

June 7, 2011

BY ECFS

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Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

JUN - 7 2011

Federal Communications Commission
Office of the Secretary

Re: *In re Applications of AT&T Mobility Spectrum LLC and Qualcomm Incorporated for Consent to the Assignment of Lower 700 MHz Band Licenses*
WT Dkt No. 11-18, Request for Second Protective Order

Dear Ms. Dortch:

AT&T Inc. (“AT&T”) (on behalf of its wholly owned subsidiary AT&T Mobility Spectrum LLC) and Qualcomm Incorporated (“Qualcomm”) (collectively, the “Applicants”) hereby request issuance of a second protective order in WT Docket No. 11-18 to provide additional protection beyond that afforded in the Commission’s May 20, 2011 protective order,¹ to certain information that Applicants are likely to submit in their responses to the Commission’s General Information Requests dated May 20, 2011. Specifically, Applicants seek the same level of protection that the Commission has afforded by second protective orders in numerous other proceedings.²

In past transactional proceedings, the Commission has issued second protective orders to exclude access to such information by other parties’ inside counsel who are not involved in competitive decision-making.³ Indeed, most of the information for which Applicants seek

¹ See *Applications of AT&T Mobility Spectrum LLC and Qualcomm Incorporated for Consent to the Assignment of Lower 700 MHz Band Licenses*, WT Dkt No. 11-18, Protective Order, DA 11-806 (rel. May 20, 2011) (“Protective Order”).

² Applicants are still preparing their responses to the General Information Requests. At this point, they do not know with certainty what highly confidential information will be included in their submissions, but it is very likely that their submissions will include highly confidential information of the types described below. To be clear, however, Applicants are not making any definitive representations at this time as to what will or will not be included in these submissions.

³ See *Applications Filed by Qwest Commc’ns International, Inc. and Centurytel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Protective Order, 25 FCC Rcd. 15238, 15238-39, ¶ 3 (WCB 2010) (“*Qwest/CenturyLink Second Protective Order*”); *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Second Protective Order, 25 FCC Rcd. 2140, 2140 ¶ 3 (MB 2010) (“*Comcast/NBCU Second Protective Order*”); *Business Broadband Marketplace*, Second Protective Order, 25 FCC Rcd. 14037, 14038, ¶ 3 (WCB 2010) (“*Broadband Second Protective Order*”); *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing*

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protection under the Second Protective Order has received such “second level protection” from the Commission under one or more prior second protective orders. Similar protections are warranted in this proceeding. In addition, AT&T also requests protection under the Second Protective Order for information that is comparable to the data to which the Commission has accorded second level protection in the past, even though there is no exact precedent.

The Commission’s requests to each Applicant are somewhat different, and the highly confidential Information Request of each varies in ways that reflect both the differing requests and the differing ways in which each Applicant has maintained, used, and integrated material responsive to each. The categories of highly confidential information relevant to each Applicant are addressed separately below. The discussion with respect to each Applicant includes a chart which lists, by category, the kinds of information (or equivalent variants thereof) to which such protection has been accorded in the past, along with the request numbers in the General Information Requests pursuant to which each Applicant is likely to produce such information in each category. Second, after each chart is a more detailed discussion of the reasons why protection under a Second Protective Order should be provided in this case.

