep them accurate, secure, and current.

f. The Ease or Difficulty with Which the Confidential Information Could Be Properly Acquired or Duplicated by Others

Competitors could not properly acquire or duplicate the Confidential Information. They have no access to T-Mobile's systems or internal procedures. Duplicating Tab b would require identifying T-Mobile's ABA customers household by household; duplicating Tab g would further require tracking those customers' payment behavior over time and reconstructing T-Mobile's internal operational metrics; and duplicating Tab c would require a competitor to design, test, and refine its own procedures without knowing which of T-Mobile's procedures and controls work.

Any such effort would be extremely costly and time-consuming and would still produce incomplete and inaccurate results.

3. Conclusion on Trade Secret Status

The Confidential Information in Tabs b, c, and g is a compilation of information used in T-Mobile's business that gives it an opportunity to obtain an advantage over competitors who do not know or use it, and each of the six factors confirms that it is a trade secret, making it exempt from disclosure under Public Officers Law § 87 (2) (d) without any further showing.

CONCLUSION

For the foregoing reasons, the Confidential Information constitutes both trade secret and confidential commercial information exempt from disclosure under Public Officers Law §§ 87 (2) (d) and 89 (5) (a) (1) and 16 NYCRR § 6-1.3. T-Mobile respectfully requests that the Department grant the Confidential Information confidential status, maintain it apart from other records as required by Public Officers Law § 89 (5) (a) (3), and, if any person(s) requests the Confidential Information or the Department determines on its own initiative to review its status, notify T-Mobile and afford it the opportunity to submit a written statement of necessity under Public Officers Law § 89 (5) (b) (2).

Please contact me directly if you have any questions. Thank you for your attention to this matter.

Respectfully Submitted,

/s/ Joshua A. Schneider

Joshua A. Schneider

cc: Michelle Lama, Esq., T-Mobile USA, Inc. (*via electronic mail*)
William M. Flynn, Esq., Harris Beach Murtha Cullina PLLC (*via electronic mail*)