

Pila, Joshua

From: Pila, Joshua
Sent: Thursday, December 10, 2009 2:59 PM
To: 'Kathy.Harris@fcc.gov'
Cc: 'nvictory@wileyrein.com'; 'peter_schildkraut@aporter.com'; Feore, John
Subject: WT Docket Nos. 09-104 and 09-121 - Response to Objections to Acknowledgments of Confidentiality

Ms. Harris,

I provide the following note on behalf of John Feore.

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We are in receipt of the objections of Verizon Wireless and AT&T to the Acknowledgments of Confidentiality filed by our firm as counsel to Telephone U.S.A. Investments, Inc. (“Telephone U.S.A.”) in connection with the intertwined acquisitions of wireless assets by Verizon Wireless and AT&T from each other in WT Docket Nos. 09-104 and 09-121. For the reasons described below, the Commission should disregard those objections and permit the Acknowledgments of Confidentiality to go into effect.

The basis for the objections is that Verizon Wireless and AT&T do not believe that Telephone U.S.A. is a party to these proceedings. Their definition of a party under the relevant protective orders is an entity that has filed a petition to deny. There is no basis for this assertion. (Verizon Wireless and AT&T mention that the protective orders require people signing acknowledgments to be counsel of record, but did not dispute that Dow Lohnes is counsel to Telephone U.S.A. The Commission can, of course, rely on the representations to this effect in the acknowledgments.)

First, the protective orders themselves do not define the term “party,” and the Commission’s rules have no generalized definition of the term. However, the Commission’s ex parte rules do address the issue, and they do not require that an entity have filed a petition to deny to be treated as a party. *See* 47 C.F.R. § 1.1202(d). The standard under those rules is that a party is any entity that has participated in a proceeding. Even in restricted proceedings, an entity need not file a petition to deny to have party status, but merely needs to have served the other parties. 47 C.F.R. § 1.1202(d)(1). In permit-but-disclose proceedings, participation in compliance with the ex parte rules is sufficient for an entity to be treated as a party. 47 C.F.R. § 1.1202(d)(5).

Verizon Wireless and AT&T do not cite any authority for the proposition that only entities that file petitions to deny are parties for the purposes of a protective order because there is none. The only authority they cite does not, by its own terms, define “party” so narrowly, and specifically refers to entities that participate in the proceeding through oral ex parte contacts as “parties.” This reference, ironically, is on the same page as the language that they cite. Public Notice, *Cellco P’Ship d/b/a Verizon Wireless & AT&T Inc. Seek FCC Consent to Assign or Transfer Control of Licenses & Authorizations & Request a Declaratory Ruling on Foreign Ownership*, WT Docket No. 09-121, DA 09-1978, at 3 (WTB rel. Aug. 31, 2009).

Telephone U.S.A. meets the standard for being treated as a party under the ex parte rules, and plainly

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has demonstrated its interest in these proceedings. Telephone U.S.A.'s chief executive officer conducted ex parte meetings concerning issues in both dockets with the Wireless Bureau on December 4, 2009. These meetings were reported in ex parte letters filed the same day. Thus, under the Commission's ex parte rules, Telephone U.S.A. is a party.

More importantly, as both Verizon Wireless and AT&T are aware, Telephone U.S.A. has a significant and legitimate interest in these proceedings. These proceedings are inextricably connected to each other and to the Commission's consideration of the Verizon Wireless-Atlantic Tele-Network transaction, in which Telephone U.S.A. filed a petition to deny. In particular, the Verizon Wireless sale of ALLTEL assets to AT&T was part of the same divestiture as the Atlantic Tele-Network transaction, and there are significant questions about whether Verizon Wireless conducted that divestiture in accordance with the Commission's intent and about whether the two Verizon Wireless-AT&T transactions really are unrelated. Indeed, many of the questions the Commission has asked AT&T and Verizon Wireless concern those very issues.

In fact, the opposition to providing access to confidential materials in the two Verizon Wireless-AT&T dockets suggests a much different motive than concern about the principle that only "parties" should have access. Rather, it appears that Verizon Wireless and AT&T may be hoping to prevent Telephone U.S.A. from using that information to demonstrate that the concerns raised in its Atlantic Tele-Network filing and in its ex parte meeting on the other transactions are true. In this context, the best course for the Commission may be to merge the three dockets, so that a complete record on all of the relevant issues can be reviewed simultaneously for all three transactions. Failing that, providing Telephone U.S.A. with access to all confidential materials in all three dockets is necessary to ensure that it can evaluate the Verizon, AT&T and Atlantic Tele-Network responses to confirm the extent to which they conform to the Telephone U.S.A.'s experience during the bidding period.

For these reasons, the Commission should disregard the objections of Verizon Wireless and AT&T and grant the individuals who signed acknowledgments on behalf of Telephone U.S.A. access to the confidential material filed in these proceedings.

This response is being submitted to you via email and served on AT&T and Verizon Wireless by email to their counsel. This response also will be provided to the Commission via ECFS.

Respectfully submitted,

John R. Feore, Jr.

Counsel to Telephone U.S.A. Investments, Inc.