Footnote continued from previous page

Arrangement, Second Protective Order, 24 FCC Rcd. 14569, 14571, ¶ 6 (WTB 2010) (“*AT&T/Verizon Wireless Second Protective Order*”); *Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership*, Second Protective Order, 25 FCC Rcd 5580, 5581, ¶ 3 (WTB 2010) (“*Centennial Divestitures Second Protective Order*”); *Applications of AT&T Inc. & Centennial Commc’ns Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Leasing Arrangements*, Second Protective Order, 24 FCC Rcd. 7182, 7183, ¶ 3 (WTB 2009) (“*AT&T/Centennial Second Protective Order*”); *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, Second Protective Order, 24 FCC Rcd. 14559, 14560, ¶ 5 (WTB 2009) (“*ATN/Verizon Second Protective Order*”); *AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, Second Protective Order, 21 FCC Rcd. 7282, 7282-83, ¶ 3 (WCB 2006) (“*AT&T/BellSouth Second Protective Order*”); *Verizon Commc’ns Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Order Adopting Second Protective Order, 20 FCC Rcd. 10,420, 10,420-21, ¶ 3 (WCB 2005) (“*Verizon/MCI Second Protective Order*”); *Applications for the Transfer of Control of Licenses & Authorizations from Nextel Commc’ns, Inc. & Its Subsidiaries to Sprint Corp.*, Order Adopting Second Protective Order, 20 FCC Rcd. 9280, 9280-81, ¶ 3 (WTB 2005) (“*Sprint/Nextel Second Protective Order*”); *SBC Commc’ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Order Adopting Second Protective Order, 20 FCC Rcd. 8876, 8876-77, ¶ 3 (WCB 2005) (“*SBC/AT&T Second Protective Order*”); *News Corp., Gen. Motors Corp., & Hughes Elecs. Corp.*, Order Concerning Second Protective Order, 18 FCC Rcd. 15,198, 15,199, ¶ 3 (MB 2003) (“*News Corp./GM/Hughes Second Protective Order*”); *EchoStar Commc’ns Corp., Gen. Motors Corp., & Hughes Elecs. Corp.*, Order Adopting Second Protective Order, 17 FCC Rcd. 7415, 7416, ¶ 3 (MB 2002) (“*EchoStar/GM/Hughes Second Protective Order*”).

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Categories of Highly Confidential Information Responsive to the AT&T Requests

The information at issue includes some of AT&T's most sensitive business information. AT&T holds this information in strict confidence because its release would place it at a significant disadvantage in the highly competitive market for mobile wireless voice and data services.

Category of Information	Request Number(s)
Information that discusses in detail future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including future procurement strategies, pricing strategies, product strategies, advertising or marketing strategies, future business plans, technology implementation or deployment plans and strategies (e.g., plans for deployment of HSPA+, LTE, wireline broadband, or IPTV or engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies. ⁴	2.i.(a), (d), (e), (f), (g), (h).2; 2.ii.(i) (with respect to details regarding future plans to deploy a wireless technology format), (j), (k)(iv)-(vi); 3.i; 5; 7; 9; 11; 19.ii; 20; 21; 22; 23 (other than public documents); 24; 25; and 26
Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, maps of network facilities, or information about the backhaul provider to a site. ⁵	3.i; 7; and 26

⁴ *Qwest/CenturyLink Second Protective Order* 25 FCC Rcd. at 15240, ¶ 6; Letter from William T. Lake, Chief, Media Bureau, to Michael H. Hammer, Willkie Farr & Gallagher LLP, A. Richard Metzger, Jr., Lawler, Metzger, Keeney & Logan, LLC, and David H. Solomon, Wilkinson Barker Knauer, LLP, MB Dkt 10-56, DA 10-635, at 5 (Apr. 30, 2010); *Broadband Second Protective Order* at 14039, ¶ 6; *Centennial Divestitures Second Protective Order* at 5583, ¶ 6; *AT&T/Centennial Second Protective Order* at 7184, ¶ 6; *AT&T/Verizon Wireless Second Protective* at 14572, ¶ 9; *ATN/Verizon Wireless Second Protective Order* at 14562, ¶ 9; *AT&T/BellSouth Second Protective Order* at 7283, ¶ 5; *Sprint/Nextel Second Protective Order* at 9281, ¶ 4; *SBC/AT&T Second Protective Order* at 8877, ¶ 4; *Verizon/MCI Second Protective Order* at 10421, ¶ 4; *News Corp./GM/Hughes Second Protective Order* at 15199, ¶ 3; *EchoStar/GM/Hughes Second Protective Order* at 7416, ¶ 3.

⁵ See *Qwest/CenturyLink Second Protective Order* at 15240, ¶ 6; *Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd. 17725, 17727, ¶ 6 (WCB 2010); *Broadband Second Protective Order* 14405, ¶ 6; *AT&T/BellSouth Second Protective Order* at 7283, ¶ 5; *SBC/AT&T Second Protective Order* at 8877, ¶ 4; *Verizon/MCI Second Protective Order* at 10,421, ¶ 4.

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Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data broken down by zip code or market and detailed information about why customers discontinue service. ⁶	3.i, ii; 4; 25; and 26
Information that discusses in detail plans to construct new facilities. ⁷	3.i; 7; and 20
Information that provides granular information about a Submitting Party's current costs, market share, marginal revenue, and firm-specific price elasticities. ⁸	11; 20; and 26
Information that provides how a Submitting Party analyzes its competitors, including the sources and methods used to do so, any limits the Submitting Party has on using these data, and how it uses these data. ⁹	15; 17.ii, iii; 20; and 26
Information that provides detailed technical performance data and test results. ¹⁰	19.ii; 20 and 26

As detailed below, AT&T's response to its General Information Request will include information falling within the categories of information that the Commission has previously deemed worthy of protection under a second protective order.

