

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of KANSAS

UNITED STATES OF AMERICA, et al.

Plaintiff

v.

AT&T INC., et al.

Defendant

Civil Action No. Misc.

(If the action is pending in another district, state where:

District of Columbia, 1:11-cv-01560 )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sprint Nextel Corp., 6200 Sprint Parkway, Overland Park, KS 66251

[X] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A for documents requested (which includes Exhibit 1 specifying the production format for electronically stored information). See Attachment B for protective order.

Table with 2 columns: Place, Date and Time. Place: BDI Investigations, 5350 W. 94th Terrace, Overland Park, KS 66207. Date and Time: October 7, 2011 at 9:00 a.m.

[ ] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place, Date and Time. Both fields are empty.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 9/26/2011

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Handwritten signature of Steven F. Benz
Attorney's signature
Steven F. Benz

The name, address, e-mail, and telephone number of the attorney representing (name of party) Defendant AT&T Inc., who issues or requests this subpoena, are: Steven F. Benz, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., 1615 M Street, NW, Suite 400, Washington, DC 20036, (202) 326-7900

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_

\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

### (c) Protecting a Person Subject to a Subpoena.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

#### **(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

#### **(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

### (d) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### **(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

# **ATTACHMENT A**

## ATTACHMENT A

### RULE 45 REQUESTS FOR PRODUCTION TO SPRINT

#### GENERAL INSTRUCTIONS

A. These requests seek all responsive documents within your possession, custody, or control, whether prepared by you or a third party.

B. As used herein, the words “and” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other wherever such dual construction will serve to bring within the scope of these requests any document which would otherwise not be brought within its scope.

C. As used herein, the singular forms shall include the plural and vice versa wherever such dual construction will serve to bring within the scope of these requests any document that would otherwise not be brought within its scope.

D. As used herein, the words “any,” “each,” and “every” shall be construed to mean individually and collectively wherever such dual construction will serve to bring within the scope of these requests any document that would otherwise not be brought within its scope.

E. Each request seeks production of all documents and things described, along with any addenda, attachments, drafts, and non-identical copies, as found or located in your files, together with a copy of the descriptive file folder or database category in its entirety.

F. Electronically-stored information must be produced according to the parameters set forth in the Electronically-Stored Information Protocol, attached hereto as Exhibit 1, with the exception that any responsive ESI that has already been produced to United States Department of Justice or the Federal Communications Commission may be produced in the same format in which it was produced to these entities.

G. If documents are withheld under claim of privilege or work product, you are required to identify each such document and state the specific basis for the claim of privilege for each document withheld by providing the following information: (1) the title, heading, or caption of the document, if any; (2) the date appearing on the document, or, if no date appears thereon, the date or approximate date on which the document was prepared; (3) a description of the general nature of the document (e.g., whether it is a letter, memorandum, email, telephone log, etc.) and the number of pages it entails; (4) the identity of the person who signed the document, or, if it was not signed, the identity of the person who prepared it; (5) the identity of each person to whom the document was addressed and the identity of each person to whom a copy was sent; and (6) the identity of each person who has custody of a copy of each document.

H. If any request cannot be responded to completely, respond to it to the extent possible, specify the portion(s) that cannot be responded to, and explain why any such portion(s) cannot be responded to.

I. If you object to any request made herein as unduly broad, identify the categories of documents within the scope of the request that you believe are properly discoverable, produce all such documents, and state, with particularity, your reason for asserting that the remainder of the request seeks documents that are beyond the scope of permissible discovery.

J. Each request shall be construed independently and, therefore, no request shall be construed to limit any other request.

K. All documents produced should bear Bates labels.

L. If any document requested has been lost, discarded, or destroyed, such documents so lost, discarded, or destroyed shall be identified as completely as possible. Identification of such documents shall include, without limitation, the information required above regarding documents withheld under a claim of privilege, and date of disposal, manner of disposal, reason for disposal, person authorizing disposal, persons having knowledge of the disposal, and the persons disposing of the document.

M. These requests are continuing in nature. If further information, evidence, or documentation comes into your possession, custody, or control or is brought to the attention of you or your attorneys or agents at any time subsequent to the service of any responses or production of any documents, prompt and complete supplementation of the responses to these requests and the corresponding production is required pursuant to the Federal Rules of Civil Procedure.

N. Unless otherwise stated, the relevant time period for all requests is from September 1, 2009 to the present.

#### **DEFINITIONS**

A. "This action" means the action filed by the United States of America against AT&T, Inc., captioned *United States v. AT&T, Inc.*, Case Number 1:11-cv-01560, pending in the United States District Court for the District of Columbia.

B. "Communication" means the transmittal of information or request for information, including but not limited to any written contact between two or more people by such means as letters, memoranda, facsimile transmissions, and e-mails and oral contact between two or more people by such means as face-to-face meetings, telephone conversations, and voice mail.

C. "Company," "you," and "your" all mean Sprint Nextel Corporation and all persons or entities acting or that have acted on its behalf, including, but not limited to divisions, subsidiaries, holding companies, parents, successors, predecessors, and any other related entity as well as its officers, directors, trustees, present and former employees, agents, affiliates, joint ventures, partners, assigns, or any other representatives or other persons under their control, expressly including, but not limited to, Boost Mobile and Virgin Mobile.

