

PAUL HASTINGS

1(650) 320-1808
chriskennerly@paulhastings.com

March 21, 2023

VIA ECF AND E-MAIL

Hon. Katherine Polk Failla, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, New York 10007

MEMO ENDORSED

Re: *Network Apps, LLC et al. v. AT&T Inc. et al.*, Civ. No. 21-cv-00718-KPF
Motion to Seal Additional Exhibit in Support of AT&T Defendants' Motion to Dismiss

Dear Judge Failla:

On March 20, 2023, the Court directed the parties to submit the documents referenced at page 11 of Exhibit 15 of AT&T's Motion. See Dkt. 135-8 at 11.

Pursuant to Section 9(C) of this Court's Individual Rules of Practice, Defendants AT&T Mobility LLC and AT&T Services, Inc. (collectively, "AT&T") submit this letter motion for leave to file under seal identified portions of an additional exhibit consisting of the requested documents in support of AT&T's Motion to Dismiss.

On June 24, 2022, AT&T filed a motion to seal identified portions of the opening brief in support of their Motion to Dismiss along with supporting exhibits. Dkt. 129. On June 27, the Court granted AT&T's sealing motion. Dkt. 136. On July 25, 2022, Plaintiffs Network Apps, LLC, Kyle Schei, and John Wantz (collectively, "Plaintiffs") filed a similar motion to seal identified portions of their opposition to AT&T's Motion to Dismiss and supporting documents. Dkt. 137. On July 26, the Court granted Plaintiffs' sealing motion. Dkt. 144. The information and documents that were the subject of the parties' sealing motions pertain to proprietary and confidential technical and business information of Plaintiffs, AT&T, and/or third parties who engaged in a business relationship with Plaintiffs, most of which were designated "confidential" or "highly confidential" by the producing party pursuant to the Stipulated Protective Order at Dkt. 128.

The Second Circuit follows a three-step inquiry for evaluating sealing requests. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). First, the court looks to whether the document at issue is a "judicial document" that is "relevant to the performance of the judicial function and useful in the judicial process." *Id.* at 119 (quoting *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("*Amodeo I*")). Second, the court determines the weight of the presumption in favor of public access, given "the role of the material at issue in the exercise of Article III judicial power." *Id.* (quoting *United States v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995) ("*Amodeo II*")). Finally, the court determines whether the party moving to seal has demonstrated that the presumption of public access is overcome by the need to protect "higher values." *Id.* at 120.

In granting the parties' previous sealing motions, the Court necessarily concluded that the factors weighing against public disclosure of the information outweighed the public's interest in monitoring the courts, which can only be achieved by open records and open courtrooms. Nothing about the sensitivity of the information has changed in the time since the Court granted the parties' previous motions to seal. The

PAUL
HASTINGS

Hon. Katherine Polk Failla, U.S.D.J.
March 21, 2023
Page 2

information contained in the documents has not been publicly disclosed and the brief passage of time has not lessened the sensitivity of the information.

For these reasons, and the reasons explained in AT&T's previous sealing motions, Dkts. 129 and 145, AT&T seeks the Court's permission to file under seal identified portions of the requested documents in support of AT&T's Motion to Dismiss.

Respectfully submitted,

By: S/ Christopher W. Kennerly
Christopher W. Kennerly (*pro hac vice*)
chriskennerly@paulhastings.com
Alexander H. Lee (*pro hac vice*)
alexanderlee@paulhastings.com
Joshua Yin (*pro hac vice*)
joshuayin@paulhastings.com
PAUL HASTINGS LLP
1117 S. California Avenue
Palo Alto, California 94304-1106
Telephone: 1(650) 320-1800
Facsimile: 1(650) 320-1900

Robert Laurenzi
robertlaurenzi@paulhastings.com
PAUL HASTINGS LLP
200 Park Avenue, 26th Floor
New York, NY 10166
Telephone: (212) 318-6000
Facsimile: (212) 318-6100

Attorney for Defendants

cc: All Counsel of Record (via ECF)

Application GRANTED. The Clerk of Court is directed to file Attachment #1 ("Exhibit 32") to the Declaration of Joshua Yin (Docket #153-1) under seal, visible to the Court and parties only. The Clerk of Court is directed to terminate the pending motion at docket number 151.

Dated: March 22, 2023
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE