

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Applications of AT&T Inc. and	)	
Deutsche Telekom AG	)	WT Docket No. 11-65
	)	
For Consent to Assign or Transfer Control	)	
of Licenses and Authorizations	)	

**OPPOSITION OF AT&T INC. TO SPRINT NEXTEL OBJECTION TO DISCLOSURE  
OF CONFIDENTIAL INFORMATION**

AT&T Inc. (“AT&T”) hereby opposes Sprint Nextel Corporation’s (“Sprint”) Objection to the Acknowledgment of Confidentiality submitted in this docket on behalf of Robert W. Quinn, Jr., AT&T’s Senior Vice President – Federal Regulatory and Chief Privacy Officer.<sup>1</sup> Sprint builds its Objection upon speculation about the nature of Mr. Quinn’s activities on behalf of AT&T. Unfortunately for Sprint, its speculation is incorrect: the facts establish that Mr. Quinn is not engaged in Competitive Decision-Making.<sup>2</sup> Accordingly, AT&T respectfully requests the Commission to dismiss or deny Sprint’s Objection promptly to permit Mr. Quinn to participate fully in this proceeding at the earliest possible time through access to Sprint’s Stamped Confidential Documents and Confidential Information.

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<sup>1</sup> Objection of Sprint Nextel Corporation to Disclosure of Confidential Documents, WT Docket No. 11-65 (filed June 16, 2011) (“Objection”).

<sup>2</sup> Capitalized terms not defined herein take their meaning from the *Protective Order* in this proceeding. *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Protective Order, DA 11-674 (rel. Apr. 14, 2011) (“*Protective Order*”).

## BACKGROUND

Mr. Quinn is an attorney licensed in Illinois.<sup>3</sup> As will be shown below, he is not engaged in Competitive Decision-Making. Mr. Quinn is actively engaged in the conduct of this proceeding.<sup>4</sup> Mr. Quinn, therefore, meets the definition of In-House Counsel<sup>5</sup> and was eligible under the *Protective Order* to execute the Acknowledgment of Confidentiality<sup>6</sup> that counsel for AT&T filed on June 13, 2011.<sup>7</sup> On June 16, 2011, Sprint objected to this Acknowledgment of Confidentiality.<sup>8</sup>

## ARGUMENT

Sprint speculates that Mr. Quinn “likely is involved in formulating, analyzing, giving advice about, or otherwise participating in AT&T’s business decisions.”<sup>9</sup> Thus, Sprint infers that “Mr. Quinn likely plays a significant role in the Competitive Decision-Making of AT&T.”<sup>10</sup> AT&T agrees with Sprint that determining whether someone is engaged in Competitive Decision-Making “necessarily is [a] fact-intensive” inquiry;<sup>11</sup> that “unsupported inferences” should be trumped by the facts;<sup>12</sup> and that “what matters most is a person’s ‘actual activity and

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<sup>3</sup> Declaration of Robert W. Quinn, Jr. ¶ 1 (“Quinn Decl.”) (Exhibit A hereto).

<sup>4</sup> *Id.* ¶ 3.

<sup>5</sup> *Protective Order* ¶ 2.

<sup>6</sup> *See id.* ¶ 5, App. A.

<sup>7</sup> *See* Letter from Peter J. Schildkraut, Arnold & Porter LLP, to Marlene H. Dortch, Secretary (June 13, 2011) (filing Mr. Quinn’s Acknowledgment of Confidentiality).

<sup>8</sup> *See* Objection.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* (citing *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984); *United States v. Sungard Data Systems, Inc.*, 173 F. Supp. 2d 20 (D.D.C. 2001)).

<sup>12</sup> Opposition of Sprint Nextel to Joint Objection to Disclosure of Confidential Documents at 6, WT Docket No. 11-65 (filed May 24, 2011) (“Sprint Nextel Opposition”).

relationship with' clients.'<sup>13</sup> Sprint's speculation does not satisfy this standard. The facts establish that Mr. Quinn's actual activity and relationship with AT&T do not amount to Competitive Decision-Making.

