

December 6, 2010

VIA ECFS

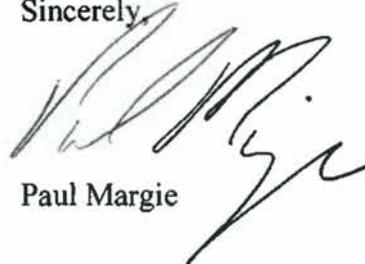
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: WC Dkt. No. 05-25, RM-10593

Dear Ms. Dortch:

BT, Sprint Nextel Corp., T-Mobile USA, and tw telecom hereby submit in the above-referenced docket the attached letter requesting issuance of a protective order in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Margie", written over the word "Sincerely,".

Paul Margie

Attachment

December 6, 2010

VIA E-MAIL

Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Dkt. No. 05-25, RM-10593

Dear Ms. Gillett:

BT, Sprint Nextel Corp., T-Mobile USA, and tw telecom, through their undersigned counsel, hereby request that the Wireline Competition Bureau (“Bureau”) adopt a protective order in the above-referenced proceeding to provide heightened protection of highly confidential information that may be submitted in the record.

In its October 28, 2010 *Public Notice*¹ in the above-referenced proceeding, the Commission requests that CMRS providers and carriers other than incumbent LECs voluntarily submit data to “assist the Commission in evaluating the various issues that have been raised in the *Special Access NPRM*.”² The *Public Notice* enumerates numerous categories of detailed information regarding, among other things, the location and type of network facilities that service providers have deployed and that they purchase. Moreover, it is anticipated that the Commission will seek other categories of information in future voluntary or mandatory data requests in this proceeding. Specifically, those companies which respond to the *Public Notice* and to future data requests may submit into the record of this proceeding detailed or granular information regarding the following:

- the locations that companies serve with last-mile facilities and the nature of those facilities (e.g., whether the last-mile facilities consist of conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops, number of fiber strands, actual and potential capacity, whether the facilities are leased on an IRU basis or are self deployed);
- the extent to which companies rely on incumbent LEC and non-incumbent LEC last-mile facilities and local transport facilities to provide services and the nature of those inputs (e.g., the names of suppliers and whether the inputs are conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops);

¹ See Data Requested in *Special Access NPRM*, Public Notice, WC Docket No. 05-25, RM-10593 (rel. Oct. 28, 2010) (“*Public Notice*”).

² See *id.* at 1.

- the location of companies' collocations;
- the location of companies' fiber network routes;
- the business rules and other factors companies take into consideration when deciding whether to self-deploy channel termination and local transport facilities or lease such facilities from a third party;
- the factors the companies take into account when deciding what types of channel termination and local transport facilities to lease;
- the types of customers companies serve and the types of services demanded by those customers;
- the location of companies' cell sites and the wire center associated with these cell sites;
- the nature or type of structure where companies' cell sites are placed;
- the name of the carrier that provides a connection to companies' cell sites; and
- the type or capacity of the connections provided to companies' cell sites.

These types of information constitute highly confidential and commercially sensitive information, the disclosure of which could place these companies at a significant competitive disadvantage. For instance, much of this information pertains to these companies' existing and future business plans and strategies. If another party – whether a competitor in the retail market or a supplier or purchaser of special access – were to obtain such information, it would likely be able to exploit the information to gain a competitive advantage over the submitting party.

In the past, the Commission has afforded heightened protection to information that pertains to existing and future business plans and strategies.³ In the National Broadband Plan proceeding, for

