

July 19, 2012

VIA ECFS

Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), SpectrumCo, LLC (“SpectrumCo”), Cox TMI Wireless, LLC (“Cox Wireless”), Bright House Networks, Inc. (“Bright House Networks”), Comcast Corp. (“Comcast”), and Time Warner Cable Inc. (“Time Warner Cable”) hereby object to the Acknowledgments of Confidentiality filed in the above-referenced proceeding by Ilene Knable Gotts, identified as outside counsel to CenturyLink.¹ As explained below, under the Protective Order and Second Protective Order in this proceeding, only certain representatives of parties may access Stamped Confidential and Highly Confidential documents. CenturyLink is not a party to this proceeding and accordingly CenturyLink’s outside counsel may not gain access to these documents.

The Protective Order and Second Protective Order make plain that access to Stamped Confidential and Highly Confidential documents is limited to certain representatives of a party to the proceeding. The Acknowledgment attached to the Protective Order stipulates that the signer “acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant *to a party*.”² The Acknowledgment in the Second Protective Order similarly requires that the signer acknowledge that he or she qualifies

¹ Letter from Melissa E. Newman, Vice President - Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed July 16, 2012).

² *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses*, Protective Order, WT Docket No. 12-4, DA 12-50 at 1 (Jan. 17, 2012) (“Protective Order”) (emphasis added).

for access due “solely to my capacity as Outside Counsel or Outside Consultant *to a party*.”³

The definitions of Counsel and Outside Counsel found in both Protective Orders further illustrate that the qualifying counsel must represent “a party” to gain access to Stamped Confidential and Highly Confidential documents. The Protective Order defines “Counsel” to mean In-House Counsel or Outside Counsel of Record.⁴ “In-House Counsel” means “an attorney employed *by a party to this proceeding* . . . and who is actively engaged in the conduct of this proceeding.”⁵ In the Protective Order and Second Protective Order, “Outside Counsel of Record” or “Outside Counsel” means an attorney or firm retained by or representing “*a party in this proceeding*.”⁶

It is plain that under both Protective Orders, one’s ability to review confidential documents is dependent on representing a party in this proceeding. The Public Notice explains what is necessary to qualify as “a party in this proceeding”:

*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.*⁷

³ *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses*, Second Protective Order, WT Docket No. 12-4, DA 12-51 at 9 (Jan. 17, 2012) (“Second Protective Order”) (emphasis added).

⁴ Protective Order at 1.

⁵ *Id* (emphasis added).

⁶ Protective Order at 1-2; Second Protective Order at 2 (emphasis added).

⁷ Public Notice, *Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, DA 12-67 at 3 (rel. Jan. 19, 2012) (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. “[T]he 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” 47 C.F.R. § 1.400. This rule indicates that party status is predicated on the timely filing of a formal pleading. The definition of party in a transfer application proceeding can be no less restrictive, particularly when access to submitted Stamped Confidential and Highly Confidential information is involved.

To the extent that CenturyLink would have the staff rely on the definition of a party in the *ex parte* rules to gain access to 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. 47 C.F.R. § 1.1202. Section 1.202(d), note 3 of

CenturyLink did not file a timely petition to deny in this proceeding. In fact, CenturyLink has not participated at all in this proceeding other than the recent filing of the Acknowledgments of Confidentiality and a “submission for the record”⁸ and notice of oral *ex parte* presentation,⁹ both filed just last Friday. CenturyLink is clearly not a “party to the proceeding” under the definition found in the Public Notice. Therefore, CenturyLink’s outside counsel is not qualified to gain access to the confidential materials filed in this proceeding.¹⁰

For these reasons, Verizon Wireless, SpectrumCo, Cox Wireless, Bright House Networks, Comcast, and Time Warner Cable respectfully ask the Commission to sustain

the Commission’s rules 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 . . . [n]or does it constitute a determination that such person has other procedural rights.” 47 C.F.R. note 3 to § 1.1202(d).

⁸ Letter from Melissa E. Newman, Vice President - Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 13, 2012).

⁹ Letter from Michael D. Saperstein Jr., Director of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 13, 2012) (regarding oral *ex parte* presentation on July 11, 2012 to Commissioner Clyburn and staff by representatives of Frontier Communications, Windstream Communications, CenturyLink, Fairpoint Communications, and ITTA, the Independent Telephone & Telecommunications Alliance).

¹⁰ The Commission has previously found that entities who have not filed timely formal pleadings during the comment cycle do not qualify as parties to a proceeding. *See, e.g.* Letter from Nancy J. Victory, Counsel for Verizon Wireless, and Peter J. Schildkraut, Counsel for AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-121 (Dec. 9, 2009).

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this objection and deny CenturyLink access to Confidential and Highly Confidential materials in this proceeding.

Sincerely,

/s/

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CERTIFICATE OF SERVICE

I, May Chiang, certify that on this 19th day of July, 2012, a copy of the foregoing letter was sent via first class mail to the following persons (unless another delivery method is specified):

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