Mr. Quinn has two roles at AT&T. First, as Senior Vice President – Federal Regulatory, Mr. Quinn oversees all of AT&T's advocacy before the Commission. He develops, provides advice on, and implements AT&T's regulatory advocacy strategy and the communications strategy to support AT&T's regulatory agenda at the Commission.<sup>14</sup> Mr. Quinn's team and he frequently review and contribute to the pleadings AT&T's Legal Department and outside counsel file with the Commission.<sup>15</sup> He also provides guidance on AT&T's legislative strategy to its legislative team at the state and federal levels.<sup>16</sup> To sum up this role, Mr. Quinn receives the business decisions made by others at AT&T and attempts to foster the regulatory and legislative environment to make those decisions as successful as possible.<sup>17</sup>

In Mr. Quinn's other job function at AT&T, he serves as Chief Privacy Officer. Mr. Quinn and his privacy team establish the global privacy policy for AT&T across all lines of business.<sup>18</sup> Like others with responsibilities for compliance with laws, regulations, and internal policies, they also work with AT&T's various business units to ensure that all of AT&T's

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<sup>13</sup> Opposition at 6 (quoting *U.S. Steel*, 730 F.2d at 1469); see also *Sungard Data Systems*, 173 F. Supp. 2d at 24.

<sup>14</sup> Quinn Decl. ¶ 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* ¶ 4.

offerings are consistent with its privacy policy.<sup>19</sup> While this responsibility does bring Mr. Quinn into meetings and discussions about competitive business decisions, Mr. Quinn states:

I participate in those meetings for the sole purpose of ensuring that any new products or services comply with the company's privacy policy. In these meetings, I do not comment on the business justifications for investing (or not) in particular products and services. Thus, I do not comment on how these investment decisions respond to AT&T's competitors' decisions.<sup>20</sup>

Mr. Quinn also works with his counterparts at other companies, various trade associations, public interest groups, and government officials to develop and promote best practices regarding privacy.<sup>21</sup> Finally, Mr. Quinn provides information to government officials regarding privacy issues and supports public policies that will protect AT&T's customers' privacy effectively and efficiently.<sup>22</sup>

As Mr. Quinn concludes, "Thus, in neither of my roles do I provide advice on, or the analysis underlying, business decisions of AT&T in competition (or in a business relationship) with Sprint and other carriers."<sup>23</sup> Since Sprint merely proffered speculation about Mr. Quinn's activities at AT&T, the facts supplied by Mr. Quinn should end this inquiry.

Yet, Sprint further suggests that, even if Mr. Quinn is not involved in AT&T's business decisions, he "has close and frequent contacts with other AT&T executives who make those decisions."<sup>24</sup> Contact with executives making business decisions is not, and cannot be, the test for In-House Counsel to be involved in Competitive Decision-Making. As the Federal Circuit has held in an analogous context, "[T]hat general counsel are automatically to be denied access

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* ¶ 5.

<sup>24</sup> Objection at 3-4.

to confidential information merely because they have regular ‘contact’ with those who are involved in competitive decisionmaking” is untenable as that “criterion . . . would disqualify almost *all* in-house counsel.”<sup>25</sup> Rather, as Sprint has argued elsewhere,<sup>26</sup> a factual determination of whether Mr. Quinn is involved in Competitive Decision-Making is the proper inquiry.<sup>27</sup> And, as discussed above, the facts establish that Mr. Quinn is not engaged in any such activity.

### CONCLUSION

For the foregoing reasons, and based upon the attached declaration of Mr. Quinn, AT&T respectfully requests that the Commission dismiss or deny Sprint’s Objection. As Mr. Quinn will continue not to have access to Sprint’s Stamped Confidential Documents and Confidential Information – and will be unable to participate fully in this proceeding – without such relief, AT&T further requests that the Commission act expeditiously.

Respectfully submitted,



Peter J. Schildkraut  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004  
(202) 942-5634

*Counsel to AT&T Inc.*

June 23, 2011

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<sup>25</sup> *Matsushita Elec. Indus. Co., Ltd. v. United States*, 929 F.2d 1577, 1580 (Fed. Cir. 1991) (emphasis in original); see *U.S. Steel*, 730 F.2d at 1469 (holding that denial of access to confidential information solely because of counsel’s in-house status is an error).

<sup>26</sup> Sprint Nextel Opposition at 6.

<sup>27</sup> See *U.S. Steel*, 730 F.2d at 1468 (stating that “the factual circumstances surrounding each individual counsel’s activities, association, and relationship with a party” must be examined).

