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Counsel for Defendants

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

2-WAY COMPUTING, INC. a Nevada
corporation,

Plaintiff,

v.

SPRINT SOLUTIONS, INC., a Delaware
corporation; NEXTEL FINANCE COMPANY,
a Delaware corporation; SPRINT UNITED
MANAGEMENT COMPANY, a Kansas
corporation; NEXTEL OF CALIFORNIA, INC.,
a Delaware corporation; NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited
liability company, and NEXTEL
COMMUNICATIONS, INC., a Delaware
corporation,

Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**DEFENDANTS' UNOPPOSED
MOTION FOR LEAVE TO FILE
UNDER SEAL**

1 Pursuant to Local Rule 10-5 and Paragraph 9 of the Stipulated Protective Order,
2 Dkt. 39, Defendants Sprint Solutions, Inc., Nextel Finance Company, Sprint United
3 Management Company, Nextel of California, Inc., Nextel Boost of California, LLC, and
4 Nextel Communications, Inc. (collectively, "Sprint") hereby request that portions of its Reply
5 in Support of their Motion *In Limine* 3 and Exhibits A, and D-F, attached to the Reply
6 Declaration of Christopher Schenck in Support of Defendants' Motions *In Limine* Nos. 3 & 6,
7 which will be electronically filed under seal contemporaneously with this request, be sealed
8 by this Honorable Court.. This Motion for Leave is based on the following Memorandum of
9 Points and Authorities, the papers and pleadings on file, and any oral argument the Court may
10 entertain. Additionally, counsel for Sprint has conferred with counsel for Plaintiff who
11 indicated that the Plaintiff will not oppose the current Motion.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 On May 20, 2011, the Court entered the parties' Stipulated Protective Order. *See*
15 Dkt. 39. On May 24, 2012, the Court entered a Stipulation for Amendment to Stipulated
16 Protective Order. *See* Dkt. 99. The Stipulated Protective Order allowed for the production of
17 documents and information that contain technical or business information of a competitive
18 significance. Dkt. 39 at ¶6. The Stipulated Protective Order also protected non-parties that
19 provided confidential documents and/or information in the case. *Id.* at ¶15. Under the
20 protective order, the parties, as well as non-parties such as Motorola Mobility, Motorola
21 Solutions, and Qualcomm, produced documents, provided information during discovery, and
22 permitted the parties to produce information and documents subject to confidentiality
23 restrictions. Much of this information was designated as "Confidential" in accordance with
24 the provisions in the Stipulated Protective Order as the information involved proprietary
25 technical information with respect to the iDEN technology at issue.

26 Previously in this matter, Sprint filed two Motions for Summary Judgment and replies
27 in support of those Motions. Both of those Motions involved materials that either the parties,
28 or non-parties, deemed "Confidential" under the Stipulated Protective Order, including

1 materials concerning how iDEN, and devices that use iDEN, operate. Thus, under paragraph
2 9 of the Stipulated Protective Order, Sprint filed a motion to seal certain materials involved in
3 those Motions for Summary Judgment illustrating that “compelling reasons” existed for such
4 materials to remain under seal. *See* Dkts. 140, 156. The Court granted those Motions. *See*
5 Dkts. 157, 159. In granting those Motions to Seal, the Court found that “Defendants have
6 stated compelling reasons for maintaining the confidentiality of documents filed in
7 connection with their Motions for Summary Judgment.” Dkt. 157 at 2. *See also* Dkt. 159 at
8 1. Similarly, in granting prior Motion to Seal in conjunction with previous motions *in limine*,
9 the Court found that the expert report of Michele Riley contains confidential financial
10 information, and that good cause was shown to seal such information. Dkt. 212 at 2-3.

11 **II. LEGAL ARGUMENT AND ANALYSIS**

12 The documents filed under seal should remain sealed because it contain confidential
13 information and trade secrets regarding the technology at issue. In the case of dispositive
14 motions, in which similar, if not the same, materials were deemed to remain under seal by
15 this Court, *see* Dkts. 157, 159, “compelling reasons” must be shown in order to seal the
16 records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). As
17 described above, the Court found that the “compelling reasons” test was met to maintain
18 under seal documents relating to the iDEN technology at issue.

19 The information Sprint seeks to maintain under seal here meets the “good cause” and
20 “compelling reasons” test. Documents relating to the development and operation of iDEN are
21 clearly proprietary and subject to protection. Another district court, in conjunction with a
22 theft of trade secrets case involving documents concerning iDEN technology, made specific
23 findings of fact that the iDEN technology is proprietary and not readily available to the
24 public. *See U.S. v. Hanjuan Jin*, 833 F. Supp. 2d 977, 982, 991 (N.D. Ill. 2012) (“iDEN is a
25 proprietary standard for cellular telecommunications technology developed by Motorola
26 [and] is not publicly accessible.”). Maintaining the confidentiality of such technology is
27 essential to not only third parties that developed the technology such as Motorola Solutions
28 and Motorola Mobility, but also the companies that have contracted with these companies to

1 use the technology and have agreed to maintain its confidentiality, such as Sprint.¹ In fact,
2 the Court filed its Order on the Motion for Summary Judgment involving the iDEN
3 technology at issue under seal. *See* Dkt. 160.

