

December 1, 2009

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

*Re: 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 WT Docket No. 09-119
Request for Second Protective Order*

Dear Ms. Dortch:

On November 30, 2009, Doug Minster and Mary de la Rosa of Atlantic Tele-Network, Inc. (“ATN”), along with Jonathan Cohen and Ken Patrich of Wilkinson Barker Knauer, LLP (representing ATN), spoke by telephone with Neil Dellar, Joel Rabinovitz, Kathy Harris, Susan Singer, Angela Kronenberg and Monica DeLong of the Federal Communications Commission staff. ATN expressed the intent of it and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) (collectively, the “Applicants”) to seek heightened or “second level” protection of certain categories of highly sensitive competitive information that has been requested by the FCC in its General Information Request dated November 19, 2009 (“General Information Request”). The Applicants hereby request that the Commission issue a second protective order in WT Docket No. 09-119 to provide additional protection beyond that afforded in the Commission’s November 19, 2009 protective order¹ to certain information that the Applicants intend to submit in their responses to the Commission’s General Information Request. Providing heightened protection is consistent with Commission practice in similar proceedings in recent years, in which it has issued second protective orders in order to restrict other parties’ in-house counsel from gaining access to highly confidential information.²

As the General Information Request directs questions to each of the Applicants, this request for second level protection is divided into two sections, one pertaining to questions directed to ATN

¹ See *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*, Protective Order, DA 09-2448 (rel. Nov. 19, 2009) (“*First Protective Order*”).

² See, e.g., *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Second Protective Order, 24 FCC Rcd 7182 (WTB 2009) (“*AT&T/Centennial Second Protective Order*”); *AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, Second Protective Order, 21 FCC Rcd 7282 (WCB 2006) (“*AT&T/BellSouth Second Protective Order*”); *Verizon Communications Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Second Protective Order, 20 FCC Rcd 10420 (WCB 2005) (“*Verizon/MCI Second Protective Order*”); *Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. & Its Subsidiaries to Sprint Corp.*, Second Protective Order, 20 FCC Rcd 9280 (WTB 2005) (“*Sprint/Nextel Second Protective Order*”); *SBC Communications Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Second Protective Order, 20 FCC Rcd 8876 (WCB 2005) (“*SBC/AT&T Second Protective Order*”); *News Corp., Gen. Motors Corp., & Hughes Elecs. Corp.*, Second Protective Order, 18 FCC Rcd 15198 (MB 2003) (“*News Corp./GM/Hughes Second Protective Order*”); *EchoStar Comm’cns Corp., Gen. Motors Corp., & Hughes Elecs. Corp.*, Second Protective Order, 17 FCC Rcd 7415 (MB 2002) (“*EchoStar/GM/Hughes Second Protective Order*”).

and the other pertaining to questions directed to Verizon Wireless. Additionally, the Commission has in the past allowed parties submitting highly confidential information to prohibit the copying of that information by those who may have access to it. Similar protections are warranted here, and the Applicants request that such protections be included in a second protective order in this proceeding.

Capitalized terms have the meanings as defined in the General Information Request.

Request as to Questions Directed to ATN

ATN's response to the General Information Request will include highly sensitive information regarding its analysis of, financial projections regarding, and future plans for, the wireless businesses being acquired in the proposed transaction. The release of any of this information would provide ATN's prospective competitors with a significant and unfair competitive advantage over ATN in the CMRS markets in which it expects to operate, and would cause serious injury to ATN. The Commission has recognized that the release of "competitive analyses including specific future pricing, product or marketing plans could all allow competitors to target customers and gain an unfair competitive advantage if they were to obtain the information."³ As explained in detail below, some of the inquiries directed to ATN in the General Information Request seek exactly these types of information, and to such extent, ATN's responses deserve the extra protection afforded by a second protective order.