⁶ See *Comcast/NBCU Second Protective Order* at 2145, ¶ 6; *Qwest/CenturyLink Second Protective Order* at 15240, ¶ 6; *AT&T/BellSouth Second Protective Order* at 7283, ¶ 5; *SBC/AT&T Second Protective Order* at 8877, ¶ 4; *Verizon/MCI Second Protective Order* at 10,421, ¶ 4; see also *News Corp./GM/Hughes Second Protective Order* at 15,199, ¶ 3; *EchoStar/GM/Hughes Second Protective Order* at 7416, ¶ 3.

⁷ *Qwest/CenturyLink Second Protective Order* at 15240, ¶ 6; *SBC/AT&T Second Protective Order* at 8877, ¶ 4; *Verizon/MCI Second Protective Order* at 10,421, ¶ 4.

⁸ *Comcast/NBCU Second Protective Order* at 2145, ¶ 6; *Centennial Divestitures Second Protective Order* at 5583, ¶ 6; *AT&T/Centennial Second Protective Order* at 7184, ¶ 6; *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9; *ATN/Verizon Second Protective Order* at 14562, ¶ 9; *Sprint/Nextel Second Protective Order* at 9281, ¶ 4; *News Corp./GM/Hughes Second Protective Order* at 15,198, ¶ 2.

⁹ *Sprint/Nextel Second Protective Order* at 9281, ¶ 4.

¹⁰ *Id.*

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- A. *Information that discusses in detail future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including future procurement strategies, pricing strategies, product strategies, advertising or marketing strategies, future business plans, technology implementation or deployment plans and strategies (e.g., plans for deployment of HSPA+, LTE, wireline broadband, or IPTV or engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.*

AT&T Request 2 asks AT&T to list the spectrum licenses that can be used in the provision of mobile wireless services which it holds, is in negotiations to acquire or plans to transfer or assign, has a joint venture or other business arrangement, or leases from another person. That Request also seeks AT&T's current and planned future deployment of wireless technologies on a license-by-license basis. AT&T will also provide detailed spectrum license lists containing the requested data and a chart listing how its cellular and PCS spectrum are allocated between technologies on a cell site-by-cell site basis. Knowledge of this information would reveal AT&T's strategic plans regarding the sale and acquisition of its spectrum and its technology deployment strategies on a granular level.

AT&T Request 3.i asks for AT&T's plans for the construction, timeframe, and capacity needs for deploying an LTE network, for marketing relevant services and products, and for changes to service and pricing plans. In response, AT&T will provide its pre-merger planned roll-out of LTE service, disaggregated by each CMA and by state and county, as well as its proposed LTE coverage if the acquisition of T-Mobile USA, Inc. ("T-Mobile") is approved. These data include the planned LTE launch dates, disaggregated at both the CMA and county level. In addition, AT&T will provide its Corporate Strategy group's analysis of wireless demand and spectrum. *[Begin Confidential]*

[End Confidential]

AT&T Requests 5, 7, and 9 call for AT&T to produce strategic plans, analyses, and reports discussing possible constraints in capacity or in increasing capacity to serve current and potential future customers; trunking and other efficiency gains that may result from supplemental downlink capacity for different user applications, including any feasibility studies; and the efficiencies and benefits to mobile wireless services and products from supplemental downlink technology. AT&T's response is likely to contain information and documents related to its current and future plans to acquire new spectrum or increase capacity, its projected efficiencies from the use of Qualcomm's spectrum, related future product strategies, and technology implementation and deployment strategies.

AT&T Request 11 asks for information and documents related to AT&T expanding LTE downlink capacity, including detailed internal analyses of AT&T's plans to deploy in the Lower 700 MHz D and E Blocks. In response, AT&T likely will provide a detailed discussion and documents discussing the technical configuration in which it plans to deploy the spectrum.

