

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)	
)	
GTE CORPORATION,)	
Transferor)	CC Docket No. 98-184
)	
and)	
)	
BELL ATLANTIC CORPORATION,)	
Transferee)	
)	
For Consent to Transfer of Control.)	

ORDER RULING ON JOINT OBJECTIONS

Adopted: February 23, 1999

Released: February 23, 1999

By the Chief, Policy and Program Planning Division:

1. On November 19, 1998, the Commission adopted a protective order that applies to any confidential documents provided by Bell Atlantic Corporation (Bell Atlantic) and GTE Corporation (GTE) in connection with the above-captioned proceeding.¹ In the *Protective Order*, the Commission limited disclosure of confidential information to "outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making."² On January 25, 1999, Bell Atlantic and GTE filed a joint objection to the disclosure of confidential information to Leon Kestenbaum and Craig Dingwall, in-house counsel for Sprint Communications Company, L.P. (Sprint), and to Aryeh Friedman, in-house

¹ In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control, *Order Adopting Protective Order*, CC Docket No. 98-184, DA 98-2348 (rel. Com. Car. Bur. Nov. 19, 1998) (*Protective Order*).

² *Id.* at para. 3. Consistent with the standard adopted by federal courts, the Commission defined "competitive decision-making" to mean "counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor." *Id.*

counsel for AT&T Corp. (AT&T).³ For the reasons set forth below, we deny Messrs. Kestenbaum and Dingwall access to the confidential documents filed by Bell Atlantic and GTE and permit such access to Mr. Friedman.

2. We find that Sprint has not rebutted the allegation that Mr. Kestenbaum, Sprint's Vice President, Federal Regulatory Affairs, and Mr. Dingwall, Sprint's Director, State Regulatory/East, are involved in competitive decision-making. Sprint states that Mr. Kestenbaum is responsible for "formulating regulatory positions and conveying them" to the FCC and the Department of Justice, and "reporting the results of such representation," and that Mr. Dingwall performs the same functions with regard to state regulatory agencies.⁴ Sprint acknowledges that "Sprint uses Mr. Kestenbaum's or Mr. Dingwall's advice to inform business strategies or decisions."⁵ We are unconvinced that, given their high positions within the company and the scope of federal and state regulation over the communications industry, Messrs. Kestenbaum and Dingwall do not provide advice or participate in the formulation of Sprint's business decisions regarding compliance with state and federal regulations. We therefore agree with Bell Atlantic and GTE that the disclosure of highly confidential business information to such in-house attorneys would pose an unacceptable opportunity for inadvertent disclosure.⁶

3. In addition, we permit Mr. Friedman of AT&T access to the confidential information. Mr. Friedman's affidavit explains that, as one of 130 "senior attorneys" at AT&T, his work consists of "antitrust compliance, antitrust regulation and regulatory work," and he does "not advise or participate in 'competitive decisionmaking'" or in AT&T's "business decisions."⁷ Bell Atlantic and GTE have filed no response to dispute these statements. Unlike Messrs. Kestenbaum and Dingwall, therefore, Mr. Friedman falls precisely under the definition of in-house counsel qualified to view confidential documents under the

³ Joint Objection of Bell Atlantic Corporation and GTE Corporation to Disclosure of Stamped Confidential Documents (Jan. 25, 1999).

⁴ Opposition of Sprint Communications Company L.P., at 4 (Jan. 29, 1999).

⁵ *Id.*

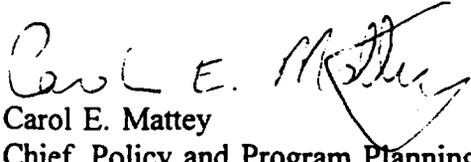
⁶ We recognize Sprint's argument that Bell Atlantic and GTE failed to meet their obligations under the Protective Order to file at the Commission and serve upon Sprint their objections within three business days after receiving a copy of Mr. Kestenbaum's and Mr. Dingwall's Acknowledgements of Confidentiality. *Id.* at 1-3. We find, however, that the need to protect the integrity of our process for review of confidential information outweighs Bell Atlantic's and GTE's oversight in this instance, because Sprint is represented by able outside counsel and our decision today thus does not deprive Sprint of the opportunity to participate in this proceeding.

⁷ Opposition of AT&T Corp. to Bell Atlantic and GTE Opposition to Disclosure of Stamped Confidential Documents and Request for Expedited Treatment, Friedman Aff. at paras. 1, 2 (Feb. 3, 1999).

terms of the Protective Order.

4. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 214, 309, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, and 310, the Joint Objection of Bell Atlantic and GTE's to Disclosure of Stamped Confidential Documents, filed January 25, 1999, IS DENIED IN PART and SUSTAINED IN PART.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Chief, Policy and Program Planning Division
Common Carrier Bureau