April 27, 2011

BY ECFS

Marlene H. Dortch, Esq.
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20002

Re: Request for Second Level Protective Order
In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer of Control of Licenses and Authorizations
WT Dkt No. 11-65

Dear Ms. Dortch:

On April 20, 2011, AT&T Inc. ("AT&T") and Deutsche Telekom AG ("Deutsche Telekom ") (jointly, "Applicants") filed applications for consent to assign or transfer to AT&T control of licenses and authorizations held by T-Mobile USA, Inc. and its wholly-owned subsidiaries from Deutsche Telekom to AT&T. Prior to that filing, on April 14, 2011, the Commission adopted and released a Protective Order to limit access to proprietary or confidential information that may be filed in this proceeding.[1] The Applicants hereby request issuance of a second level protective order in WT Docket No. 11-65 to provide additional protection beyond that afforded in the Commission's April 14, 2011 protective order to certain highly sensitive competitive information that the Commission has requested Applicants to provide. Consistent with second level protective orders issued by the Commission in prior merger proceedings, the second level protective order should limit disclosure of covered information and documents to outside counsel of record, their employees, and outside consultants and experts whom they have retained to assist them in this proceeding. It also should include all other protections and restrictions contained in recent merger proceeding second level protective orders.[2]

The information sought by the Commission will include some of Applicants' most sensitive business data which they hold in the strictest confidence. The release of this

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[1] *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer of Control of Licenses and Authorizations*, WT Dkt No. 11-65, Protective Order, DA 11-674 (rel. April 14, 2011).

[2] *See, e.g., Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56, *Second Protective Order*, DA 10-371, released March 4, 2010; *Applications of AT&T Inc. and Cellco Partnership*, WT Dkt. No. 09-104, Second Protective Order, DA 09-2601, rel. December 16, 2009.

information would cause both Applicants extremely severe harm in the highly competitive market for CMRS services. In past merger proceedings, the Commission has issued second level protective orders to allows access only to outside Counsel of Record, their employees, and Outside Consultants and experts whom Outside Counsel retain to assist them is the proceeding:

> 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. For example, a company's list of specific customers or customer data (including revenues associated with the specific customer or group of customers) disaggregated to a relatively detailed level, and 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]

The Commission also allowed parties to prohibit copying of highly confidential documents. Similar protections are warranted in this proceeding.

The Applicants specifically request that the second level protective order cover several documents they plan to produce in response to the Commission's requests. The Commission has protected each of the kinds of information contained in those documents under one or more second level protective orders in prior matters. Those documents, all of which are attached to the Stock Purchase Agreement between the Applicants (the Stock Purchase Agreement has been previously produced) are as follows:

1. Annex F to the Stock Purchase Agreement regarding arrangements between the Applicants in the event this transaction is not consummated.

2. Schedule 3.2(q) of the Seller's Disclosure Letter, which provides numbers of customers broken down by narrow geographic areas.

3. Schedule 4.16 of the Seller's Disclosure Letter relating to future business plans.

4. Schedules 4.6(b)(i) and (b)(ii) of the Purchaser's Disclosure Letter, which includes specific agreements between the parties with respect to regulatory approval conditions. The disclosure of this information more broadly than permitted by second level protection could impair both parties' ability to negotiate acceptable regulatory approval condition terms in future agreements and could skew the incentives of parties to this proceeding that might seek to utilize this information to obtain regulatory conditions that would aid their ability to gain an artificial competitive advantage in the marketplace.

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[3] *AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, Order, 21 FCC Rcd. 7282, 7282-83, ¶ 3 (WCB 2006) (citation omitted) ("*AT&T/BellSouth Second Protective Order*").

Finally, consistent with prior second level protective orders, the Commission should allow reviewing parties to receive no more than one copy of protected materials and should prohibit further copying. As set forth above, the information covered under a second level 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.

In sum, the information the Applicants are seeking to guard through a second level 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 level 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 level protective order along the lines discussed herein as soon as possible.

Respectfully submitted,

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