4 The redactions in Defendants’ Reply in Support of their Motion *In Limine* 3 and
5 Exhibits A, and D-F, attached to the Reply Declaration of Christopher Schenck in Support of
6 Defendants’ Motions *In Limine* Nos. 3 & 6, thereto relate to (1) the functionality of the
7 proprietary iDEN technology, how iDEN devices that use such technology operate, and the
8 development of the iDEN technology, and thus should be maintained under seal, and (2)
9 competitive financial information. The information has been designated as “Confidential”
10 under the Stipulated Protective Order because the producing party considers the information
11 to be proprietary and subject to protection. The Court’s prior orders with respect to the
12 Motions to Seal in conjunction with the Motions for Summary Judgment and previous
13 motions *in limine*, *see, e.g.*, Dkt. 157, 159, 212, as well as the Order from the Northern
14 District of Illinois discussed above, illustrate that Sprint has made the requisite particularized
15 showing of good cause with respect to these documents.

16 Due to the confidential, proprietary, and private nature of these documents and
17 information, public disclosure could result in improper use and could put not only Defendants
18 Sprint, but also non-parties Motorola Mobility, LLC and Motorola Solutions, Inc. at a
19 competitive disadvantage in the marketplace. Furthermore, the public has little to no interest
20 in these documents and information in the context of this patent litigation matter brought by a
21 non-practicing entity. Considering the information at issue, there is comparatively little value
22 to the general public in terms of enhancing its “understanding of the judicial process.” *See*
23 *Kamakana*, 447. F.3d at 1179. Simply put, there is no harm to the public if they do not have
24 access to the information Sprint seeks to seal. Therefore, this Court should enter an order to
25 seal the document and information and not place it on the Court’s docket.

27
28 ¹ The agreements with these companies contain non-disclosure and confidentiality obligations.

1 **III. CONCLUSION**

2 Because portions of Defendants' Reply in Support of their Motion *In Limine* 3 and
3 Exhibits A, and D-F, attached to the Reply Declaration of Christopher Schenck in Support of
4 Defendants' Motions *In Limine* Nos. 3 & 6, contain confidential information regarding the
5 technology used by Sprint for Push-to-Talk that is at issue in this lawsuit, and financial
6 information related to the same, and because Plaintiff does not oppose the current Motion,
7 Sprint respectfully requests that the Court enter an Order that these materials remain sealed.

8 Dated: August 18, 2015

Respectfully submitted,

9 **KILPATRICK TOWNSEND &**
10 **STOCKTON LLP**

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*Sprint Solutions, Inc., Nextel Finance
Company, Sprint United Management
Company, Nextel of California, Inc., Nextel
Boost of California, LLC, and Nextel
Communications, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen
3 (18) years. On this date, I caused to be served a true and correct copy of the foregoing
4 **DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE UNDER SEAL** by
5 the method indicated:

- | | | |
|----|------------|-------------------------------|
| 6 | <u>XXX</u> | by the Court's CM/ECF Program |
| 7 | _____ | by U. S. Mail |
| 8 | _____ | by Facsimile Transmission |
| 9 | _____ | by Electronic Mail |
| 10 | _____ | by Federal Express |
| 11 | _____ | by Hand Delivery |

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Counsel for Plaintiff
2-Way Computing, Inc.

29 DATED: August 18, 2015

s/Christopher Schenck
Christopher Schenck (Pro Hac Vice)

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22 FOR THE DISTRICT OF NEVADA**

23 2-WAY COMPUTING, Inc. a Nevada corporation,

24 Plaintiff,

25 v.

26 SPRINT SOLUTIONS, INC., a Delaware
27 corporation; NEXTEL FINANCE COMPANY, a
28 Delaware corporation; SPRINT UNITED
MANAGEMENT COMPANY, a Kansas
corporation; NEXTEL OF CALIFORNIA, INC., a
Delaware corporation; NEXTEL BOOST OF
CALIFORNIA, LLC, a Delaware limited liability
company, and NEXTEL COMMUNICATIONS,
INC., a Delaware corporation,

Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:11-cv-00012-JCM-PAL

**[PROPOSED] ORDER GRANTING
DEFENDANTS' UNOPPOSED MOTION
FOR LEAVE TO FILE UNDER SEAL**

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The Court, having reviewed Defendants' Unopposed Motion for Leave to File Under Seal and good cause appearing, hereby ORDERS that the following documents can be filed under seal:

1. The unredacted version of Defendants' Reply in Support of their Motion *In Limine* 3;
- and
2. Exhibits A, and D-F to the Reply Declaration of Christopher Schenck in Support of Defendants' Motions *In Limine* Nos. 3&6.

DATED this 20th day of August, 2015


THE HONORABLE PEGGY A. LEEN