**EXHIBIT A**

**Declaration of Robert W. Quinn, Jr.**

**June 23, 2011**

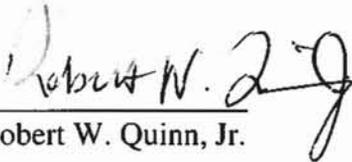
## **DECLARATION OF ROBERT W. QUINN, JR.**

1. My name is Robert W. Quinn, Jr. My business address is 1120 Twentieth Street, NW, Suite 1000, Washington, DC 20036. I am Senior Vice President – Federal Regulatory and Chief Privacy Officer for AT&T Inc (“AT&T”). I am an attorney licensed in Illinois.
2. I am not involved in Competitive Decision-Making at AT&T, as defined in the Protective Order adopted by the Commission in WT Docket No. 11-65.
3. I have two primary job responsibilities. First, as Senior Vice President – Federal Regulatory, I oversee all advocacy regarding AT&T and its affiliates before the Federal Communications Commission (“Commission”). I develop, advise on, and implement AT&T’s regulatory advocacy strategy and the communications strategy to support AT&T’s regulatory agenda at the Commission. Members of my 25-person team and I frequently review and have input into the pleadings AT&T’s Legal Department and outside counsel submit to the Commission. I also advise AT&T’s legislative team on AT&T’s legislative strategy at the state and federal levels. In short, I take the business decisions made by others at AT&T and help create the regulatory and legislative environment to maximize the success of those decisions. I am actively engaged in AT&T’s advocacy in the Commission proceeding to consider AT&T’s proposed acquisition of T-Mobile USA, Inc.
4. Second, as the Chief Privacy Officer, I work with a different team of approximately seven or eight people to establish the global privacy policy for AT&T. My privacy team and I also work with AT&T’s various business units to ensure that all of AT&T’s products and services comply with that policy. Consequently, I participate in roughly quarterly meetings led by AT&T’s Chief Marketing Officer and Chief Financial Officer

to determine the new products and services in which AT&T will invest. I participate in those meetings for the sole purpose of ensuring that any new products or services comply with the company's privacy policy. In these meetings, I do not comment on the business justifications for investing (or not) in particular products and services. Thus, I do not comment on how these investment decisions respond to AT&T's competitors' decisions. For example, at a recent such meeting, we discussed the development of application programming interfaces, or APIs, that third parties use to create applications for use with devices on AT&T's network. My participation in that discussion was limited to ensuring that the APIs comply with AT&T's privacy policy. In my Chief Privacy Officer role, I also work with my counterparts at other companies, various trade associations, public interest groups, and government officials to create and support privacy best practices for the industry. Finally, I inform government officials about privacy issues and advocate on behalf of public policies that will protect our customers' privacy effectively and efficiently.

5. Thus, in neither of my roles do I provide advice on, or the analysis underlying, business decisions of AT&T in competition (or in a business relationship) with Sprint and other carriers.
6. AT&T has procedures in place to prevent the unauthorized disclosure of Stamped Confidential Documents and Confidential Information pursuant to the *Protective Order*.

I declare under penalty of perjury that the foregoing is true and correct. Executed this  
twenty-third day of June, 2011.

  
Robert W. Quinn, Jr.

## CERTIFICATE OF SERVICE

I hereby certify that on this twenty-third day of June, 2011, I caused true and correct copies of the foregoing to be served by electronic mail (\*) and by hand delivery (+) upon:

\* Best Copy and Printing, Inc.  
445 Twelfth Street, S.W.  
Room CY-B402  
Washington, DC 20554  
FCC@BCPIWEB.COM

\* Kathy Harris, Esq.  
Mobility Division  
Wireless Telecommunications Bureau  
1250 Maryland Avenue, SW  
Room 6329  
Washington, DC 20554  
kathy.harris@fcc.gov

\* Ms. Kate Matraves  
Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Room 6528  
Washington, DC 20554  
catherine.matraves@fcc.gov

\* Jim Bird, Esq.  
Office of General Counsel  
Federal Communications Commission  
445 Twelfth Street, SW  
Room 8-C824  
Washington, DC 20554  
jim.bird@fcc.gov

+ Antoinette Cook Bush, Esq.  
Skadden, Arps, Slate, Meagher & Flow LLP  
1440 New York Avenue, NW  
Washington, DC 20005

+ Regina M. Keeney, Esq.  
Lawler, Metzger, Keeney & Logan LLC  
2001 K Street, NW, Suite 802  
Washington, DC 20006

*Counsel for Sprint Nextel Corporation*

*Counsel for Sprint Nextel Corporation*

  
Julia I. Renehan  
Senior Legal Assistant  
Arnold & Porter LLP