

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Consent to the)	
Transfer of Control of Licenses)	
)	
Comcast Corporation and)	MB Docket No. 02-70
AT&T Corp., Transferors,)	
)	
To)	
)	
AT&T Comcast Corporation,)	
Transferee)	

**JOINT OBJECTION OF COMCAST CORPORATION AND AT&T CORP.
TO DISCLOSURE OF CONFIDENTIAL INFORMATION**

Comcast Corporation (“Comcast”) and AT&T Corp. (“AT&T”) (collectively, the “Applicants”) have previously submitted confidential information (including but not limited to stamped confidential documents) (“Confidential Information”) under seal and subject to the Protective Order adopted by the Commission in the above-referenced docket (“Protective Order”).¹ On July 15, 2002, John P. Frantz, Vice President and Counselor to the General Counsel, and outside counsel of record for Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.net (“Verizon”) filed a request with the Applicants and the Commission to review the Confidential Information pursuant

¹ *Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 5926 (2002).

to the Protective Order.² Mr. Frantz is a senior level in-house counsel at Verizon and therefore appears to be “involved in competitive decision-making” for Verizon. He consequently is not eligible to review the highly proprietary and competitively sensitive Confidential Information produced by the Applicants pursuant to the Protective Order.³

I. The Protective Order Precludes Access to Confidential Information by In-House Counsel Who Are Involved In Competitive Decision-Making.

The Commission’s Protective Order in this proceeding bars access to Confidential Information by in-house counsel who are “involved in competitive decision-making.”⁴ In particular, where in-house counsel advise or participate “in *any* or all of the client’s business decisions made in light of similar or corresponding information about a competitor,” they are prohibited from obtaining access to Confidential Information.⁵ The test for determining whether access by in-house counsel is proper depends on whether such access, if allowed, would present “an unacceptable opportunity for inadvertent disclosure” of the Confidential Information.⁶ As the Commission and the courts have

² The Applicants do not object to outside counsel of record at Wiley, Rein and Fielding reviewing the Confidential Information on behalf of Verizon.

³ This objection is being timely filed within three days of receipt of Mr. Frantz’s Acknowledgement of Confidentiality. *See* Protective Order ¶ 8.

⁴ *See id.* ¶ 2; *see also Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465 (9th Cir. 1992); *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984); *Ball Memorial Hosp. v. Mutual Hosp. Insurance*, 784 F.2d 1325 (7th Cir. 1986).

⁵ Protective Order ¶ 2 (emphasis added). This limitation is derived from and consistent with the standard adopted by federal courts with regard to in-house counsel accessing confidential information. *See Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 11166, ¶ 5 & n.15 (1998) (citing *U.S. Steel Corp.*, 730 F.2d at 1468 n.3).

⁶ *See U.S. Steel Corp.*, 730 F.2d at 1468.

previously held, to the extent that in-house counsel participate directly or indirectly in competitive decision-making for their employer, disclosure of Confidential Information “to such in-house attorneys would pose an unacceptable opportunity for inadvertent disclosure.”⁷

As Vice President and Counselor to the General Counsel of Verizon, Mr. Frantz holds a senior corporate position in the company and apparently works closely with William P. Barr, Executive Vice President and General Counsel for Verizon. Mr. Barr, as General Counsel, heads Verizon’s legal, regulatory, and government affairs groups, and provides legal advice to senior management at Verizon.⁸ Because business and legal advice are often “inextricably interwoven,”⁹ it is a virtual certainty that Mr. Frantz advises or participates in competitive decision-making in his role as Vice President and Counselor to Mr. Barr. Permitting Mr. Frantz to access the Applicants’ Confidential Information would present “an unacceptable opportunity for inadvertent disclosure” of that information. Based on similar evidence, the Commission has previously denied access to in-house counsel holding comparable or less senior positions, such as “Vice

⁷ See, e.g., *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 13478, ¶ 2 (1998) (“*WorldCom Order*”); *FTC v. Exxon Corp.*, 636 F.2d 1336, 1350 (D.C. Cir. 1980) (“[I]t is very difficult for the human mind to compartmentalize and selectively suppress information once learned, no matter how well-intentioned the effort may be to do so.”); *Sullivan Marketing, Inc. v. Valassis Communications, Inc.*, 1994 WL 177795, at *3 (S.D.N.Y. May 5, 1994) (denying access to general counsel, who had sworn that he did not have “input on matters relating to production or sales, except when a legal issue is raised,” because of the difficulty of drawing “the line between legal and business advice” and the risk of inadvertent disclosure).

⁸ See Key Executives, William P. Barr, Executive Vice President and General Counsel, Verizon, available at: <http://newscenter.verizon.com/speeches/bio_barr.vtml> (last viewed July 16, 2002).