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In response to AT&T Request 19, AT&T likely will provide a detailed link budget analysis for both the uplink and downlink for the 700 MHz and AWS spectrum bands it plans to use in connection with the initial rollout of its LTE network. In response to AT&T Request 20, AT&T will provide documents discussing its future LTE deployment plans and strategies and implementation of those plans; analyses of alternative spectrum options for deploying LTE and of alternative spectrum opportunities; internal valuations of AT&T's spectrum; and analyses of the proposed transaction, including AT&T's valuation of Qualcomm's assets. AT&T Requests 21, 22, 23, 24, and 25 ask for the production of AT&T's business plans and strategies discussing AT&T's valuations of Qualcomm's spectrum assets and AT&T's valuation of any spectrum licenses it has acquired or considered acquiring; strategic plans relating to the Qualcomm spectrum and its expected uses; the effect of the proposed transaction on AT&T's spectrum constraints and business plans; protected data on traffic loads and customer base; and projected facilities to meet consumer demand. In response, AT&T likely will produce documents containing its current and future procurement and deployment strategies, internal strategic presentations regarding the effect of the transaction on spectrum constraints; and estimations of current and projected customer base and anticipated customer demand.

In response to AT&T Request 26, AT&T will produce certain documents that were provided to the Department of Justice that discuss in detail AT&T's future spectrum procurement strategies, product strategies, business plans, technology implementation, and deployment plans.

AT&T's responses to these Requests will reveal highly sensitive information regarding its current and forward-looking business strategies and plans. Such plans and negotiations are among Applicants' and their vendors' and other business partners' (collectively, "Partners") most closely guarded secrets. Disclosure would allow a competitor to learn valuable information about Applicants' and their Partners' business plans and strategies and formulate responsive strategies. Knowledge of AT&T's network, spectrum acquisition and sale, LTE deployment plans, and Qualcomm's and both Applicants' Partners' plans, and the timing of these plans, would enable competitors to target their pricing, advertising, and marketing as well as their capital plans in a way that would advantage them unfairly against Applicants and their Partners.

The responses to certain of these questions also likely will contain sensitive technical data, including trade secrets, which Applicants and their Partners have expended considerable resources in developing. Disclosure of these data would provide competitors with significant information that could be used by these competitors in their own technical developments, and could be used to harm the competitive positions of Applicants and their Partners. Therefore, AT&T requests that the Commission issue a Second Protective Order to cover the foregoing information to be produced in response to AT&T Requests 2.i.(a), (d), (e), (f), (g), (h).2; 2.ii.(i) (with respect to details regarding future plans to deploy a wireless technology format), (j), (k)(iv)-(vi); 3.i; 5; 7; 9; 11; 19.ii; 20; 21; 22; 23 (other than public docs); 24; 25; and 26.

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- B. *Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, maps of network facilities, or information about the backhaul provider to a site.*

AT&T's response to Request 3.i likely will include documents containing plans regarding future LTE deployment. As described above, AT&T's response also will include a detailed spreadsheet of its pre-merger planned rollout of LTE service, disaggregated by each CMA and by state and county, as well as its proposed LTE coverage if the merger with T-Mobile is approved. These data include the planned LTE launch dates, disaggregated at both the CMA and county level. In addition, AT&T will provide its Corporate Strategy group's analysis of wireless demand and spectrum. AT&T Request 7 calls for analyses and reports discussing possible constraints in capacity. In response, AT&T likely will produce documents containing strategic plans to acquire new spectrum or increase capacity. Some of these documents may be granular to the local level. In response to AT&T Request 26, AT&T will provide certain documents that it provided to the Department of Justice that contain proprietary subscriber and spectrum demand detail.

Disclosure of these data would provide significant information that can be used by competitors in their own technical developments, would enable competitors to react to this information in their own business and marketing strategies, and would harm AT&T's competitive position. In addition, knowledge of granular data related to locations of cell sites and facilities also would reveal information about AT&T's specific customer demand, and would enable competitors to analyze the strengths and weaknesses of their service offerings at precise locations. Therefore, Applicants request that the Commission issue a Second Protective Order to cover the foregoing information produced in response to AT&T Requests 3.i; 7; and 26.

- C. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data broken down by zip code or market and detailed information about why customers discontinue service.

In response to AT&T Request 3.i, AT&T will produce strategic plans, analyses, and reports discussing on a CMA-by-CMA basis AT&T's LTE deployment over its 700 MHz and AWS spectrum, including post-transaction projections for changes to service, pricing plans, and capacity needs. In response to AT&T Request 3.ii, AT&T likely will provide projected uplink and downlink data usage and pricing assumptions. In response to AT&T Request 4, AT&T likely will provide internal projections of capacity and bandwidth requirements. In response to AT&T Request 25, AT&T is likely to produce strategic plans, analyses, and reports revealing estimations of its current and projected customer base and anticipated customer demand. In response to AT&T Request 26, AT&T will produce documents that were provided to the Department of Justice that discuss in detail forecasts of traffic growth, future plans for meeting growth, and AT&T's position relative to specific competitors.