D. "Complaint" means the Complaint filed in this action by the Plaintiffs.

E. "Documents" shall include all information producible under Rule 34, including, but not limited to, books, papers, records, letters, notes, schedules, tabulations, vouchers, accounts, statements, financial statements, balance sheets, income or revenue statements, debt summaries, profit-and-loss statements, spreadsheets, data bases, affidavits, memoranda, records, communications, electronic mail ("email"), voicemail, facsimiles, "text" or SMS/MMS messages, minutes, reports, abstracts, agreements, contracts, calendars, drafts, drawings, photographs, blueprints, slides, sketches, video recordings, audio recordings, charts, graphs and similar items, including originals, copies, or reproductions of any kind, and shall also include any kind of transcript, transaction, or recording of any audio or visual presentation or communication of any kind. The term "documents" shall further include other data compilations or electronically-stored information of any kind, including data or information that can be obtained or translated through detection devices or other means into any reasonably useable or readable format. All documents stored or maintained in an electronic form should be produced in the same electronic form in which they are stored or maintained in the regular course of business.

F. "Electronically-Stored Information" or "ESI" means all documents that are stored in any electronic medium from which information can be obtained.

G. "Person" means any person and includes natural persons, corporations, firms, partnerships, proprietorships, associations, joint ventures, firms and other enterprises or legal entities.

H. "Plaintiffs" means the Plaintiffs in this action: (a) the United States of America, (b) the State of New York, (c) the State of Washington, (d) the State of California, (e) the State of Illinois, (f) the Commonwealth of Massachusetts, (g) the State of Ohio, (h) the Commonwealth of Pennsylvania, and all of their respective divisions, officers, directors, present and former employees, agents and any other persons acting on their behalf.

I. "Relating to" and "relate to" mean concerning, constituting, regarding, referring to, describing, discussing, embodying, evidencing, memorializing, mentioning, recording, studying, analyzing, reflecting, pertaining to, supporting, refuting, or with respect to.

J. "AT&T" means AT&T, Inc. and all persons or entities acting or that have acted on its behalf, including but not limited to divisions, subsidiaries, holding companies, parents, successors, predecessors, and any other related entity as well as its officers, directors, trustees, present and former employees, agents, affiliates, joint ventures, partners, assigns, or any other representatives or other persons under their control.

K. "T-Mobile" means T-Mobile USA, Inc., and all persons or entities acting or that have acted on its behalf, including but not limited to divisions, subsidiaries, holding companies, parents, successors, predecessors, and any other related entity as well as its officers, directors, trustees, present and former employees, agents, affiliates, joint ventures, partners, assigns, or any other representatives or other persons under their control.

L. "Transaction" refers to the proposed merger between AT&T, Inc. and T-Mobile USA, Inc.

M. “Cell Site” refers to a site where antennas and other electronic communications equipment are located to create a cell in a cellular network.

N. “ARPU” means average revenue per user.

O. “Brand Image” means customer perceptions, brand awareness, or “net promoter score” for any mobile wireless service provider.

P. “Churn” or “Churn Rate” means any measure of mobile wireless customers who discontinue their use of a provider’s mobile wireless services.

Q. “CMA” means cellular marketing area.

R. “CRU” means corporate responsibility user.

S. “DAS” means distributed antenna system.

T. “DMA” means Designated Market Area.

U. “Device” means any mobile devices used to access mobile wireless services, including but not limited to cellular phones, smartphones, e-book readers, and tablet computers.

V. “iDAS” means indoor distributed antenna system.

W. “IRU” means individual responsibility user.

X. “Mobile wireless service provider” or “provider” means any entity providing mobile wireless services, including entities offering any mobile wireless service as a reseller of such services.

Y. “Mobile wireless services” or means mobile wireless voice, data, or text services.

Z. “MSA” means metropolitan statistical area.

AA. “Network for mobile wireless services” refers to the network on which mobile wireless voice, data, or text services are provided.

BB. “Network Quality” refers to the measurement of voice accessibility, retainability, voice quality, or reliability of a wireless network.

CC. “Network Speed” refers to the measurement of download speed or upload speed of a wireless network.

DD. “oDAS” means outdoor distributed antenna system.

EE. “Porting” means mobile wireless customers who discontinue their use of a provider’s mobile wireless services and transfer their telephone number to another provider.

FF. “RSA” means rural service area.



GG. "Smartphone" refers to any mobile device that combines the functionality of a mobile telephone with a handheld computer, including but not limited to devices utilizing RIM's BlackBerry OS, Apple's iOS, Google's Android, Microsoft's Windows Phone, or Nokia's Symbian.

HH. "Sub-national" refers to any area or region of the United States smaller than the entirety of the United States, including, but not limited to, CMAs, RSAs, MSAs, DMAs, counties, zip codes, and local, regional, state, or engineering markets.

### **REQUESTS FOR PRODUCTION TO SPRINT**

1. All requests, whether formal or informal, for information relating to the Transaction, from: (a) the U.S. Department of Justice, (b) the Federal Communications Commission, (c) the Office of the State Attorney General of any state, (d) the public utilities commission of any state, or (e) any other federal, state or local government entity.

2. All documents the Company produced to and any correspondence or communication with: (a) the U.S. Department of Justice, (b) the Federal Communications Commission, (c) the Office of the State Attorney General of any state, (d) the public utilities commission of any state, or (e) any other federal, state or local government entity relating to the Transaction.

3. All documents analyzing the Transaction, including, but not limited to:

- documents evaluating or analyzing the potential impact of the Transaction on the Company or on consumers, other mobile wireless service providers, or any other party;
- financial, economic, engineering or technical models analyzing the effects of the Transaction on price, quality, capacity, supply or demand conditions, or any other economic variable, including any evaluations or analyses of the efficiencies generated by the Transaction;
- documents evaluating or analyzing the impact of the Transaction on innovation in the mobile wireless business;
- documents relating to the Company's plans to compete with AT&T and other mobile wireless service providers post-Transaction;
- documents evaluating or analyzing any actions the Company might take in response to the Transaction;
- documents relating to actions contemplated by the Company or any plans it has formulated or considered, including any business combination with T-Mobile, in the event the Transaction is not consummated.

