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December 10, 2009

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**VIA ELECTRONIC DELIVERY**

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

**Re: Objection to Request for Access to Stamped Confidential Documents and Confidential Information Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement WT Docket No. 09-104**

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), by its undersigned attorney, hereby objects to the Acknowledgments of Confidentiality filed in the above-captioned proceeding by John R. Feore, Jr.; J.G. Harrington; John S. Logan; Joshua N. Pila; and Vicki Lynne Lyttle of Dow Lohnes PLLC (collectively, “Dow Lohnes”).<sup>1</sup> Dow Lohnes states that it represents Telephone U.S.A. Investments, Inc. (“Telephone U.S.A.”).<sup>2</sup> However, as discussed below, Telephone U.S.A. is plainly not a party whose counsel may seek access to Stamped Confidential Documents or Confidential Information under the Protective Order.

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<sup>1</sup> Letter from John R. Feore, Jr., Dow Lohnes PLLC, to Marlene H. Dortch, Secretary, FCC (Dec. 4, 2009) (“Feore Letter”). As indicated in the letter’s certificate of service, Verizon Wireless was served by overnight courier and received the letter on December 7, 2009. Verizon Wireless’ objection is therefore timely under paragraph 7 of the Protective Order, which affords parties submitting confidential information 3 business days from receipt of the acknowledgements to object to any requested disclosure of Stamped Confidential Documents or Confidential Information. *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and to Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Protective Order, DA 09-2446, at 3 (¶ 7) (WTB Nov. 19, 2009) (“Protective Order”).

<sup>2</sup> Feore Letter at 1.



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The Protective Order could not be clearer that access to Stamped Confidential Documents and Confidential Information is limited to Counsel for a “party to these proceedings.”<sup>3</sup> The Protective Order defines “Counsel” to mean “In-House-Counsel and Outside Counsel of Record.”<sup>4</sup> “‘In-House Counsel’ means an attorney *employed by a party to these proceedings* or employed by an affiliated entity and *who is actively engaged in the conduct of this proceeding, provided that*, such counsel is not involved in competitive decision-making.”<sup>5</sup> “‘Outside Counsel of Record’ means the firm(s) of attorneys . . . *representing a party in these proceedings, provided that*, the Outside Counsel of Record is not involved in competitive decision-making.”<sup>6</sup> Thus, one’s status as “Counsel” and one’s right to seek access to Stamped Confidential Documents and Confidential Information are inextricably tied up with being employed by or representing a party in the proceeding.

With regard to qualifying as a party in this proceeding, the Public Notice in this proceeding makes clear that:

*Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts.*<sup>7</sup>

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<sup>3</sup> Protective Order at 2 (¶ 4), 3 (¶ 10).

<sup>4</sup> *Id.* at 2 (¶ 4).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> See AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement, Public Notice, DA 09-1350, at 5 (WTB rel. June 19, 2009) (emphasis added). Significantly, the Public Notice’s definition of a “party” is consistent with how the Commission defines the same term for purposes of a rulemaking proceeding –

the term *party* refers to any person who participates in a proceeding by the timely filing of a petition for rule making, comments on a notice of proposed rule making, a petition for reconsideration, or responsive pleadings. . . .



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Telephone U.S.A., however, did not submit a timely petition to deny the applications. Nor has Telephone U.S.A. filed any timely formal objection to the applications. Indeed, its only participation in this proceeding has been limited to a few *ex parte* meetings, notices of which do not even identify Telephone U.S.A. Telephone U.S.A. is thus plainly not a “party to these proceedings” and its representatives do not qualify as Counsel entitled to access to the Stamped Confidential Documents and Confidential Information.<sup>8</sup>

For the foregoing reasons, Verizon Wireless respectfully requests that the Commission dismiss or deny the Acknowledgments of Mr. Feore and his colleagues in this proceeding.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory

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(Continued . . .)

47 C.F.R. § 1.400. Again the emphasis is on the timely filing of a formal pleading. The definition of a party in a transfer application proceeding can be no less restrictive, particularly when access to submitted Confidential Information is involved.

To the extent that Telephone U.S.A. would have the staff rely on the definition of a party in the *ex parte* rules to gain it access to the Confidential Information and Stamped Confidential Documents in this proceeding, the preamble to section 1.1202 makes clear that the definitions therein pertain only to Subpart H—Ex Parte Communications and note 3 to section 1.1202(d) further elaborates that “[t]he fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements. . . . Nor does it constitute a determination that such person has any other procedural rights.” 47 C.F.R. § 1.1202 & note 3 to § 1.1202(d).

<sup>8</sup> Telephone U.S.A. clearly understands the procedure necessary to qualify as a party – it submitted a petition to deny a different set of applications for a different transaction involving Verizon Wireless’ sale of wireless properties that was filed during the same approximate time period. *See Petition to Deny of Telephone USA Investments, Inc.*, WT Docket 09-119 (filed Aug. 10, 2009).

**CERTIFICATE OF SERVICE**

I, Nancy J. Victory, certify that on this 10<sup>th</sup> day of December, 2009, a copy of the foregoing letter was sent via hand delivery to the following persons (unless another delivery method is specified):

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/s/ Nancy J. Victory  
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\* Denotes service by email.