⁹ See *Hercules Inc. v. Exxon Corp.*, 434 F. Supp. 136, 147 (D. Del. 1977).

President and Deputy General Counsel” and “Assistant General Counsel.”¹⁰ It should do the same here.

Disqualifying Mr. Frantz from reviewing the Applicants’ Confidential Information is not only consistent with prior Commission and federal court precedent, but is also consistent with Verizon’s arguments during its own merger proceeding. There, in response to an objection filed by Bell Atlantic and GTE (now Verizon), the Commission determined that in-house counsel holding corporate positions comparable to (Vice President) and less senior (Director) than Mr. Frantz’s position were engaged in competitive decision-making and thus were barred from obtaining access to Verizon’s Confidential Information.¹¹ In support of its objection, Verizon argued:

It is obvious from their titles alone that [the Vice President and Director] perform competitive decision-making roles and do not fit under the category of lawyers functioning in purely legal roles. Indeed, neither are appropriately considered “counsel” within the meaning of . . . the Protective Order.¹²

Verizon further argued that the Commission has “established a nearly un rebuttable presumption that anyone at a sufficiently high level of a company is involved in

¹⁰ See *WorldCom Order* ¶ 5 (denying access to in-house counsel holding the positions of “Vice President and Deputy General Counsel” and “Assistant General Counsel – Antitrust and Litigation”). Mr. Frantz’s current position appears to be senior to the position of Vice President and Associate General Counsel he previously held.

¹¹ *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, 14 FCC Rcd 3364, ¶ 2 (1999) (“*BA/GTE Order*”).

¹² Joint Objection of Bell Atlantic Corporation and GTE Corporation to Disclosure of Stamped Confidential Documents, CC Dkt. No. 98-184, at 2 (filed Jan. 25, 1999) (arguing that the in-house position of Vice President “does not function as an attorney” and is thus “barred from reviewing his competitors’ most sensitive documents”).

competitive decision-making and thus should not have access to these types of [confidential] documents.”¹³

In ruling on this objection, the Commission endorsed Verizon’s reasoning:

We are unconvinced that, given their high positions within the company and the scope of federal and state regulation over the communications industry, [the vice president and director] do not provide advice or participate in the formulation of [their employer’s] business decisions regarding compliance with state and federal regulations.¹⁴

Given his level of seniority and his special role of “Counselor to the General Counsel,” the Commission should similarly be “unconvinced” that Mr. Frantz does not provide advice or participate in the formulation of Verizon’s business decisions regarding compliance with industry regulations.¹⁵

II. Conclusion

In restricting the disclosure of confidential information, courts and the Commission have recognized that in-house counsel often participate in the business decision-making process of the corporation, and thus cannot effectively perform their responsibilities without risking inadvertent disclosure of the confidential information.¹⁶

¹³ *Id.* at 3. Under Verizon’s own standard, in order to obtain access to Confidential Information, at the very least Mr. Frantz “must submit an affidavit explaining why, notwithstanding his crucial position in the company, he should be permitted access to these highly confidential documents of his competitors.” *See id.* at 3-4. That “affidavit would have to relate in detail his job function, his responsibilities, the matters he has worked on, and proof that he does not advise or participate in *any* of the client’s business decisions.” *Id.* at 4 (emphasis added).

¹⁴ *BA/GTE Order* ¶ 2.

¹⁵ *See id.*; *see also WorldCom Order* ¶ 2 (indicating that “it is difficult to fathom that a ‘Senior Vice President’ of a company does not participate in competitive decision-making” and concluding that disclosure of Confidential Information “to such in-house attorneys would pose an unacceptable opportunity for inadvertent disclosure”).

¹⁶ *Brown Bag Software*, 960 F.2d at 1470; *U.S. Steel Corp.*, 730 F.2d at 1468.

Because the disclosure of Confidential Information to Mr. Frantz presents an “unacceptable opportunity for inadvertent disclosure,” the Applicants request that Mr. Frantz be denied access to the Confidential Information pursuant to the Protective Order.¹⁷

Respectfully submitted,

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¹⁷ As noted, the Applicants do not object to outside counsel of record reviewing the Confidential Information. *See supra* note 2. Thus, the Commission’s decision to disqualify Mr. Frantz will not deprive Verizon of “an opportunity to participate in this proceeding or unduly limit the Commission’s ability to make a reasoned decision on the merits of this merger application.” *See WorldCom Order* ¶ 6.

Certificate of Service

I hereby certify that on this 18th day of July 2002, I caused a copy of the attached Joint Objection of AT&T and Comcast to be hand delivered or electronically mailed to the following:

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