ATN specifically requests that, consistent with Commission precedent, the second protective order cover highly confidential information it plans to submit in response to particular requests in the General Information Request where such information reveals ATN's future plans to compete for a customer or specific groups of customers, including ATN's future procurement strategies, pricing strategies, product strategies, advertising plans and/or marketing strategies, investment plans, and technology choices and deployment plans.⁴ As detailed below, the following General Information Request questions solicit information that qualifies for protection under a second protective order: II.3; III.1; III.2; III.3; III.4.a and c; III.5; III.8; IV.1.d; IV.2.c-f; IV.2.g; IV.3.a; and IV.5. ATN respectfully requests second level protection for its responses to each of these questions.

- Question II.3: This question calls for ATN to disclose whether it has plans to upgrade to 4G the network it proposes to acquire, and if so, to describe the timeframe, the amount to be invested in the upgrade, plans for financing the upgrade, the scope of deployment and the choice of technology. Knowledge of any such plans (or the lack thereof) would enable competitors to forecast ATN's capital requirements and other investments in its markets and enable competitors to target their investments and marketing more precisely, and otherwise adjust their efforts, so as to provide them with an unfair advantage over ATN.
- Question III.1: This question asks ATN to describe the efforts it has undertaken to transition into ownership of the to-be-divested networks. Knowledge of ATN's transition planning process would provide competitors with an undeserved window into ATN retail operational plans, which would enable them to target their own efforts (*i.e.*, their pricing, advertising, marketing and investment plans) in a way that would provide them with an unfair advantage over ATN.

³ *AT&T/BellSouth Second Protective Order*, 21 FCC Rcd at 7282-7283 ¶ 3.

⁴ See *AT&T/Centennial Second Protective Order*, 24 FCC Rcd at 7183 ¶ 3; *SBC/AT&T Second Protective Order*, 20 FCC Rcd at 8877 ¶ 4; *AT&T/BellSouth Second Protective Order*, 21 FCC Rcd at 7283 ¶ 5; *Verizon/MCI Second Protective Order*, 20 FCC Rcd at 10421 ¶ 4; *News Corp./GM/Hughes Second Protective Order*, 18 FCC Rcd at 15199 ¶ 3; *EchoStar/GM/Hughes Second Protective Order*, 17 FCC Rcd at 7416 ¶ 3; *Sprint/Nextel Second Protective Order*, 20 FCC Rcd at 9281 ¶ 3.

- Question III.2: This question seeks a copy of the Transition Services Agreement between ATN and Verizon Wireless, which includes information regarding the services to be provided by Verizon Wireless to ATN, along with schedules identifying pricing information for those services. If revealed to competitors, details of the Transition Services Agreement would provide them with an unfair advantage over ATN. ATN seeks second protective order protection for all schedules to the Transition Services Agreement.
- Question III.3: This question calls for ATN to provide its business plan for the wireless systems proposed to be acquired. Knowledge of ATN's forward-looking business plans for the Divestiture Markets would enable competitors to target their business efforts (*i.e.*, their pricing, advertising, marketing and investment plans) in a way that would provide them with an unfair advantage over ATN in competing for customers.
- Questions III.4.a (2nd and 3rd questions), and III.4.c: This question asks ATN to provide the FCC with information regarding its roaming agreement with Verizon Wireless, as well as the agreement itself, which contains highly sensitive pricing, term and other information. If this information became known to its competitors, ATN would be placed at a significant competitive disadvantage.
- Question III.5: This question seeks the identities of the senior management team that will run ATN's retail wireless business in the Divested Markets. Most of this information is not yet public, even within the broader ATN organization. Premature revelations with respect to senior management staffing decisions would provide competitors with insights into ATN's operational structure, as well as its business and staffing plans, which would provide them with an unfair competitive advantage over ATN. Additionally, such disclosures could have a significant disruptive effect on ATN's internal efforts to manage the transition to ownership of the Divestiture Assets.
- Question III.8: This question calls for ATN to disclose its future investment plans in the markets it proposes to acquire, including the amount to be invested, the types of investments expected, the timeframes for such investments, and ATN's plans for financing these investments. If made public, knowledge of any such plans (or the lack thereof) would enable competitors to forecast ATN's capital requirements and other investments in its markets and enable competitors to target their investments and marketing more precisely, and otherwise adjust their efforts, so as to provide them with an unfair advantage over ATN.
- Questions IV.1.d: This question calls for ATN to compare its service plans to those currently provided to customers in the subject markets, thereby requiring ATN to divulge its thinking regarding a key component to its competitive strategy – its service and pricing strategy. Any competitor gaining access to information regarding such matters would be able to use ATN's planning to better craft its own strategies for competing with ATN, obviously providing an unfair advantage in the marketplace.
- Question IV.2.c-f: These questions call for ATN to reveal information regarding its pricing, service and product strategies in the Divestiture Markets, as well as information regarding how Divestiture Customers service will be transitioned. As with Question IV.1.d, any competitor gaining access to information regarding such matters obviously would be in a position to tailor its own actions to better compete for customers in the Divestiture Markets, thereby gaining an unfair advantage over ATN in the marketplace.
- Question IV.2.g: This question solicits information concerning ATN's future plans regarding the availability and prices of handsets and devices for customers in the divestiture markets. Access to this information would enable competitors to forecast

