

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
)	
SPRINT NEXTEL CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:11-cv-01600-ESH
)	
AT&T INC., et al.,)	
)	
<i>Defendants.</i>)	
)	
_____)	

**DEFENDANTS’ [PROPOSED] STIPULATED PROTECTIVE ORDER
CONCERNING CONFIDENTIALITY**

Defendants AT&T Inc., AT&T Mobility LLC, T-Mobile USA, Inc., and Deutsche Telekom AG (jointly “Defendants”) hereby submit their Proposed Stipulated Protective Order Concerning Confidentiality (“Defendants’ Proposed Protective Order”).

Defendants’ Proposed Protective Order (Exhibit 1) differs from Plaintiffs’ proposal in the following substantive aspects: First, Defendants propose a separate protective order for each of the two Private Actions that limits use of the materials produced to the matter in which they are produced (subject to exceptions established by agreement among the parties or by order of the Special Master).

Second, Defendants propose adding provisions contained in the Second Amended Stipulated Protective Order Concerning Confidentiality entered by this Court in *United States v. AT&T*, No. 11-cv-1560 (D.D.C. filed Aug. 31, 2011) [DN 79] (“DOJ Action Protective Order”) which were added to the DOJ Action Protective Order to address the concerns of third parties

and to authorize the use of a special master. *See* Defendants' Proposed Protective Order ¶¶ 6, 7, 10, 11.

Third, Defendants propose removing references to the DOJ and FCC inquiries into the proposed acquisition (thus, replacing "Investigation Materials" with "Discovery Materials" in the definitions and removing the reference to Investigation Materials in the definition of "Protected Person"). *See* Plaintiffs' Proposed Protective Order ¶ 1(e), (f), (k). The deleted provisions are unique to government merger enforcement actions and are not necessary in this private action.

Fourth, Defendants omit Plaintiffs' proposal granting in-house counsel for each Party access to Confidential Information. *See* Plaintiffs' Proposed Protective Order ¶ 8(d). This is consistent with the DOJ Action Protective Order and appropriate here in light of the highly sensitive nature of the materials involved.

Fifth, Defendants omit Plaintiffs' proposal that would allow Parties to provide Confidential Information to those whom a Party believes in good faith has already had access to the Confidential Information. *See* Plaintiffs' Proposed Protective Order ¶ 8(f). In the context of a lawsuit between competitors, that provision could lead to some unintended and unauthorized disclosures of a Party's Confidential Information – or of a third party's Confidential Information.

Sixth, Defendants propose adding a new provision regarding persons who have received Discovery Materials and who receive a request or subpoena for production or disclosure of that material in order to allow that Protected Person an opportunity to exercise their rights to prevent or condition such disclosure. *See* Defendants' Proposed Protective Order ¶ 14.

Finally, Defendants propose adding the Appendix from the DOJ Action Protective Order for use with persons receiving Confidential Information.

A redline showing the differences between Defendants' Proposed Protective Order and Plaintiffs' proposal is attached hereto for the Court's convenience (Exhibit 2).

Dated: December 7, 2011

By: /s/ James R. Wade

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SPRINT NEXTEL CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:11-cv-01600-ESH
)	
AT&T INC., et al.,)	
)	
<i>Defendants.</i>)	
)	
)	

**[PROPOSED] STIPULATED PROTECTIVE ORDER CONCERNING
CONFIDENTIALITY**

In the interests of (i) promoting an efficient and prompt resolution of the above-styled Action; (ii) facilitating discovery by the Parties litigating the Action; and (iii) protecting the Parties’ and nonparties’ Discovery Materials and Confidential Information from improper disclosure or use, and 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 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., AT&T Mobility LLC, 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) “Discovery Materials” means all documents, testimony and other information produced by a Party or nonparty voluntarily or in response to any obligations of the Federal Rules of Civil Procedure.

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

(f) “Party” means the Plaintiff or any Defendant to this Action.

(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 Sprint Nextel Corporation.

(j) “Protected Person” means any person (including any Party or nonparty) that has provided Discovery Materials.

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

B. DESIGNATION OF CONFIDENTIAL INFORMATION

2. A Protected Person may designate as “Confidential Information” any Discovery Materials, to the extent such material 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 4 of this Order. However, any such subsequent designation will not retroactively prohibit the disclosure of any information for which disclosure was proper when made.

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

(a) Any request for Discovery Materials of any nonparty Protected Persons shall be accompanied by a copy of this Protective Order. If a nonparty Protected Person determines that this Protective Order does not adequately protect its confidential materials, it may, within 10 days after receipt of a copy of the Protective Order, seek additional relief from the Court. If a nonparty Protected Person seeks additional relief from the Court, the confidential materials for which additional protection has been sought will not be produced until the Court has ruled.