³ See, e.g., *A National Broadband Plan for Our Future*, Protective Order, 24 FCC Rcd. 12479, 12479-80 ¶ 3 (2009) (“*National Broadband Plan Protective Order*”); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Second Protective Order, 24 FCC Rcd. 9509, 9509 n.2 (2009) (“*Qwest Phoenix Forbearance Second Protective Order*”) (“On other occasions, the [Wireline Competition] Bureau has granted similar protection to materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.”); *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control*, Second Protective Order, 21 FCC Rcd. 7282, 7282-83 ¶ 3 (2006) (“*AT&T-BellSouth Merger 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.”); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh,*

example, the Commission permitted submitting parties to designate as “highly confidential” any information “that is not otherwise available from public sources and that consists of detailed or granular information regarding the location, type, or cost of last-mile infrastructure used by a Submitting Party to offer broadband service.”⁴ In addition, in the Qwest Phoenix Forbearance Petition proceeding, the Commission allowed submitting parties to designate as “highly confidential” non-public information regarding, among other things, (1) “the specific locations where a competitor is able to use its own network, including its own loop facilities” to offer service; (2) “the identity or characteristics of specific customers or those with whom a company is negotiating;” and (3) “details of the Submitting Party’s future plans to compete for a customer or specific groups or types of customers . . . specifically including the Submitting Party’s future pricing strategies, product strategies, or marketing strategies.”⁵ The FCC provided “highly confidential” protection to similar information filed in the Business Broadband proceeding,⁶ the Qwest-CenturyTel Transfer of Control,⁷ and the AT&T Section 272 Forbearance⁸ proceedings.

Providence and Virginia Beach Metropolitan Statistical Areas, Second Protective Order, 22 FCC Rcd. 892 (2007) (granting Verizon’s request for protective order).

⁴ *National Broadband Plan Protective Order*, ¶ 5; see also *id.* ¶ 3.

⁵ *Qwest Phoenix Forbearance Second Protective Order*, ¶ 4.

⁶ See *Business Broadband Marketplace*, Second Protective Order, WC Docket No. 10-188, ¶ 6 (rel. Oct. 14, 2010) (“*Business Broadband Marketplace Second Protective Order*”) (according second-level protection to information regarding last-mile facilities for the provision of business broadband services, customer demand patterns, the extent to which market participants rely on incumbent LEC and non-incumbent LEC facilities and the nature of those inputs (e.g., conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops), the factors market participants take into consideration when deciding whether to self-deploy facilities).

⁷ *Applications filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Second Protective Order, WC Docket No. 10-110, ¶ 6 (rel. Oct. 29, 2010) (granting Qwest’s request for second-level protective order and protecting information and maps regarding network facilities that is sufficiently granular to describe the types of connections and capabilities at specific buildings; information that is detailed enough to reveal information about specific customers and specific customer demand).

⁸ *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Second Protective Order, 22 FCC Rcd. 10021, 10022 ¶ 4 (2007) (granting AT&T’s petition for second-level protection for engineering capacity information; information regarding the specific locations where an intermodal competitor is able to use its own network, including its own loop facilities, to offer substitute services for the ILECs service offerings; the identity or characteristics of specific customers).

Accordingly, the Commission should permit parties submitting proprietary information that falls into one of the above-listed categories or that is of a similarly competitively-sensitive nature to designate such information as “highly confidential.” We would also expect that the Commission would treat types of information that it has permitted to be designated as “highly confidential” in other proceedings to be so designated in the above-captioned proceeding, such as the information described in the Second Protective Order in the Business Broadband Proceeding.⁹ Information so designated should be accessible only to outside counsel of record, their employees, and to outside consultants and experts retained by outside counsel of record to assist them in this proceeding.¹⁰ Adoption of a protective order that establishes these procedures is essential to protecting submitting parties’ competitively sensitive information, and it would enable the Commission to develop a more complete record in this proceeding than would be the case in the absence of such protections.¹¹

Please do not hesitate to contact us if you have any questions or concerns about this request.

Respectfully submitted,

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⁹ *Business Broadband Marketplace Second Protective Order*, ¶ 6.

¹⁰ See *Qwest Phoenix Forbearance Second Protective Order*, ¶ 2; *National Broadband Plan Protective Order*, ¶ 3.

¹¹ See *Qwest Phoenix Forbearance Second Protective Order*, ¶ 2; *National Broadband Plan Protective Order*, ¶ 3; *AT&T-BellSouth Merger Second Protective Order*, ¶ 3.