4. All documents relating to the Company's consideration of any merger, acquisition, joint venture, or other business combination with T-Mobile, including, but not limited to:

- documents reflecting, referring or relating to the Company's reasons for seeking such a transaction with T-Mobile, and any benefit or efficiency contemplated from the transaction;
- communications, discussions, or negotiations between the Company and T-Mobile;
- documents that reflect financial, economic, engineering or technical models analyzing the effects of the proposed combination on price, quality, capacity, supply or demand conditions, or any other economic variable;
- documents discussing the reasons that the transaction did not take place; or
- documents evaluating or analyzing the potential impact of such a business combination on: (a) the Company, (b) its customers, subscribers or consumers, (c) its investors, (d) its network for mobile wireless services, (e) customers, subscribers or consumers of other mobile wireless service providers, (f) other mobile wireless service providers, or (g) competition and innovation in the mobile wireless ecosystem.

5. All documents relating to transactions entered into from January 1, 2004 through the present involving: (a) Nextel, (b) Virgin Mobile, (c) Clearwire, or (d) any other mobile wireless provider, that: (i) the Company submitted to the U.S. Department of Justice in response to Item 4(c) of the Notification and Report Form filed by the Company pursuant to the Hart-Scott-Rodino Antitrust Improvement Act, or (ii) reflect any analysis of anticipated or achieved efficiencies or synergies for such transaction.

6. All documents analyzing, discussing, or assessing T-Mobile's competitive position or significance.

7. All documents regarding the Company's efforts, through each of its Sprint, Boost Mobile or Virgin Mobile brands, to target or solicit T-Mobile customers, including documents analyzing the actual or potential impact of such activities.

8. All documents relating to any actual or proposed competitive response by the Company (as a whole or through its Sprint, Boost Mobile, or Virgin Mobile brands) to T-Mobile's rate plans, pricing, advertising, service offering, device offering, or network offering nationally or in any sub-national area.

9. All documents relating to any actual or proposed competitive response by the Company (as a whole or through its Sprint, Boost Mobile, or Virgin Mobile brands) to the rate

plan, pricing, advertising, service offering, device offering, or network offering of MetroPCS, Leap, US Cellular, Cellular South, or any other wireless provider nationally or in any sub-national area.

10. All business plans or other strategic plans relating to the Company's mobile wireless services (for the Company as a whole or through its Sprint, Boost Mobile, or Virgin Mobile brands) including, but not limited to, plans to enter or expand service into any geographic area, plans to improve or increase market share (in total or in any segment), research and development plans, marketing plans, plans to introduce new services, devices, or products, or plans to improve existing services, products, or network capacity or quality.

11. All documents relating to the Company's ability to compete (as a whole and separately for its Sprint, Boost Mobile, or Virgin Mobile brands) with AT&T, T-Mobile, Verizon, MetroPCS, Leap, or other mobile wireless service providers, including, but not limited to, any competitive assessment or other description, analysis, or comparison with respect to device offerings, network quality, features and functionality, pricing, churn, customer service, or other dimension of competition.

12. All studies, reports, or analyses that reflect the Company's, any other mobile wireless service provider's, or wireless industry: (a) forecasts of usage demand for mobile wireless services, (b) analyses or estimates of demand elasticities or other studies of such demand, or (c) the determinants of demand for mobile wireless services.

13. Documents sufficient to show any efforts by the Company to innovate or lead in the adoption of any devices, network technology, pricing plans, or any other innovation.

14. Documents sufficient to show all research and development activities in which the Company has engaged in the past two years or plans to engage in the next 18 months either independently or through joint ventures, partnerships, or other associations with other companies or entities, including, but not limited to: (a) any manufacturer of devices, (b) any developer of operating systems, (c) any developer of applications, or (d) any participant in the provision of any type of network technology.

15. Documents sufficient to identify the amount spent by the Company on: (a) national advertising, and (b) local advertising (in any sub-national area, provided separately by area) for any of the Company's mobile wireless services by month for the past three years.

16. Documents sufficient to show all promotional or other advertising materials created or used within the past two years that compare the Company's mobile wireless services (through any of its Sprint, Boost Mobile, or Virgin Mobile brands) with services offered by any other mobile wireless service provider on a national or sub-national level, including, but not limited to, comparisons based on price, network quality, device portfolio, or customer service.

17. All analyses, reports, studies or market research reports (including, but not limited to, demographic and psychographic surveys) of consumers, subscribers, or customers relating to: (a) consumer, subscriber or customer preferences or behavior in selecting mobile wireless service providers; (b) the Company's brand image (including the Sprint, Boost Mobile, and Virgin Mobile brands); (c) the mobile wireless services provided by the Company (including

through its Sprint, Boost Mobile, and Virgin Mobile brands), including, but not limited to, network speed or quality, voice or data coverage, or customer service or; (d) the services of any other mobile wireless service provider, including, but not limited to, network speed or quality, voice or data coverage, or customer service; or (e) the brand image of any other mobile wireless service provider.

18. Documents sufficient to show: (a) all rate plans the Company has offered (through each of its Sprint, Boost Mobile, and Virgin Mobile brands) at retail to consumers from January 1, 2008 to the present for any voice, text, and/or data service, including, but not limited to, the rate plan price, type of service, the terms and conditions applicable to the rate plan, the types of customers to whom the rate plan was available, geographic area in which the rate plan was available, and the time period during which the rate plan was available; (b) the reasons for and impact of any rate plan change by the Company, (c) the factors the Company uses to set its pricing, and (d) any competitive responses to such rate plan change by any other mobile wireless service provider.