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Knowledge of such data would reveal information about AT&T's specific customer demand and AT&T's plans for serving that demand, would enable competitors to analyze the strengths and weaknesses of their service offerings in comparison to AT&T's, and would give competitors an unfair advantage in competing for customers. Accordingly, AT&T requests that the Commission issue a Second Protective Order to cover information produced in response to AT&T Requests 3.i, ii; 4; 25; and 26.

D. *Information that discusses in detail plans to construct new facilities.*

AT&T Requests 3.i and 7 call for documents that discuss AT&T's detailed plans to construct new facilities. In response to AT&T Request 3.i, AT&T will provide its pre-merger planned rollout of LTE service, disaggregated by each CMA and by state and county, including the planned launch dates, as well as its proposed LTE coverage if the acquisition of T-Mobile is approved. In addition, AT&T will provide its Corporate Strategy group's analysis of wireless demand and spectrum. *[Begin Confidential]*

[End Confidential]

These data are being provided at a level of granularity that would be highly valuable to market competitors.

In response to AT&T Requests 7 and 20, AT&T is likely to produce strategic plans, analyses, and reports discussing (i) acquisition of new spectrum; (ii) plans to increase network capacity using existing spectrum; (iii) alternative solutions to spectrum constraint problems; (iv) repurposing spectrum; and (v) constraints other than spectrum (*e.g.*, backhaul). Each of these solutions will require some construction of new (or at least modified) facilities. Knowledge of such strategic plans and analyses would enable competitors to target their own deployments, as well as pricing, advertising, and marketing, in a way that would advantage them unfairly against AT&T. Therefore, AT&T requests that the Commission issue a Second Protective Order to cover the foregoing information it produces in response to AT&T Requests 3.i; 7; and 20.

E. *Information that provides granular information about a Submitting Party's current costs, market share, marginal revenue, and firm-specific price elasticities.*

In response to AT&T Request 11, AT&T likely will provide post-transaction plans and strategies related to the costs of deploying Lower 700 MHz D or E Block base stations and mitigating interference and the effect on cost of mitigating possible mobile-to-mobile interference. In response to AT&T Request 20, AT&T will provide documents containing AT&T's cost analysis of adding cell sites and past and future budget forecasts for deployment. In response to AT&T Request 26, AT&T will provide certain documents that it produced to the Department of Justice that contain detailed data on incremental costs for LTE construction and detailed spectrum acquisition costs.

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Knowledge of such granular data regarding pricing and costs would enable competitors to forecast AT&T's capital and other investments in those geographic areas, make judgments about entry into business, target their marketing more precisely, and otherwise adjust their efforts to give them an unfair advantage in competing against AT&T. Accordingly, AT&T requests that the Commission issue a Second Protective Order to cover the foregoing information produced in response to AT&T Requests 11; 20; 26.

- F. *Information that provides how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, how such analyses or data are used, and any customer survey data that show why customers discontinue a Submitting Party's service.*

In response to AT&T Requests 17.ii and iii, AT&T likely will produce documents and information discussing AT&T's analyses of present and future competition with respect to spectrum use and LTE mobile broadband services; sensitive analyses of other nationwide providers and their spectrum usage, as well as 4G capabilities; and provider-by-provider analyses discussing the competitive significance of various competitors to AT&T.

In response to AT&T Request 15, AT&T likely will provide documents discussing in detail its analyses regarding the effect of the proposed transaction on competitors and the use of supplemental downlink technology by other carriers. In response to AT&T Request 20, AT&T will provide documents containing its valuation and analyses of competitors' spectrum. In response to AT&T Request 26, AT&T will produce certain documents that were provided to the Department of Justice that discuss in detail AT&T's analyses of its competitors' amount and quality of spectrum.

Materials related to competitive data and analyses, including analyses of competitors, are among Applicants' most sensitive information. It is critically important that such information be shielded effectively from public disclosure, particularly disclosure to competitors, as it would reveal key business strategies and plans, as well as reveal strengths, weaknesses, or strategies of Applicants. Disclosure would allow competitors to react to this information in their own competitive analyses, and business and other strategies, giving them an unfair competitive advantage. Accordingly, AT&T requests that the Commission issue a Second Protective Order to cover the foregoing information in response to AT&T Requests 15; 17.ii, iii; 20; and 26.