ATN's deployment of products, target their marketing more precisely, adjust their own product roll-outs and investments, and otherwise adjust their efforts, all of which would place ATN at a significant competitive disadvantage.

- Question IV.3.a: This question asks ATN to reveal its plans for marketing wireless services through retail outlets. Knowledge regarding these matters would allow ATN's competitors to adjust their own retail sales efforts to gain an unfair advantage over ATN.
- Question IV.5: ATN is asked to discuss its plans for retail distribution of its service through dealers, including the identity of any dealers with whom ATN has reached agreement or is engaged in discussions. If given access to this information, ATN competitors would gain insight into ATN's retail distribution channels and potentially would be able to interfere with these relationships. Therefore, knowledge of ATN's plans in this respect would give its competitors an unfair competitive advantage.

Request as to Questions Directed to Verizon Wireless

The questions included in Question V of the General Information Request call for granular information from Verizon Wireless regarding the divestiture bidding process. Among other things, Questions V.B.3, B.5, D.3, and D.5-6 call for information about certain bidders' interest in entering or expanding their presence in the CMAs being divested and their evaluation of the divestiture assets. For certain types of bidders, Questions V.C and V.D also call for the types of services it would be unable to self-supply, the forecasted duration of this inability and the funding constraints each of those bidders faced. Furthermore, the responses to Questions V.D.9-10 would reveal competitively sensitive information about how ATN valued divestiture assets, thus signaling its business plans. The responses to Question V would also reveal the strategic judgments Verizon Wireless made in conducting the sale process and evaluating potential buyers. Knowledge about the divestiture bidding process, including information that ATN and other bidders submitted during the bidding process that would reveal their forward-looking strategies, could facilitate competitors' strategic judgments about future negotiations with ATN, other bidders and Verizon Wireless and otherwise provide competitors with unfair competitive advantages against the Applicants and other bidders.

Request to Allow Prohibition of Copying

Finally, the Applicants note that the *First Protective Order* requires submitting parties to provide one copy of confidential information to reviewing parties. In the second protective order, the Applicants request that the Commission allow submitting parties to determine whether it is necessary to prohibit copying of highly confidential documents, consistent with longstanding Commission precedent.⁵ As demonstrated above, the information covered under a second protective order represents a company's 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.⁶ If a submitting party deems that highly confidential information is so sensitive that it should be restricted from copying,

⁵ *AT&T/Centennial Second Protective Order* at 7185 ¶ 11 (recognizing that there is "information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone"); *AT&T/BellSouth Second Protective Order* at 7284 ¶ 10 (same).

⁶ 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 (incident involving outside law firm inadvertently filing confidential information on ECFS and that information was widely disseminated).

permitting even a single copy to be in the hands of a third party increases the risk of accidental disclosure.

In sum, the information the 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. The 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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