19. Documents sufficient to show all bids the Company has submitted for mobile wireless services to business or government entities over the past three years, whether or not the bid was successful, including, but not limited to, documents sufficient to show for each such bid: (a) the name of the entity; (b) the date the Company submitted its bid; (c) the terms of the bid; (d) the total contract value; (e) the number of lines; (f) the geographic scope; (g) the scope of services requested; and (h) whether the Company was awarded the contract, and if not, the identity of the winning bidder, if known.

20. Documents sufficient to show for each of the Company's business and government subscribers, by year for the past three years, the total lines, total revenue, geographic locations, product or services purchased, price, and payment arrangements.

21. Documents sufficient to show: (a) the identity of your business and government customers; (b) the number of the Company's IRU and CRU subscribers, separately, by month for the past three years, (c) the Company's ARPU for IRU and CRU subscribers, separately, by month for the past three years, (d) the Company's churn rate for IRU and CRU customers, separately, on a national basis and any sub-national basis tracked by the Company by month for the past three years, and (e) the percentage of government or business contracts that include Push-To-Talk service.

22. All documents evidencing business or government wireless service RFPs or other opportunities in which T-Mobile bid for the business or was a factor the Company considered or responded to in its offering.

23. Documents sufficient to show by year for each of the past five years both nationally and in any sub-national area tracked by the Company: (a) the number of cell sites (i) in service on the Company's network today, (ii) deployed in the last five years, or (iii) located on third party structures and/or collocated with carriers or other third parties, (b) where the cell sites are deployed, (c) the length of time required to deploy the cell sites, (d) the number and location of proposed cell sites that the Company has sought to deploy but has abandoned or not yet

completed deployment and the reasons for any such abandonment or lack of completion, and (e) plans for deployment of cell sites in the next five years.

24. Documents sufficient to show by year for each of the past five years: (a) the number of DAS deployments (i) in service on the Company's network today, (ii) deployed in the last five years, (b) the location of the DAS deployments, (c) the length of time required for the DAS deployments, (d) the number and location of proposed DAS deployments that the Company has abandoned or not yet completed deployment and the reasons for any such abandonment or lack of completion, and (e) plans for DAS deployment in the next five years.

25. Documents sufficient to show by year for each of the past five years: (a) the number of Wi-Fi hotspots (i) in service on the Company's network today, (ii) deployed in the last five years, (b) where the Wi-Fi hotspots are deployed, (c) the length of time required to deploy the Wi-Fi hotspots, (d) the number and location of proposed Wi-Fi hotspots that the Company has sought to deploy but has abandoned or not yet completed deployment and the reasons for any such abandonment or lack of completion, and (e) plans for deployment of Wi-Fi hotspots in the next five years.

26. Documents sufficient to show by year for each of the past five years: (a) the number of femtocells (i) in service on the Company's network today, (ii) deployed in the last five years, (b) where the femtocells are deployed, (c) the length of time required to deploy the femtocells, (d) the number and location of proposed femtocells that the Company has sought to deploy but has abandoned or not yet completed deployment and the reasons for any such abandonment or lack of completion, and (e) plans for deployment of femtocells in the next five years.

27. All documents relating to the Company's requirements for leasing or acquiring cell sites, including, but not limited to, any analyses or plans to do so and the costs and timing involved.

28. All documents relating to the Company's analysis, use, or consideration of "heterogeneous networks" as that term is used on pages 99 and 105 of the Company's Petition to Deny the Transaction, filed with the FCC.

29. Documents sufficient to show all actual or proposed plans for future upgrades or expansions of the Company's mobile wireless voice or data network, including, but not limited to, any future deployment of 4G network technology (through LTE technology, WiMAX, or other 4G technology), allocation or acquisition of spectrum (directly or through affiliates, subsidiaries, or other related companies), alternative backhaul arrangements, network deployment cost projections, and network infrastructure build-out plans.

30. Documents sufficient to show the Company's efforts to migrate subscribers across network technology platforms (*e.g.*, from 2G to 3G; from 3G to 4G), including, but not limited to, any plans for such migration, any efforts undertaken to induce such a migration, any plans to sunset 2G services, and any analyses of the impact of such efforts.

31. All documents relating to any proposed or actual network capacity sharing or leasing arrangements by the Company, including, but not limited to, any analyses of spectrum

leasing options, roaming or network sharing arrangements, and the costs and feasibility of such options.

32. Documents sufficient to show the Company's forecast or other analysis of network capacity utilization at the national and sub-national level, including, but not limited to projections of "spectrum exhaust" or the point in time at which the capacity utilization becomes so high that the quality of service is significantly degraded.

33. Documents sufficient to show in detail the Company's relationship with Clearwire, including any governance rights or other legal rights with respect to Clearwire or Clearwire's spectrum assets, and any commercial arrangements between the Company and Clearwire including wholesale or resale agreements and spectrum leases.

34. All documents relating to the Company's plans with respect to Clearwire, including, but not limited to: (a) any plan or discussion of deploying or otherwise making use of Clearwire's spectrum assets in any geographic area, and the technology to be used in any such deployment; or (b) plans with respect to any 4G LTE network deployment, including any role of Clearwire or Clearwire's spectrum assets in any such plan.

35. All contracts, agreements, or documents reflecting negotiations with device manufacturers relating to exclusive or preferential rights for current or future device offerings, including, but not limited to, offerings of devices that are under development.

36. Documents sufficient to show smartphone sales and smartphone penetration, by year for the past three years, and projected sales and penetration in the next two years.

37. Organization charts sufficient to identify all employees of the Company: (a) with management-level responsibility for sales, marketing, pricing, network operations, (b) performing merger and acquisition strategic planning functions relating to the mobile wireless services offered by the Company, and (c) who are responsible for the negotiation of any agreements relating to the procurement of devices to be sold by the Company at retail.