- G. *Information that provides detailed technical performance data and test results.*

AT&T Request 19.ii asks for AT&T's underlying link budget assumptions for both the uplink and downlink for bands used or planned to be used by AT&T. In response to AT&T Request 19.ii, AT&T will provide the results of its detailed link budget analysis for the 700 MHz and AWS spectrum bands it plans to use in connection with the initial rollout of its LTE network. In response to AT&T Request 20, AT&T will produce documents discussing the results of LTE supplemental downlink tests and analyses; link budget calculations and assumptions for a

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competitor; and detailed analyses of spectrum utilization for LTE and alternative options for LTE deployment. In response to AT&T Request 26, AT&T will produce certain AT&T documents that were provided to the Department of Justice that contain post-merger integration plans for network, facilities, and cell sites.

Analyses of technical performance data and related documents, including test planning and results, are extremely sensitive. They may reveal various business strategies, including product and marketing strategies, plans related to customer demand, as well as sensitive technical data. Disclosure of these materials and data would give competitors information they could use in their own technical developments and technology testing, as well as enable them to react to this information in their own business and marketing strategies, which may harm Applicants' competitive positions. In addition, knowledge regarding technical data and testing could be used by competitors to compare relative strengths and weaknesses of their services in comparison to Applicants', giving them an unfair advantage when competing for customers. Accordingly, AT&T requests that the Commission issue a Second Protective Order to cover the foregoing information they produce in response to AT&T Requests 19.ii; 20; and 26.

Categories of Highly Confidential Information Responsive to the Qualcomm Requests

Qualcomm develops cutting edge technologies, including those relating to wireless communications, and the Proposed Transaction reflects Qualcomm's careful, high-level strategic analysis of market opportunities related to mobile broadband technologies and devices. Qualcomm has developed considerable expertise and intellectual property, including trade secrets, in developing FLO-TV technology and supplemental downlink technology, among others, that might be utilized within the Lower 700 MHz D and E frequency blocks. Qualcomm has also conducted careful strategic analysis of its assets and options in a dynamic and highly competitive market, reflected in documents that rely on, refer to, and incorporate Qualcomm's related intellectual property. Several of the Requests from the FCC (*e.g.*, numbers 2, 3, 4, 6, 9, and 10) call for disclosure to the Commission of some of this highly sensitive commercial and technological subject matter. They do so in ways that overlap and inter-relate, because much of Qualcomm's responsive material integrates highly confidential technical and competitive analyses. While, in many cases, the highly confidential nature of material expected to be responsive is apparent even as a stand-alone matter, the combination of technical and strategic business material requested would threaten to unfairly undermine Qualcomm's competitive position were it to be disseminated more widely than strictly necessary. Therefore, Qualcomm seeks highly confidential treatment of the following categories of information:

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Category of Information	Request Number(s)
Non-public information, analysis, or discussions of technical data, testing, capabilities, capacity, characteristics, performance, pricing, or limits, that relate to current, future, or potential corporate technologies, services or products. ¹¹	2; 3; 6; 7; 8; and 10
Non-public information, analysis, or discussions of internal assessments of the financial or operational viability or applicability of corporate technologies, products or services related to the Qualcomm Spectrum Assets. ¹²	2; 3; 6; 7; 8; and 10
The identity of parties approached or that approached Qualcomm regarding a potential sale of FLO TV or the Qualcomm Spectrum Assets, provision of wholesale FLO TV service, or sale of equity interest in FLO TV Incorporated, as well as any offers, bids, expressions of interest or lack thereof, or similar responses, positive or negative, by those parties. ¹³	3; 4; 7; 8; and 9

¹¹ See *Verizon/MCI Second Protective Order* at 10421, ¶ 4 (protecting technical data regarding relevant assets, specifically “detailed or granular engineering capacity information”); *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9 (protecting detailed information and analysis about subjects including detailed price and technical data, and current and future deployment and competitive strategies).

¹² See *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9 (protecting detailed valuation and analysis of divestiture assets, including current costs, market share, marginal revenue, firm-specific price elasticities, and current and future deployment and competitive strategies); *Comcast/NBCU Second Protective Order* at 2143, ¶ 6 (protecting survey results explaining why customers discontinued service and other consumer data showing the number of customers offered service compared with the number that accepted service and various terms, and protecting detailed revenue data).