(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 2 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 Parties' 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.

4. If a 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.

5. If a Party receives a confidentiality waiver to allow a deponent that is not related to the waiving Protected Person 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.

6. 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. Such motions shall be referred to the Special Master appointed for this Action. 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 Special Master's Report and Recommendation. 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

7. 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 the Special Master and his/her staff, law clerks, court reporters, and stenographic or clerical personnel;

(b) outside counsel acting for the Parties in this Action, that counsel's employees, and independent contractors assisting such outside counsel in this Action;

(c) 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; and

(d) testifying or consulting experts retained by a Party to assist in 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 experts' work in this Action.

8. Before any information designated as Confidential Information may be disclosed to any expert described in Paragraph 7(d) 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 7 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.

9. 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; or

(c) prevents disclosure of Confidential Information by any Party with the consent of the person that designated the Confidential Information.

D. DISCLOSURE OF CONFIDENTIAL INFORMATION

10. 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 or Protected Person 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. A Party that files with the Court material that has been designated as Confidential Information by a nonparty shall notify the nonparty of that filing (and what particular materials were filed) within one day after

the filing, provided that the nonparty has informed the Parties of its desire to receive such notification and provided an email contact to the Parties. In addition, Parties shall provide nonparties at least twenty-four (24) hours' notice before any trial or pretrial hearings during which a nonparty's Confidential Information may be publicly disclosed, provided that the nonparty has informed the Parties of its desire to receive such notification and provided an email contact to the Parties.

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

(ii) If a Party or nonparty 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 nonparty shall identify to the notifying Party the information

designated as Confidential Information for which it seeks protection from public disclosure. The Party or nonparty 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 nonparty continues to object to potential public disclosure of the information at trial, the Party or nonparty must, within 14 days after receipt of written notice, file a motion for additional protection. Resolution of these motions shall be referred to the Special Master appointed in this Action, who will determine whether the materials in question should be afforded protection as confidential and the nature of any additional protections that will be applied to the use of documents found to be confidential at trial.

(b) Absent a ruling by the Court to the contrary, documents or deposition testimony designated as Confidential Information by a Party or nonparty 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 nonparty and that that Party or nonparty 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 nonparty that designated the material receives a written notice of same. The Party will inform the nonparty that, absent objection, that Confidential Information will be disclosed on the public record.

(iv) If the Party or nonparty continues to object to public disclosure of the information at trial, the Party or nonparty must, within seven days after receipt of written notice, file a motion for additional protection. Any such motion shall be submitted to the Special Master for disposition.

12. All Discovery Materials produced or exchanged in connection with this Action, including but not limited to Confidential Information, produced by a Party or nonparty 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.

13. 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.

14. Any Person who has received Discovery Materials in this Action who receives a request or subpoena for production or disclosure of any Discovery Material shall immediately give written notice to the Protected Person who produced such Discovery Materials identifying the information sought and providing a copy of the request or subpoena. The Person subject to the request or subpoena shall not produce or otherwise disclose the requested Discovery Materials unless: (a) the Protected Person specifically consents in writing; (b) the Protected Person fails to seek relief from the subpoena or request within thirty (30) days of receiving notice; or (c) notwithstanding the Protected Person's request for relief, production or disclosure is ordered by a court of competent jurisdiction. In the event such production or disclosure is ordered in another proceeding, the Person subject to the request or subpoena shall use reasonable efforts to negotiate a protective order that contains the same level of protection provided in this Order. Nothing contained in the Paragraph is intended to suggest that any other court would

have priority over this Order or constitute waiver of any objection or consent to the jurisdiction or any other court issuing such an order.

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 counsel, Defendants' 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.

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.

IT IS SO ORDERED.

DATED: December ____, 2011

Hon. Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
)	
SPRINT NEXTEL CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:11-cv-01600-ESH
)	
AT&T INC., et al.,)	
)	
<i>Defendants.</i>)	
)	
_____)	

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____
by _____.

I hereby certify that:

1. I have read the Stipulated Protective Order Concerning Confidentiality (“Protective Order”) entered in the above-captioned Action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order and agree to use information, designated as Confidential Information, provided to me only for the purpose of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.
5. I make this certificate this ____ day of _____, 201__.

Signed: _____

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Plaintiff,

AT&T INC., et al.,

i. ~~AT&T INC., et al.,~~

~~CELLULAR SOUTH, INC., et al.,~~

~~*Plaintiff,*~~

i. ~~AT&T INC., et al.,~~

Defendants.

