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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UTILITY CONSUMERS' ACTION NETWORK and ERIC TAYLOR, on behalf of themselves, their members and/or all others similarly situated, as applicable,

Plaintiffs,

v.

SPRINT SOLUTIONS, INC.; SPRINT SPECTRUM, L.P.; SPRINT-NEXTEL CORPORATION,

Defendants.

CASE NO. C07-2231RJB

ORDER DENYING STIPULATED MOTION FOR ENTRY OF PROTECTIVE ORDER - WITHOUT PREJUDICE

This matter comes before the Court on the above-referenced motion (Dkt. 51). The court is familiar with the records and files herein and the parties' Proposed Protective Order. For the following reasons, the Stipulated Motion should not be granted with the Proposed Protective Order in its present form. Counsel and the parties may agree on confidentiality among themselves and adopt any reasonable agreement. When the court is asked to be involved with a protective order, however, the order must be narrowly drawn and the parties must make the requisite showings under FRCP 26(c).

The motion should be denied without prejudice for the following reasons:

- 1. Protective orders should be issued only for good cause pursuant to FRCP 26(c).
This is a public court and its business should be conducted publicly, unless there is

1 a specific reason to keep information confidential. There is a strong presumption
2 of public access to the court's files and records, which should be overcome only on
3 a compelling showing that the public's right of access is outweighed by the
4 interests of the public and the parties in protecting files, records or documents
5 from public review. When protective orders are appropriate, they should be
6 narrowly drawn, the presumption being in favor of open and public litigation.
7 These considerations are particularly important in a class action case where the
8 rights of innumerable non-parties may be affected.

9 2. The Proposed Protective Order submitted in this case is deficient in the following
10 respects:

- 11 A. Regarding paragraph 1.1.1 & 1.2 in the Proposed Protective Order: The
12 Proposed Protective Order appears to be overbroad; the definitions
13 provided go far beyond the limits of FRCP 26(c), and allow the parties
14 excessive leeway in determining what should be protected. Any request for
15 a protective order should clearly identify the class or type of documents
16 subject to the protective order, and the reason underlying the request for
17 the order.
- 18 B. Regarding paragraph 2.2 in the Proposed Protective Order: This paragraph
19 allows "any party or third party" to designate information as confidential or
20 limited. Even though such a designation may be overcome in court
21 proceedings, such broad authority encourages the parties and non-parties
22 to "litigate in private," outside of the confines of FRCP 26(c).
- 23 C. Regarding paragraph 3.1 in the Proposed Protective Order: This paragraph
24 provides that certain individuals in certain circumstances "will be required
25 to agree to be bound by" the terms of the Proposed Protective Order. The
26 court should not, and will not, now require unknown persons to agree to
27 something in the future.
- 28

- 1 D. Regarding paragraph 4.1 in the Proposed Protective Order: This paragraph
2 also provides that certain parties in certain circumstances “shall agree” and
3 is not appropriate for the same reasons as stated in the preceding
4 paragraph.
- 5 E. Regarding paragraph 5.2.5 in the Proposed Protective Order: This
6 paragraph provides for “ an *ex parte* application.” The undersigned judge
7 does not consider *ex parte* applications in any case where other parties
8 have appeared. All parties are entitled, by due process considerations, to
9 notice and the opportunity to be heard on any application made to the
10 court.
- 11 F. Regarding paragraph 5.4 in the Proposed Protective Order”: This
12 paragraph provides that “a subpoenaed party shall not produce
13 information” under certain circumstances. This order provides that the
14 court is ordering an unknown person not to do something in the future. It
15 is simply not appropriate, out of consideration of due process, to make
16 such a future order against unknown persons.
- 17 G. Regarding paragraph 5.5 in the Proposed Protective Order: This provision
18 limits existing contractual rights of unknown third parties to information
19 and, again, stretches due process considerations beyond the breaking point.
- 20 H. Regarding paragraph 7 in the Proposed Protective Order: Typically the
21 local rules will provide sufficient procedures and safeguards for documents
22 filed under seal. It is this court’s understanding that documents filed under
23 seal in the CM/ECF system are available to appropriate parties through that
24 system and references to hard copies in the rule may be unnecessary.
- 25 I. Regarding paragraph 10.3 in the Proposed Protective Order: This
26 paragraph provides that “a separate order shall be entered.” The court
27 does not wish to obligate itself at this time to issue a future order that may
28 or may not be necessary.

1 J. Regarding paragraph 10.7 in the Proposed Protective Order: This
2 paragraph provides for the inadmissibility of possible evidence. The Rules
3 of Evidence control what will be admissible and the court does not wish to
4 make advance ruling on evidentiary matters prior to the time those rulings
5 are required.

6 K. Regarding paragraph 10.8 in the Proposed Protective Order: This
7 paragraph provides for continuing jurisdiction after termination of the case.
8 The case should not be terminated until issues covered in the Protective
9 Order are resolved. Once the case is concluded, the undersigned does not
10 wish to retain jurisdiction. If an issue arises after the case is terminated,
11 there must be a separate basis for federal jurisdiction and, if there is federal
12 jurisdiction, it may be appropriate to then assign any such issues to the
13 undersigned as a related case.


14 The undersigned also requires that any protective order makes clear that
15 the court may *sua sponte* raise questions and consider amendments,
16 modifications, or additions to protective orders, but with notice to all
17 involved parties and an opportunity for all to be heard before any ruling is
18 issued.

19 Therefore, it is now

20 **ORDERED** that the Stipulated Motion for Entry of Protective Order (Dkt. 51) is
21 **DENIED** without prejudice.

22 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
23 to any party appearing *pro se* at said party's last known address.

24 DATED this 16th day of January, 2009.

25 
26 ROBERT J. BRYAN
27 United States District Judge
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