38. Documents sufficient to show the Company's mobile wireless service demand forecasts for the next five years for the Company as a whole and for each of its Sprint, Boost Mobile, and Virgin Mobile brands, including forecasts of both subscriber growth and usage per subscriber growth (separately for voice, data, and text) by network generation (*e.g.*, 2G, 3G, 4G) and type of subscriber (post-paid vs. pre-paid) nationally and for any sub-national areas tracked by the Company.

39. Documents sufficient to show the value of a customer to the Company (as a whole and for each of its Sprint, Boost Mobile, and Virgin Mobile brands) over that customer's lifecycle including the costs associated with acquiring a customer initially, the lifetime costs of subscriber, and the lifetime revenue of a subscriber, separately by customer type (pre-paid, post-paid).

40. Documents sufficient to show the number of subscribers and share of subscribers, including the number of pre-paid, post-paid, wholesale and M2M/connected device subscribers,

for the Company and any other mobile wireless service providers, on a national basis and any sub-national basis tracked by the Company by month for the past three years.

41. Documents sufficient to show the number of gross additions, the number of net additions, share of gross additions, and share of net additions for the Company and any other mobile wireless service providers on a national basis and any sub-national basis tracked by the Company by month for the past three years.

42. Documents sufficient to show the Company's projections or forecasts for future market share, share of gross adds, share of net adds, or churn rate for the Company and any other mobile wireless service providers on a national basis and any sub-national basis tracked by the Company

43. Documents sufficient to show for the Company as a whole and separately for each of (a) the Sprint brand, (b) the Boost Mobile brand, and (c) the Virgin Mobile brand, ARPU, revenue per minute of use, revenue per bytes of data use, by category of plan and customer type (e.g., consumer, government or business, and pre-paid), on a national basis and any sub-national basis tracked by the Company by month for the past five years.

44. Documents sufficient to show the ARPU for new subscribers by month for their first two years of service for the Company as a whole and for each of its Sprint, Boost Mobile, and Virgin Mobile brands.

45. Documents sufficient to show the nature and amount of any discounts or promotions, including, but not limited to, device subsidies and termination fee waivers, offered by the Company on any mobile wireless service or device on a national basis and any sub-national basis by month for the past three years, and their effect on customer acquisition or retention for each of the Company's Sprint, Boost Mobile, and Virgin Mobile brands.

46. Documents sufficient to show the rate of churn, rate of porting, number of subscribers voluntarily terminating service (i.e. "disconnects"), and number of subscribers porting to any other mobile wireless service providers (including any "port-in" or "port-out" data) for the Company as a whole, and separately for the (a) Sprint brand, (b) the Boost Mobile brand, and (c) the Virgin Mobile brand, on a national basis and any sub-national basis tracked by the Company by month for the past three years.

47. All analyses of substitution, churn or switching among mobile wireless service providers for the Company, including, but not limited to: (a) analyses of the extent to which churn or switching is correlated with or due to pricing, network quality, customer service, or length of contract commitments, or the absence or availability of particular services or devices; or (b) analyses of the extent to which particular marketing or promotional efforts by the Company or any other mobile wireless service provider contributed to churn or subscribers switching to or from the Company.

## EXHIBIT 1

### Electronically-Stored Information Protocol

#### I. Definitions

A. The definitions in Attachment A to the subpoena enclosed herewith are incorporated as if set forth fully herein.

B. “Control number” means the unique number permanently affixed to each page of a document produced in TIFF-image format in litigation and means the unique number appearing as the file name of a document produced in litigation where the document is produced in native format.

C. “Custodian” means a person who had custody of information or a document prior to collection for production.

D. “Electronic document” shall mean any document existing in electronic form, including but not limited to word processing files (e.g., Microsoft Word), computer presentations (e.g., PowerPoint slides), databases or spreadsheets (e.g., Excel), together with the metadata associated with each such document.

E. “Extracted text” is the equivalent of the typed content of a text-based electronic document.

F. “Load File” means a file or files issued with each production providing a map to the images and metadata or objective coding contained within the production.

G. “OCR” or “optical character recognition” refers to the result of the process by which a hard copy document or an electronic document containing an image of text is analyzed by a computer for the purpose of creating a plain text electronic document that contains the



textual content gleaned and recognized from the original hard copy document.

H. “Metadata” shall include, but is not limited to, structured fields or information stored with or associated with a given file. Non-limiting examples of specific fields of metadata are set forth in the table at the end of this Exhibit 1.

I. “Native file” shall mean the default format of a data file created by its associated software program. For example, by default Microsoft Excel will produce ‘.xls’ files, which is a native format for Excel. Microsoft Word produces files with a ‘.doc’ extension, which is a native format of Word.

## **II. General Format of Production**

A. **Document Images.** Documents that are produced, whether originally stored in paper or electronic form, shall be produced in electronic image form in the manner as described below. AT&T reserves the right to request that an alternative format or method of production be used for certain documents, if such document is not susceptible to production in the format or methods of production addressed herein. In that event, AT&T and the producing party shall meet and confer to discuss alternative production requirements, formats, or methods.

B. **Control Numbering.** Each production document shall consist of a unique production prefix identifying the producing party and an 8-digit sequential number or range of numbers, as appropriate. (Example: [Prefix]\_00000001). Where a document is produced in image format, such control number and any confidentiality legend shall be “burned” onto each document’s image at a location that does not unreasonably obliterate or obscure any information from the source document. Where a document is produced in native format, such control number shall constitute the filename (along with the appropriate file extension).

C. **Production Volume.** Each production shall be named using the production

prefix and a 3-digit sequential number. (Example: [Prefix]\_001).