¹³ See *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9 (protecting documents discussing the “identity or characteristics of specific persons with whom a company is negotiating, prices for and values of the assets”); *Verizon/MCI Second Protective Order* at 10421, ¶ 4 (protecting discussions providing detail or analysis of merger integration benefits or efficiencies, including costs, benefits, timeline, and risks of the integration).

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Non-public information or discussions on the value or potential uses of the Qualcomm Spectrum Assets. ¹⁴	2; 3; 4; 6; 7; 8; 9; and 10
Non-public information or discussions on the value of FLO TV. ¹⁵	2; 3; 4; 6; 7; 8; and 9
Non-public information or discussions concerning Qualcomm’s business with equipment manufacturers other than Qualcomm. ¹⁶	2; 3; 4; 6; 8; 9; and 10
Non-public information or discussions concerning Qualcomm trade secrets, patents, or other intellectual property rights. ¹⁷	2; 6; 8; and 10

As reflected by the table above, the Commission’s requests to Qualcomm overlap significantly. This is largely because Qualcomm’s evolving efforts to evaluate use of the Spectrum Assets, business models for the assets, and sale of the assets, evolved in an integrated manner into the Proposed Transaction. For example, Qualcomm Request 2 calls for strategic documents discussing “how to make use” of the spectrum at issue, while Qualcomm Request 3 calls for information regarding “. . . all the options for a business model for Qualcomm Qualcomm’s spectrum, including a discussion of the advantages and disadvantages of each option that was considered,” which will call for much of the same strategic analysis called for in Qualcomm Request 2. Similarly, Qualcomm Request 4 calls for detailed nonpublic information about the options Qualcomm considered for sale of its spectrum, including its confidential communications with bidders and potential bidders; some responsive material will analyze those options in light of the same strategic information called for by Qualcomm Request 2 and business-model alternatives sought in the fourth Request. Qualcomm Request 6 calls for the same information as Request 4 to the extent the Wise Declaration reflects it. Request 7 calls for documents discussing valuation of the Spectrum Assets at issue in the Proposed Transaction,

¹⁴ See *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9 (protecting granular information, valuation, and other analysis about assets and current and future strategies).

¹⁵ See *AT&T/Verizon Wireless Second Protective Order* at 14573, ¶ 9 (protecting detailed valuation and analysis of divestiture assets, including current costs, market share, marginal revenue, firm-specific price elasticities, and current and future deployment and competitive strategies); *Comcast/NBCU Second Protective Order* at 2143, ¶ 6 (protecting detailed financial data).

¹⁶ See *AT&T/BellSouth Second Protective Order* at 7282, ¶ 3 (WCB 2006) (protecting competitively sensitive nonpublic details regarding current and anticipate customers).

¹⁷ *Broadband Second Protective Order* at 14405, ¶ 3 (protecting trade secrets such as customer demand patterns and factors used to determine deployment and make purchasing decisions).

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which will reflect the very same subject matter called for by Requests 2 through 4. Request 8 calls for “. . . all strategic plans, policies, analyses, reports and presentations discussing the Qualcomm spectrum and its expected use.” Those plans, reports, analyses, etc. generally contain one or more of the types of information sought in Qualcomm Requests 2-4 and 6-8. Qualcomm Request 9 calls for some nonconfidential information about the Proposed Transaction, but also includes requests for nonpublic reports and analyses provided to Qualcomm management and Board members regarding the transaction; again, those nonpublic reports will contain much of the same or similar substance to that requested by the previously cited requests. Finally, Qualcomm Request 10 calls for “all strategic plans, policies, analyses, reports and presentations discussing how to evaluate and monitor capacity, including the amount of spectrum, speed of connection, and facilities (including, cell site configuration and backhaul) that are required to meet consumer demand.” As such capacity analysis drives the commercial and technical logic of the Proposed Transaction, it is reflected in much information responsive to the other Requests identified above.

