

December 4, 2009

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Opposition to Request of GA-8 Partners  
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

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and Atlantic Tele-Network, Inc. (“ATN,” and collectively with Verizon Wireless, the “Applicants”), hereby oppose the request filed on December 2, 2009 by Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc. (collectively, the “GA-8 Partners”) in the above-captioned proceeding.<sup>1</sup>

The GA-8 Partners ask that any Protective Order adopted in this proceeding not apply to the GA-8 Partners and oppose “any and all limitations requested by ATN and Verizon Wireless” should the Protective Order be deemed applicable to the GA-8 Partners.<sup>2</sup> The Applicants oppose these requests, as a grant of either would run afoul of Commission policy regarding the treatment of confidential information and would afford insufficient protection to the highly confidential materials to be filed in the instant proceeding.

By requesting that the terms of any Protective Order be inapplicable to them, the GA-8 Partners seek to challenge the very purpose of a protective order. The Commission has previously stated that adoption of a Protective Order that limits access to and uses of confidential information “may serve the dual purpose of protecting competitively

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<sup>1</sup> Letter from Caressa D. Bennet to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-119 (Dec. 2, 2009) (“GA-8 Partners Request”).

<sup>2</sup> *Id.*

valuable information while still permitting limited disclosure for a specific public purpose.”<sup>3</sup> The Commission has further found that in “rare instances as when specific future business plans are involved,” precluding in-house counsel from gaining access to confidential information may be appropriate to “minimize the potential for inadvertent misuse of such information.”<sup>4</sup> For the Commission to selectively waive the important protection afforded to highly sensitive information would undermine both its well-established framework for treatment of confidential data as well as its efforts to obtain such information in future proceedings.<sup>5</sup>

Further, the FCC must reject the GA-8 Partners’ unsupported assertion that “ATN and Verizon already deem themselves protected against disclosure of protected data by the Georgia Partners” by virtue of the federal court’s *Consent Protective Order* issued in connection with pending litigation in Georgia.<sup>6</sup> The existence of the *Consent Protective Order* does not protect the highly confidential information to be submitted in this proceeding, and the GA-8 Partners’ reliance on it is improper. The Consent Protective Order applies only to Confidential Materials (as defined in that Order) produced during discovery or otherwise filed during proceedings in the course of that litigation,<sup>7</sup> not to information filed or otherwise disclosed in another forum, such as this Commission

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<sup>3</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 9 (1998).

<sup>4</sup> *See Id.* at ¶ 26. *See also, 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, DA 09-1164, ¶ 3 (2009) (“*AT&T/Centennial Second Protective Order*”) (“The Commission will grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. Accordingly . . . we will limit access to such materials to Outside Counsel of Record, their employees, and Outside Consultants and experts whom they retain to assist them in this proceeding. . . . We conclude that the protections adopted in this Second Protective Order will give appropriate access to the public while protecting a Submitting Party’s competitively sensitive information, and will thereby serve the public interest.”) (footnote omitted).

<sup>5</sup> The Commission has recognized that highly confidential materials are necessary to the development of a complete record in particular proceedings. *AT&T/Centennial Second Protective Order* at ¶ 3 (“We find that such materials are necessary to develop a more complete record on which to base the Commission’s decision in this proceeding and therefore require their production.”).

<sup>6</sup> GA-8 Partners Request at 1, referring to Consent Protective Order, *Bulloch Cellular, Inc. et al. v. Alltel Communications, LLC*, Civil Action Number 1:09-CV-2186-RWS (N.D. Ga. filed Nov. 5, 2009) (“*Consent Protective Order*”).

<sup>7</sup> *Consent Protective Order* at ¶ 1 (“This Order governs the handling of all Confidential Material . . . that is produced, provided, or filed by Plaintiffs Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc., or by any non-party during discovery or other proceedings in the above-captioned case.”).

proceeding.<sup>8</sup> As the GA- 8 Partners conceded, information to be submitted to the Commission will not coincide with the Applicants' production pursuant to the *Consent Protective Order*,<sup>9</sup> and the *Consent Protective Order* does not limit access to and use of information to be produced to the Commission. Moreover, the Commission has an interest in protecting the confidentiality of sensitive information submitted at its request, and a violation of the *Consent Protective Order* would not be enforceable by the Commission.

Accordingly, for the reasons stated above, the Applicants request that, in the Second Protective Order requested on December 1, 2009 by the Applicants, the Commission explicitly deny the GA-8 Partners' request and find that, as a party to this proceeding, the GA-8 Partners are subject to the provisions of all protective orders issued in this proceeding.

Respectfully submitted,

/s/ Jonathan V. Cohen

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<sup>8</sup> Further, even if the *Consent Protective Order* were applicable to materials filed in this proceeding, which it is not, the *Consent Protective Order* does not afford the same level of protection to highly confidential information as has been sought by the Applicants and which is typical of the Commission's treatment of highly confidential information. See *Consent Protective Order* at ¶ 12 (stating that those materials designated as "CONFIDENTIAL/ATTORNEYS' EYES ONLY" (the heightened level of protection) may be viewed by the parties' "in-house counsel or legal department."). The Commission typically restricts access to highly confidential material to "Outside Counsel of Record, their employees, and Outside Consultants and experts whom they retain to assist them." See, e.g., *AT&T/Centennial Second Protective Order* at ¶ 3; *Applications of Sirius Satellite Radio Inc. And XM Satellite Radio Holdings Inc. For Approval to Transfer Control*, Protective Order, DA 07-4666, ¶ 3 (2007).

<sup>9</sup> See GA-8 Partners Request at 1 ("Information *similar* to that which ATN and Verizon would be submitting to the FCC in response to the Commission's November 19, 2009 letter of inquiry is subject to nondisclosure and confidentiality protections pursuant to" the *Consent Protective Order*.) (emphasis added).

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