1. The production volume should be the first directory volume on the root of the production media.

2. Production volume shall be defined by the production date, not the amount of media that is contained in the production.

3. The production volume description shall include the production volume and the production date. (Example: [Prefix]\_001-20110101).

D. **Production Media**. The production media shall bear the production volume and the following information on the label:

1. Case caption
2. Volume
3. Media count of production
4. Media creation data
5. Control number range
6. Confidentiality designation

E. **Production Directory**. Each production directory should contain the following 4 sub-directories, which shall be saved on the root of each production media (CD/DVD or HD):

**1. Images Directory**

- a. Shall contain single-page TYPE VI TIFF (Black and White) at 300 DPI or compressed .jpg format at 300 DPI (Color).
- b. Each image shall have the control number endorsed in the lower right-hand corner of the document and any confidentiality designation endorsed on the lower left corner of the document.
- c. Each image file name shall correspond to the page's control number on the image.

**2. FullText Directory**

- a. Shall contain document-level FullText files and/or OCR (for scanned images, documents that originated in hardcopy, or redacted files).
- b. Name each .txt file with the control number labeled on the first page of each corresponding document (Example: [Prefix]\_000000001.txt).
- c. FullText is defined by the print setting and standard FullText extraction tools.
- d. FullText should be processed to contain page breaks that match the corresponding image files.

### **3. LoadFiles Directory**

- a. Shall contain the image load files for IPRO (.LFP), OPTICON (.OPT or .LOG) and SUMMATION (.DII).
  - (1) 1 load file each per production volume.
  - (2) Modify the image load files to reflect the image location information that is on the root of the production media.
  - (3) Name the files the same as the production volume. (EXAMPLE: [Prefix]\_001.DII, [Prefix]\_001.OPT, [Prefix]\_001.LFP).
- b. Shall contain an extracted text control list file for summation (.lst).
  - (1) Format: DOC-ID, File Path\DOC-ID.txt. (Example: [Prefix]\_000000001, D:\Fulltext\[Prefix]000000001.txt)
- c. Shall contain a data file (.DAT) that contains metadata fields.
  - (1) Use the following delimiters (standard Concordance delimiters):
    - (a) Field Separator: ASCII value (020) or [ ¶ ].
    - (b) Text Qualifier: ASCII value (254) or [ þ ].
    - (c) Linebreak: ASCII value (174) or [ ® ].
  - (2) Shall contain the metadata fields in the table at the end of this Exhibit 1.

**4. DocLink Directory**

- a. Shall contain native files for spreadsheets and presentation files (Excel and Power Point documents).
- b. Each file should be named with the control number labeled on the first image of each corresponding document (Example: [Prefix]\_000000001.XLS)
- c. In addition to producing native files for spreadsheets and presentation files, a native file should be produced where the producing party cannot convert the native file to a TIFF image for production.

## METADATA FIELDS

FIELDNAME	DESCRIPTION
PRODBEG	Beginning control number
PRODEND	Ending control number
BEGATTACH	Beginning control number of family member
ENDATTACH	Ending control number of family member
CUSTODIAN	If applicable, provide custodian or source information for the document
PGCOUNT	Total page count per document
TYPE	Document file type
DOCEXT	File extension of original document
TITLE	Subject of e-mail or title of attachment or electronic loose file
DOCDATE	Document last modified date or document sent date
DOCTIME	Document last modified time or document sent time
FILESIZE	Document file size in bytes
FILENAME	Attachment or electronic loose filename
AUTHOR	Author of document
RECIPIENT	Recipient of document
CC	Copies
BCC	Blind copies

FOLDERPATH	Location of documents
FILELINK	Location of native file in volume, if provided
SHA1HASH	SHA1 HASH of Electronic loose file or attachments
MESSAGEID	Internet message identifier
VOLUME	Production volume name
VOLDESC	Production volume description

# **ATTACHMENT B**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

SEP 15 2011

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

AT&T INC., T-MOBILE USA, INC., and  
DEUTSCHE TELEKOM AG,

*Defendants.*

Civil No. 11-01560 (ESH)

**STIPULATED PROTECTIVE ORDER CONCERNING CONFIDENTIALITY**

In the interests of (i) promoting an efficient and prompt resolution of this Action ; (ii) facilitating discovery by the Parties litigating this Action; and (iii) protecting the Parties' and non-parties' Confidential Information from improper disclosure or use, Plaintiff, the United States, and Defendants, AT&T, Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, have stipulated to the provisions set forth below. Upon good cause shown, the Court, pursuant to Fed.

R. Civ. P. 26(c)(1)(G), ORDERS as follows:

**A. DEFINITIONS**

1. As used in this Order:

(a) "Confidential Information" means the portions of any Investigation

Materials, documents, transcripts, or other material that contain any trade secret or other



confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G).

(b) “Defendants” means AT&T, Inc., Deutsche Telekom AG, and T-Mobile USA, Inc., their divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

(c) “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

(d) “Document” means documents or electronically stored information as defined in Fed. R. Civ. P. 34(a).

(e) “Investigation” means the Department of Justice’s pre-Complaint inquiries into the proposed acquisition of T-Mobile USA, Inc. by AT&T, Inc.

(f) “Investigation Materials” means documents or transcripts of testimony that (i) any non-party provided to any Party either voluntarily or under compulsory process during the Investigation, (ii) any Party sent to any non-party during the Investigation, or (iii) that Defendants have provided to Plaintiff during the Investigation.

(g) “Parties” means collectively the plaintiff and defendants to this Action.

(h) “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

(i) “Plaintiff” means the United States of America, the Antitrust Division of the United States Department of Justice, and representatives of the Antitrust Division of the Department of Justice.

(j) "Protected Person" means any person (including a Party) that has provided Investigation Materials or that, voluntarily or under compulsory process, provides any documents or testimony in this Action.

(k) "This Action" means the above-captioned action pending in this Court, including any pretrial, trial, post-trial, or appellate proceedings.

**B. DESIGNATION OF CONFIDENTIAL INFORMATION**

2. Within five business days after the Court's entry of this Order, Plaintiff shall send by email, facsimile, or overnight delivery a copy of this Order to each non-party Protected Person (or, if represented by counsel, the Protected Person's counsel) that provided Investigation Materials to Plaintiff.

If a non-party Protected Person determines that this Order does not adequately protect its confidential Investigation Materials, it may, within ten days after receipt of a copy of this Order, seek additional relief from the Court. If a non-party Protected Person seeks additional relief from the Court, the Investigation Materials for which additional protection has been sought will not be produced until the Court has ruled. No non-party Investigation Materials shall be produced to Defendants by Plaintiff until 11 days after a non-party's receipt of a copy of this Order unless, before then, the non-party Protected Person that produced the Investigation Materials indicates that it is satisfied with the terms of this Order. In these circumstances, Plaintiff shall produce to Defendants that non-party Protected Person's Investigation Materials as soon as feasible.

3. A Protected Person may designate as "Confidential Information" any information that it provides to any Party during this Action, to the extent such information constitutes Confidential Information as defined in Paragraph 1(a) of this Order. Such designations constitute a representation to the Court that such Protected Person believes, in good faith, that the

information so designated constitutes Confidential Information. Any production of documents or testimony not designated as Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated Confidential Information pursuant to Paragraph 6 of this Order. However, any such subsequent designation will not retroactively prohibit the disclosure of any information for which disclosure was proper when made.

4. All transcripts of depositions and documents that Defendants provided to Plaintiff during the Investigation will be treated as Confidential Information without the need for further designation. Defendants may withdraw these designations at any time.

5. Designation as Confidential Information of deposition transcripts and documents produced during this Action is governed as follows:

(a) Whenever discovery is sought by subpoena from a non-party in this Action after entry of this Order, a copy of this Order shall accompany the subpoena.

(b) All transcripts of depositions taken in this Action after entry of this Order will be treated as Confidential Information in their entirety for 10 days after the date a copy of the final transcript has been made available to the deponent for review. Within three days of receipt of the final transcript, the Party that noticed the deposition shall provide the final transcript to the deponent. At any time during the 10 days following receipt of the final transcript, the deponent may designate testimony as Confidential Information, in compliance with Paragraph 3 of this Order. Such designations (with reference to the page(s) and line(s) of the final transcript) must be provided in writing by the person making such designations to Plaintiff's and Defendants' counsel.

(c) A Protected Person that designates as Confidential Information any document produced in this Action after entry of this Order must stamp or label each confidential page of each document with the designation "CONFIDENTIAL." If the entire document is not Confidential Information, the Protected Person shall stamp or label only those pages that contain Confidential Information. Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk.

6. If a Party or Protected Person inadvertently fails to designate as Confidential Information any documents or testimony, it may later so designate by notifying the Parties in writing. After receiving such notice, the Parties shall thereafter treat the newly designated information as Confidential Information. No prior disclosure of newly designated Confidential Information shall violate this Order. However, in such circumstance, the disclosing Party will cooperate with the Protected Person to retrieve copies distributed beyond as permitted by this Order and otherwise take reasonable steps to mitigate the disclosure.

7. If a Party receives a confidentiality waiver to allow a deponent that is not related to the waiving Party to be questioned on information that would otherwise be Confidential Information, that waiver (including identification of the specific Confidential Information to which it pertains) must be disclosed to counsel for all other Parties as soon as practicable, but no later than two business days prior to the deposition of the witness in question, unless good cause for a later disclosure is shown.

8. Any Party that objects to the designation as Confidential Information of any documents or transcripts may notify the designating person in writing, copying all Parties. The designating person shall then have 10 days from receipt of the notification to file a motion

seeking a Court order upholding the designation. The burden of proving that the designation is proper under Rule 26(c)(1)(G) shall be upon the person seeking to uphold the designation. If a motion is filed, the Parties shall continue to treat the designated Confidential Information at issue as Confidential Information until the Court rules on the motion. If the designating person does not seek an order within 10 days of receiving notice, or if the Court determines the designation of Confidential Information to have been inappropriate, the challenged designation shall be rescinded.

**C. SCOPE OF DISCLOSURE OF CONFIDENTIAL INFORMATION**

9. Except as authorized by this Order, information designated as Confidential Information pursuant to this Order shall not be disclosed to any person other than the persons set forth below, and may be disclosed to and used by the persons set forth below only in this Action:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) United States Department of Justice attorneys and employees, and independent contractors retained by the United States Department of Justice to assist in the prosecution of this litigation or otherwise assist in its work;

(c) outside counsel acting for Defendants in this Action, that counsel's employees, and independent contractors assisting such outside counsel in the defense of this Action;

(d) authors, addressees, and recipients of particular information designated as Confidential Information solely to the extent that they have previously had lawful access to the particular information disclosed or to be disclosed;

(e) persons (and their counsel) Plaintiff or Defendants believes, in good faith, to have had prior access to the Confidential Information, or who have been participants in a communication that is the subject of the Confidential Information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they may have had access or that is the subject of the communication in which they may have participated; provided that, unless and until the persons or their counsel confirms that the persons had access or were participants, only as much of the information may be disclosed as may be necessary to confirm the persons' access or participation; and

(g) testifying or consulting experts retained by a Party to assist in the prosecution or defense of this Action, including employees of the firm with which the expert or consultant is associated or independent contractors to the extent necessary to assist the expert's work in this Action.