In response to these overlapping requests, Qualcomm will provide:

- Non-public information, analysis, or discussions of internal assessments of the financial or operational viability or applicability of corporate technologies, products or services related to the Qualcomm Spectrum Assets;
- The identity of parties approached or that approached Qualcomm regarding a potential sale of FLO TV or the Qualcomm Spectrum Assets, provision of wholesale FLO TV service, or sale of equity interest in FLO TV Incorporated, as well as any offers, bids, expressions of interest or lack thereof, or similar responses, positive or negative, by those parties;
- Non-public information or discussions on the value or potential uses of the Qualcomm Spectrum Assets;
- Non-public information or discussions on the value of FLO TV;
- Non-public information or discussions concerning Qualcomm’s business with equipment manufacturers other than Qualcomm; and
- Non-public information or discussions concerning Qualcomm trade secrets, patents, or other intellectual property rights.

The Requests thus call for a comprehensive disclosure of Qualcomm’s analyses of the technologies that might be used in the Lower D and E frequency blocks, and the advantages or disadvantages of each, how Qualcomm adapted business strategies to reflect insights into technology, the approaches taken with individual potential purchasers subject to nondisclosure agreements, Qualcomm’s integrated analyses of the above, and reports of all of the above to the highest levels of Qualcomm’s management and Board. This would allow a thorough understanding of Qualcomm’s business strategies for mobile broadband products and services.

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This is highly confidential and competitively sensitive technical as well as business information which no employee of another party should be allowed to see.

There is one other category of highly confidential information that should be covered in a Second Protective Order on a different basis. Qualcomm Request 5 calls for “all documents discussing Qualcomm’s assessment of the proposed AT&T/Deutsche Telekom-T-Mobile merger on the Proposed Transaction.” Any responsive material will postdate the vast majority of the other information called for and is highly unlikely to be integrated with other responsive highly confidential information. But Qualcomm’s analysis of the transaction is likely to be of significant competitive interest, and similar to other analyses the Commission has protected in the past.¹⁸ Therefore, material Qualcomm identifies responsive to the fifth request and falling into the following category should also be protected as highly confidential:

Category of Information	Request Number(s)
Non-public information or discussions of the impact of the proposed AT&T/T-Mobile transaction on the proposed AT&T/Qualcomm transaction. ¹⁹	5

* * * * *

In addition, consistent with prior second level protective orders, the Commission should allow reviewing parties to receive no more than one copy of protected materials and should prohibit further copying. As set forth above, the information covered under a second protective order represents Applicants’, or their Partners’, most highly sensitive information. As is universally recognized, confidential information is vulnerable to loss, theft, and misuse. Limits on copying are necessary because, without such a restriction, the chances of disclosure increase significantly – as evidenced by improper release of sensitive information in certain Commission proceedings.²⁰

¹⁸ See *Verizon/MCI Second Protective Order* at 10421, ¶ 4 (protecting discussions providing detail or analysis of merger integration benefits or efficiencies, including costs, benefits, timeline, and risks of the integration); *Sprint/Nextel Second Protective Order* at 9281, ¶ 4.

¹⁹ See *id.*

²⁰ See, e.g., *In re Applications of America Online, Inc. & Time Warner Inc. for Transfers of Control*, Memorandum Opinion and Order, 16 FCC Rcd 2400 (CSB 2001) (incident involving summaries of a dozen confidential documents being emailed to 13 executives of a competitor); *Private ALTS Document Mistakenly Lands on FCC Website*, Comm. Daily, Oct. 4, 2004

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Moreover, in light of the voluminous size of the production of documents responsive to the General Information Requests, it will not be practicable for Applicants to identify the precise portions of documents that are highly confidential. Accordingly, Applicants request that any documents that contain highly confidential information pursuant to a forthcoming second protective order may be designated as highly confidential in their entirety.

Finally, after the termination of this proceeding, Applicants request that the Commission direct that: “No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph __) may retain, under the continuing strictures of this Second Protective Order, one paper copy (not in electronic format) of the pleading containing Highly Confidential Information prepared on behalf of that party.” The Commission has included similar limits in the past.²¹

* * * * *

In sum, the information Applicants are seeking to guard through a second protective order would provide competitors with a significant unwarranted marketplace advantage if they were to come to possess it. For this reason, in past proceedings where it has sought such sensitive information, the Commission has accorded it the enhanced protections of a second protective order. Consistent with those precedents, the Commission should do so in this proceeding as well. Applicants therefore respectfully request that the Commission issue a second protective order along the lines discussed herein as soon as possible.

Respectfully submitted,

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(incident involving outside law firm inadvertently filing confidential information on ECFS and that information was widely disseminated).

²¹ Cf. *AT&T/BellSouth Second Protective Order* at 7288, ¶ 20.

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