

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of Cellco Partnership d/b/a)	WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC and Cox)	
TMI, LLC For Consent To Assign AWS-1)	
Licenses)	
)	
Applications of Verizon Wireless and Leap for)	ULS File Nos. 0004942973, 0004942992,
Consent To Exchange Lower 700 MHz, AWS-1,)	0004952444, 0004949596, and 0004949598
and PCS Licenses)	
)	
Applications of T-Mobile License LLC and Cellco)	WT Docket 12-175
Partnership d/b/a Verizon Wireless for Consent to)	
Assign Licenses)	

ORDER

Adopted: August 21, 2012

Released: August 21, 2012

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

1. On May 9, 2012, pursuant to the terms of the *Second Protective Order*,¹ Public Knowledge challenged the designation as Highly Confidential of certain portions of the Joint Operating Entity Agreement (“JOE Agreement”) submitted in WT Docket No. 12-4.² On May 16, 2012, Comcast Corp., Verizon Wireless, Time Warner Cable Inc., and Bright House Networks, LLC (collectively, the “JOE Members”), filed a response, arguing that the section in question was competitively sensitive and properly designated as Highly Confidential.³ Public Knowledge filed a Reply on May 25, 2012.⁴ For the reasons stated below, we find that the material at issue should not be designated as Highly Confidential but should instead be designated as Confidential.

2. Public Knowledge argues that Article VII of the JOE Agreement, which deals with the governance, management and licensing of technology of the JOE, should be made public. It argues that the material does not contain any commercially sensitive information or trade secrets, and is therefore not entitled to either Confidential or Highly Confidential status under the protective orders issued in this

¹ Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, *Second Protective Order*, DA 12-51 (Jan. 17, 2012) (“*Second Protective Order*”).

² Challenge to Confidentiality Designation of Public Knowledge, WT Docket No. 12-4 (May 15, 2012).

³ Letter from Michael H. Hammer, Wilkie Farr & Gallagher LLP, Attorney for Comcast; John T. Scott, Katherine R. Saunders, Verizon, Michael E. Glover, Of Counsel for Verizon; Daniel Brenner, Hogan Lovells US LLP, Attorney for Bright House Networks; Matthew Brill, Latham & Watkins LLP, Attorney for Time Warner Cable, WT Docket No. 12-4 (May 16, 2012) (“JOE Members Response”).

⁴ Reply to Opposition to Confidentiality Challenge, WT Docket No. 12-4 (May 25, 2012). In addition, the Communication Workers of America filed a letter on May 15, 2012, supporting Public Knowledge’s challenge. Letter from Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, WT Docket No. 12-4 (May 15, 2012).

proceeding.⁵ The JOE Members disagree and claim that disclosure would cause them competitive harm. The provisions at issue detail how the JOE board operates, how decisions are made (including details as to voting), and how JOE Members may license the technology in certain circumstances. The JOE Members argue that disclosure would provide competitors with insight into their decision-making processes, and that the ability of competitors to know the details of how and when technology would and would not be licensed would provide them with a competitive advantage.⁶ Finally, the JOE Members argue that even if the information does not contain some of their most sensitive business data, as required to be designated as Highly Confidential under the *Second Protective Order*, the information is at least entitled to protection as Confidential under the *First Protective Order* because it contains sensitive commercial information.⁷ Public Knowledge, while continuing to argue that the material should be made public, recognizes that it might be prudent to allow the material to be designated as Confidential to encourage parties to file such information voluntarily.⁸

3. We conclude that the information is not entitled to be protected as Highly Confidential. We find that the JOE Members have not shown how the governance details of the JOE constitute some of their most sensitive business information. Moreover, the details of how the JOE Members may license technology from the JOE have been superseded by a consent decree entered into between the JOE Members and the United States Department of Justice.⁹ However, we decline to hold that the JOE Members may not designate the details of the JOE Agreement as Confidential. While the existence of the JOE Agreement is public, the details of the agreement as originally negotiated by the parties are not. We credit the statements of the JOE Members that the details of the JOE Agreement as negotiated among the parties are commercially sensitive and that public release of that information could provide competitors with a competitive advantage in the marketplace.¹⁰

⁵ Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, *Protective Order*, DA 12-50 (Jan. 17, 2012) (“*First Protective Order*”); *Second Protective Order*.

⁶ JOE Members Response at 3-5.

⁷ *Id.* at 5-6.

⁸ See Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, WT Docket No. 12-4 (Aug. 20, 2012).

⁹ Stipulation and Order and Proposed Final Judgment, *United States and State of New York v. Verizon Communications Inc., Cellco Partnership d/b/a Verizon Wireless, Comcast Corp., Time Warner Cable Inc., Cox Communications, Inc. and Bright House Networks, LLC*, No. 1:12-cv-02354 (D.D.C. filed Aug. 16, 2012).

¹⁰ This decision does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon a proper request under our rules implementing the Freedom of Information Act (FOIA).

4. Accordingly, IT IS ORDERED THAT the motion by Public Knowledge to make certain documents and information publicly available IS GRANTED to the extent that the material at issue shall be designated as Confidential under the *First Protective Order*.

5. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division,
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