Defendants wish to designate up to ten (total) in-house lawyers to have access to Confidential Information. The Parties have not addressed this issue in this Order due to, among other issues, the need to allow non-parties to be heard on the issues surrounding the production of their confidential materials. Defendants reserve the right to move the Court to permit such access. Non-parties, whose confidential materials have been produced to outside counsel for the Defendants subject to the terms of this Order, do not waive the right to contest Defendants' motion to permit in-house counsel to access these materials.

10. Before any information designated as Confidential Information may be disclosed to any person described in Paragraph 9(g) of this Order, he or she must first read this Order or must have otherwise been instructed on his or her obligations under the Order by this Court or counsel for a Party, and shall have executed the agreement included as Appendix A hereto.

Counsel for the Party making the disclosure must retain the original of such executed agreement for a period of at least one year following the final resolution of this Action. Each individual described in Paragraph 9 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other individual, except as provided in this Order.

11. Nothing in this Order:

- (a) limits a person's use or disclosure of its own information designated as Confidential Information;
- (b) prevents disclosure of Confidential Information by any Party to any current employee of the person that designated the information as Confidential Information;
- (c) prevents disclosure of Confidential Information by any Party with the consent of the person that designated the Confidential Information; or
- (d) prevents the Plaintiff, subject to taking appropriate steps to preserve the further confidentiality of such information, from disclosing information designated as Confidential Information (i) to duly authorized representatives of the Executive Branch of the United States Government; (ii) in the course of any other legal proceedings in which the Plaintiff is a party; (iii) to secure compliance with a Final Judgment that is entered in this Action; (iv) for law enforcement purposes; or (v) as may be required by law.

**D. DISCLOSURE OF CONFIDENTIAL INFORMATION IN THIS ACTION**

12. If any documents or testimony designated under this Order as Confidential Information is included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file such material shall follow the procedures set forth in LCvR 5.1(j) of the Rules of the United States District Court for the District of Columbia. Nothing in this

Order shall restrict any person, including any member of the public, from challenging the filing of any Confidential Information material under seal.

13. Disclosure at trial of documents and testimony designated as Confidential Information is governed as follows:

(a) Absent a ruling by the Court to the contrary, documents or deposition testimony designated as Confidential Information by a Party or non-party that appear on an exhibit list or in deposition designations, that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information will likewise be disclosed on the public record, after compliance with the following process:

(i) Within seven days after the Parties file pretrial exhibit lists and within seven days after the Parties file deposition designations, each Party shall ensure that each non-party receives a written notice of any exhibits or designated deposition testimony listed by that Party that the non-party designated as Confidential Information, including the document-production page numbers and/or page and line numbers of deposition testimony. The Party will inform the non-party that, absent objection, that Confidential Information may be disclosed on the public record.

(ii) If a Party or non-party objects to potential public disclosure of all or part of the information identified in the written notice, within seven days of the date on which it received the notice, the Party or non-party shall identify to the notifying Party the information designated as Confidential Information for which it seeks protection from public disclosure. The Party or non-party objecting to public disclosure and the notifying Party shall attempt to resolve their differences by, for example, redacting irrelevant Confidential Information. If no resolution is reached and the Party or non-party continues to object to potential public disclosure of the



information at trial, the Party or non-party must, within fourteen days after receipt of written notice, file a motion for additional protection.

(b) Absent a ruling by the Court to the contrary, documents or deposition testimony designated as Confidential Information by a Party or non-party that do not appear on an exhibit list or in deposition designations, that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information will likewise be disclosed on the public record, after compliance with the following process:

(i) A Party must alert the Court before doing so that it intends to use Confidential Information of a Party or non-party and that that Party or non-party is not on notice.

(ii) At that time, the Court will determine whether to seal the courtroom while such Confidential Information is being discussed.

(iii) Within one day after the Party uses that Confidential Information, that Party shall ensure that a non-party that designated the material receives a written notice of same. The Party will inform the non-party that, absent objection, that Confidential Information will be disclosed on the public record.

(ii) If the Party or non-party continues to object to public disclosure of the information at trial, the Party or non-party must, within seven days after receipt of written notice, file a motion for additional protection

13. All materials produced or exchanged in connection with this Action, including but not limited to Confidential Information, produced by a Party or non-party as part of this proceeding shall be used solely for purposes of the conduct of this Action and shall not be used for any business, commercial, competitive, personal, or other purpose.

14. Nothing in this Order shall prevent any person, including members of the public, from petitioning the Court for reconsideration of a determination that any trial proceedings shall not be on the public record.

**E. PROCEDURES UPON TERMINATION OF THIS ACTION**

15. Within 90 days after receiving notice of the entry of an order, judgment, or decree terminating this Action, all persons having received information designated as Confidential Information must either make a good-faith effort to return such material and all copies thereof to the person that produced it, or destroy all such Confidential Information and certify that fact in writing to that person. Counsel for the Parties will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that Plaintiff's employees and Defendant's counsel and such counsel's employees do not disclose the portions of court papers, deposition transcripts, exhibits, or work product containing information designated as Confidential Information to any person except pursuant to Court order or agreement with the person that produced the information designated as Confidential Information. All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph. Nothing in this Paragraph restricts the rights of the Plaintiff, under Paragraph 11 of this Order, to retain and use documents, information or other material designated as Confidential Information for law enforcement purposes or as otherwise required by law.

**F. RIGHT TO SEEK MODIFICATION**

16. Nothing in this Order prevents any person, including members of the public, from seeking modification of this Order, upon motion made pursuant to the rules of this Court.

**SO ORDERED:**

this 15 day of September, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Ellen S. Huvelle". The signature is written in black ink and is positioned above a horizontal line.

Ellen S. Huvelle  
U.S. District Judge