[PROPOSED] STIPULATED PROTECTIVE ORDER CONCERNING
CONFIDENTIALITY

In the interests of (i) promoting an efficient and prompt resolution of ~~these Actions~~the above-styled Action; (ii) facilitating discovery by the Parties litigating ~~these Actions~~the Action; and (iii) protecting the Parties' and ~~non-parties'~~nonparties' Discovery Materials and Confidential Information from improper disclosure or use, and upon good cause shown, the Court, pursuant to Fed. R. Civ. P. 26(c)(1)(G), ORDERS as follows:

A. DEFINITIONS

As used in this Order:

(a) "Confidential Information" means the portions of any 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., AT&T Mobility LLC, 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) "Discovery Materials" means all documents, testimony and other information produced by a Party or nonparty voluntarily or in response to any obligations of the Federal Rules of Civil Procedure.

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

~~(f) (e) “Investigation” means the U.S. Department of Justice’s (“DOJ”) inquiries into the proposed acquisition of T Mobile USA, Inc. by AT&T, Inc. prior to the filing of the first complaint in *United States, et al. v. AT&T Inc., et al.*, 1:11-cv-01560-ESH (“DOJ Action”)~~**Party” means the Plaintiff or any Defendant to this Action.**

~~(f) — “Investigation Materials” means documents or transcripts of testimony that (i) any nonparty provided to the DOJ or any Party either voluntarily or under compulsory process during the Investigation, (ii) any Party provided to the Federal Communications Commission (“FCC”), (iii) any Party sent to any nonparty during the Investigation or (iv) that Plaintiff Sprint or Defendants have provided to the DOJ during the Investigation.~~

~~(g) — “Party” means any plaintiff or defendant to these Actions.~~

~~(g) (h) “Parties” means collectively the plaintiffs~~**Plaintiff** and ~~defendants to these Actions.~~ (i) **Defendants to this Action.**

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

~~(h) (a) “Plaintiffs~~**Plaintiff**” means Sprint Nextel Corporation, ~~Cellular South, Inc., and, Corr Wireless Communications, L.L.C.~~

~~(i) (b) “Protected Person” means any person (including any Party or nonparty) that has provided Investigation Materials or that, voluntarily or under compulsory process, provides any documents or testimony in these Actions~~**Discovery Materials.**

~~(j) (e) “These Actions~~**This Action**” means the above-captioned ~~actions~~**action** pending in this Court, including any pre-trial, trial, post-trial, or appellate proceedings.

B. DESIGNATION OF CONFIDENTIAL INFORMATION

1. A Protected Person may designate as “Confidential Information” any ~~Investigation~~Discovery Materials ~~or information that it provides to any Party during these~~ ~~Actions~~, to the extent such ~~information~~material 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 54 of this Order. However, any such subsequent designation will not retroactively prohibit the disclosure of any information for which disclosure was proper when made.

~~3. All transcripts of depositions, documents and other materials that Plaintiffs and Defendants provided to the DOJ during the Investigation or to the FCC during its investigation will be treated as Confidential Information without the need for further designation. Plaintiffs or Defendants may withdraw these designations at any time.~~

2. ~~4.~~ Designation as Confidential Information of deposition transcripts and documents produced during ~~these Actions~~this Action is governed as follows:

(a) Any request for ~~discovery~~Discovery Materials of any nonparty Protected Persons shall be accompanied by a copy of this Protective Order. If a nonparty Protected Person determines that this Protective Order does not adequately protect its confidential materials, it may, within 10 days after receipt of a copy of the Protective Order, seek additional relief from the Court. If a nonparty Protected Person seeks additional relief from the Court, the confidential

materials for which additional protection has been sought will not be produced until the Court has ruled.

(b) All transcripts of depositions taken in ~~these Actions~~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 2 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 Sprint's counsel and Defendants~~Parties' counsel.

A Protected Person that designates as Confidential Information any document produced in ~~these Actions~~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.

3. ~~5.~~ 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.

4. ~~6.~~ If a Party receives a confidentiality waiver to allow a deponent that is not related to the waiving ~~Party~~Protected Person 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.

~~7.~~ 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. Such motions shall be referred to the Special Master appointed for this Action. 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.~~Special Master's Report and Recommendation. 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

5. ~~8.~~ 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 ~~these Actions~~this Action, including the Special Master and his/her staff, law clerks, court reporters, and stenographic or clerical personnel;

(b) outside counsel acting for ~~Plaintiffs~~the Parties in ~~these Actions~~this Action, that counsel's employees, and independent contractors assisting such outside counsel in the prosecution of these Actions;

~~(c) — outside counsel acting for Defendants in these Actions, that counsel's employees, and [independent contractors] assisting such outside counsel in the defense of these Actions;~~

~~(d) — up to [five] in-house counsel for each Party to these Actions for Confidential Information belonging to a Party, and up to [five] in-house counsel for each Party to these Actions for Confidential Information belonging to a nonparty Protected Person if the nonparty gives written permission to the Party~~this Action;

~~(e)~~ (c) 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;

~~(f) — persons (and their counsel) who Plaintiffs or Defendants believe, 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~~

(d) ~~(g)~~ testifying or consulting experts retained by a Party to assist in ~~the prosecution or defense of these Actions.~~ 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 experts' work in this Action.

6. ~~9.~~ Before any information designated as Confidential Information may be disclosed to any expert described in Paragraph ~~9~~7(~~g~~d) 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 ~~these Actions~~this Action. Each individual described in Paragraph ~~9~~7 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.

7. ~~10.~~ Nothing in this Order:

(a) limits a person's use or disclosure of its own information designated as Confidential Information;

prevents disclosure of Confidential Information by any Party to any current employee of the person that designated the information as Confidential Information; or

(b) prevents disclosure of Confidential Information by any Party with the consent of the person that designated the Confidential Information.

D. DISCLOSURE OF CONFIDENTIAL INFORMATION ~~IN THESE ACTIONS~~

8. ~~11.~~ 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 [or Protected Person] 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. **A Party that files with the Court material that has been designated as Confidential Information by a nonparty shall notify the nonparty of that filing (and what particular materials were filed) within one day after the filing, provided that the nonparty has informed the Parties of its desire to receive such notification and provided an email contact to the Parties. In addition, Parties shall provide nonparties at least twenty-four (24) hours' notice before any trial or pretrial hearings during which a nonparty's Confidential Information may be publicly disclosed, provided that the nonparty has informed the Parties of its desire to receive such notification and provided an email contact to the Parties.**

9. ~~12.~~ 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 nonparty 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:

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

(i) ~~(i)~~ If a Party or nonparty 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 nonparty shall identify to the notifying Party the information designated as Confidential Information for which it seeks protection from public disclosure. The Party or nonparty 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 nonparty continues to object to potential public disclosure of the information at trial, the Party or nonparty must, within 14 days after receipt of written notice, file a motion for additional protection. **Resolution of these motions shall be referred to the Special Master appointed in this Action, who will determine whether the materials in question should be afforded protection as confidential and the nature of any additional protections that will be applied to the use of documents found to be confidential at trial.**

(b) Absent a ruling by the Court to the contrary, documents or deposition testimony designated as Confidential Information by a Party or nonparty 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 nonparty and that that Party or nonparty is not on notice.

~~(ii)~~ _____

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

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

(iii) ~~(iii)~~ If the Party or nonparty continues to object to public disclosure of the information at trial, the Party or nonparty must, within seven days after receipt of written notice, file a motion for additional protection. Any such motion shall be submitted to the Special Master for disposition.

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

11. ~~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.

12. Any Person who has received Discovery Materials in this Action who receives a request or subpoena for production or disclosure of any Discovery Material shall immediately give written notice to the Protected Person who produced such Discovery Materials identifying the information sought and providing a copy of the request or subpoena. The Person subject to the request or subpoena shall not produce or otherwise disclose the requested Discovery Materials unless: (a) the Protected Person specifically consents in writing; (b) the Protected Person fails to seek relief from the subpoena or request within thirty (30) days of receiving notice; or (c) notwithstanding the Protected Person's request for relief, production or disclosure is ordered by a court of competent jurisdiction. In the event such production or disclosure is ordered in another proceeding, the Person subject to the request or subpoena shall use reasonable efforts to negotiate a protective order that contains the same level of protection provided in this Order. Nothing contained in the Paragraph is intended to suggest that any other court would have priority over this Order or constitute waiver of any objection or consent to the jurisdiction or any other court issuing such an order.

E. PROCEDURES UPON TERMINATION OF ~~THESE ACTIONS~~THIS ACTION

Within 90 days after receiving notice of the entry of an order, judgment, or decree terminating ~~these Actions~~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 ~~Plaintiffs'~~Plaintiff's counsel, Defendants' 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.

F. RIGHT TO SEEK MODIFICATION

13. 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.

IT IS SO ORDERED.

DATED: December , 2011

Hon. Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE

Document comparison by Workshare Professional on Wednesday, December 07, 2011
8:37:20 PM

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Document 2 ID	file://C:\Documents and Settings\VANHORSN\Desktop\Sprint v. AT&T Protective Order (Sprint only).doc
Description	Sprint v. AT&T Protective Order (Sprint only)
Rendering set	HB Standard

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Style change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	87
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Moved to	1
Style change	0
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