

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Applications of AT&T Inc. and)	WT Docket No. 11-65
Deutsche Telekom AG)	DA 11-674
)	DA 11-1100
)	
For Consent to Assign or Transfer)	
Control of Licenses and Authorizations)	

**OBJECTION OF SPRINT NEXTEL CORPORATION TO DISCLOSURE
OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

Pursuant to the Protective Order¹ and the Second Protective Order (Revised)² in the above-referenced proceeding, Sprint Nextel Corporation (“Sprint”) objects to the request for access to Sprint Confidential and Highly Confidential Information by Outside Counsel representing the Communications Workers of America (“CWA”), Outside Consultants to CWA, and certain CWA employees. This access to sensitive materials should be denied because there is no valid use or legitimate need for the Confidential and Highly Confidential Information. Additionally, the CWA employees and one of its consultants do not qualify for access under the Protective Orders.

¹ *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Protective Order, DA 11-674 (rel. April 14, 2011).

² *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Second Protective Order (Revised), DA 11-1100 (rel. June 22, 2011). Undefined capitalized terms in this document are as defined in the Protective Orders.

I. CWA Has No Valid Use for Sprint’s Confidential and Highly Confidential Information.

In response to a request from AT&T, Inc. and Deutsche Telekom AG, the Commission has permitted withdrawal of the applications for transfer of control of T-Mobile USA and has dismissed all Petitions to Deny those applications, including the petition filed by Sprint. The use of Sprint’s Confidential and Highly Confidential Information is restricted solely to “the preparation and conduct of [the merger] proceeding before the Commission and any subsequent judicial proceeding arising directly” from it.³ Accordingly, there is no current permitted use for Sprint’s Confidential and Highly Confidential Information and CWA’s request, therefore, must be to gather intelligence for purposes unrelated to the T-Mobile FCC proceeding.

Through its Outside Counsel, CWA served counsel for Sprint with Acknowledgments of Confidentiality for the first time on Wednesday, November 23, 2011.⁴ Later on that same day, AT&T and T-Mobile requested the withdrawal of their applications,⁵ which the Commission accepted on November 29, 2011.⁶ Sprint is filing this objection to make clear its position that with no current pending applications or petitions to deny, there is no reason

³ *Id.*, ¶ 9; Protective Order, ¶7.

⁴ Acknowledgements were served on behalf of Matthew B. Berry, Carly T. Didden, Wade E. Shafer, Brenda Davis, Jillian Gibson, Lisa Henderson, and Bernadette C. Talbert of Patton Boggs LLP; Leslie M. Marx of Duke University; Debbie Goldman and Anthony Daley of CWA; and Randy Barber, consultant to CWA. Ms. Goldman, Mr. Daley, and Mr. Barber (the “CWA Parties”) did not submit an acknowledgment with regard to NRUF/LNP information and consequently would be unable to have access to NRUF/LNP data or to Sprint materials derived from that data. These acknowledgments had been filed with the Commission between May 18 and September 22, but no request had been made for access to Sprint materials and the acknowledgments were not previously served on Sprint.

⁵ See Letter from Patrick J. Grant, Arnold & Porter LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 23, 2011).

⁶ *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, DA 11-1955, Order (released November 29, 2011).

for companies that had been active in the docket to risk exposure of their Confidential and Highly Confidential Information by releasing it to parties now that the proceeding is no longer active. Sprint's Confidential and Highly Confidential Documents contain some of Sprint's most sensitive business information. Unnecessary disclosure of that information to competitors or parties whose interests are clearly adverse to Sprint's would have a serious negative effect on Sprint's business and would place Sprint at a significant competitive disadvantage.

II. The CWA Parties Are Not Qualified for Access Under the Protective Orders.

The Protective Orders do not permit access to Confidential or Highly Confidential information by employees of parties to the proceeding, but make an exception for “any consultant or expert⁷ employed by a non-commercial party” who is not involved in Competitive Decision Making.⁸ It is highly unlikely that a labor union like CWA falls within the definition of “non-commercial party” within the context of the Protective Orders. Indeed, CWA is often adverse to telecommunications companies in matters involving labor and employment practices and contracts, which are undeniably commercial matters.

CWA has championed the goals of AT&T's management in this proceeding. Sprint will not speculate as to CWA's motives, but notes that this alliance with management is unusual for a labor union. Moreover, CWA's hostilities toward Sprint only began after Sprint filed its Petition to Deny the merger.⁹

⁷ Although not relevant to the CWA request, the Protective Order also permits access to Confidential Information by In-House Counsel not involved in Competitive Decision Making.

⁸ See definition of “Outside Consultant” in the Protective Orders.

⁹ See, e.g., <http://eyeonsprint.org/employment-practices/>; CWA Comments at iii, 26-28. The “Eye on Sprint” website is labeled as “A Project of Communications Workers of America”. <http://eyeonsprint.org/> (visited December 6, 2011).

Ms. Goldman is CWA's Telecommunications Policy Director and a Research Economist. Mr. Daley is a Research Economist, and Mr. Barber is an outside consultant to CWA. CWA is the largest telecommunications union in the world, holding over 2,000 collective bargaining agreements spelling out wages, benefits, working conditions and employment security provisions.¹⁰ Because the CWA Parties advise the union on economic issues it is very likely that they influence the organizing process or the negotiation of collective bargaining agreements, which are competitive in nature. CWA is in a position to use Sprint's Confidential and Highly Confidential Information to harm Sprint in the future. For example, if Sprint were to become involved in an organizing effort or collective bargaining negotiations, CWA's knowledge of Sprint's Confidential or Highly Confidential Information could inform its organizing or negotiating strategies against Sprint.¹¹

There is also an unacceptable risk that the CWA parties could inadvertently disclose confidential information obtained from Sprint to other CWA personnel or even to AT&T. In one decision, for example, the FCC "decline[d] . . . to allow in-house economists, analysts, or other in-house staff access to confidential information" because "there is a greater risk of inadvertent disclosure by such individuals that is not justified given the sensitive nature of the information at issue."¹² Similarly, as one federal court stated, it was reasonable to inquire whether a company's counsel "could lock-up trade secrets in his mind, safe from inadvertent

¹⁰ http://www.cwa-union.org/pages/about_cwa/

¹¹ CWA itself believes that approval of the merger could be a "tipping point" for the wireless industry, presumably leading to greater CWA representation at all wireless companies. CWA Comments at 24.

¹² *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Order Adopting Protective Order, 13 FCC Rcd 11166, ¶ 5 (1998). For the same reason, the Commission denied access to "labor unions that are not represented by either outside or in-house counsel." *Id.*

disclosure to his employer once he had read the documents.”¹³ The court concluded the counsel was engaged in competitive decision-making, noting that his knowledge of trade secrets would place him in the “untenable position” of having to refuse his employer legal advice on a host of business decisions.¹⁴

Here, the CWA Parties appear to be in the same untenable position: they likely have close and frequent contacts with CWA and/or AT&T executives who themselves have direct involvement in formulating AT&T’s business decisions. To expect the CWA Parties to “divide their minds in two” and “lock up” in one part of their minds the Confidential and Highly Confidential Information learned in this proceeding is likely wishful thinking.

¹³ *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1471 (9th Cir. 1992).

¹⁴ *Id.*

III. Conclusion.

Accordingly, the Commission should conclude that there is now no requirement to grant new individuals access to any of Sprint's Confidential or Highly Confidential Information or Documents, notwithstanding requests made pursuant to the Protective Orders and that the named CWA employees are not eligible for access to this information.

Respectfully submitted,

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December 7, 2011

Certificate of Service

I hereby certify that on this 7th day of December, 2011, I caused true and correct copies of the foregoing Objection to be served as follows:

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