

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

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

Adopted: August 7, 2002

Released: August 8, 2002

By the Chief, Media Bureau:

1. On March 28, 2002, the Commission adopted a protective order that applies to any confidential information provided by Comcast Corporation and AT&T Corp. (“the Applicants”) in connection with the above-captioned applications.¹ In the *Protective Order*, the Commission limited disclosure of confidential information to “Outside Counsel of Record” and “In-House Counsel” “who are actively engaged in the conduct of this proceeding, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel’s activities, association, and relationship with a client are not such as to involve such counsel’s advice and participation in any or all of the client’s business decisions made in light of similar or corresponding information about a competitor.”²

2. On July 18, 2002, the Applicants filed a joint objection to the disclosure of confidential information to John P. Frantz, in-house counsel of Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.net (“Verizon”).³ Mr. Frantz holds the position of Vice President and Counselor to the General Counsel of Verizon, and on July 12, 2002, executed an “Acknowledgment of Confidentiality,” seeking to review the confidential documents submitted herein by the Applicants. In their Joint Objection, the Applicants argue that “Mr. Frantz is a senior level in-house counsel at Verizon and therefore appears to be ‘involved in competitive decision-making’ for Verizon.”⁴ In support of this assertion, the Applicants argue that “[b]ecause business and legal advice are often ‘inextricably

¹ *In the Matter of Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Order Adopting Protective Order, MB Docket No. 02-70, DA 02-734 (rel. Med. Bur. March 29, 2002) (“*Protective Order*”).

² *Protective Order* at para. 2 (emphasis in original).

³ Joint Objection of Comcast Corporation and AT&T Corp. to Disclosure of Confidential Information (“Joint Objection”).

⁴ Joint Objection at 2.

interwoven,⁷ 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.”⁵

3. On July 22, 2002, Verizon filed an opposition to the Joint Objection of the Applicants.⁶ In its Opposition, Verizon asserts that Mr. Frantz’s “duties involve the conduct of litigation and regulatory proceedings and the provision of legal advice regarding such proceedings,” and that he “is not involved in any aspect of competitive decision-making at Verizon.”⁷ Verizon also asserts that Mr. Frantz is one of thirty-four Verizon attorneys with the title of Vice President, and that he reports directly to one of seven Senior Vice Presidents and Deputy General Counsels, who, in turn, report to Mr. Barr.

4. In support of Verizon’s assertions, and attached to its Opposition, is a declaration of Mr. Frantz,⁸ who states that he is not involved in any business decisions made at Verizon, and that his responsibilities involve solely litigation and regulatory matters.⁹ Mr. Frantz also states that in other cases, he has “signed protective orders excluding in-house counsel engaged in competitive decision-making and, without objection from the other side, reviewed confidential materials.”¹⁰ Also attached to Verizon’s Opposition is a declaration of William P. Barr,¹¹ Verizon’s Executive Vice President and General Counsel, who states that “Mr. Frantz is not involved in competitive decision-making at Verizon, nor does he advise me or any other Verizon officer on competitive decisions.”¹²

5. On July 25, 2002, the Applicants filed a joint response to Verizon’s Opposition.¹³ In their Joint Response, the Applicants argue that “the job responsibilities described by Mr. Frantz in his declaration are remarkably similar to the job duties of other in-house counsel that the Commission previously has barred from reviewing sensitive information.”¹⁴ The cases to which Applicants attempt to

⁵ *Id.* at 3 (citation omitted). William P. Barr is Verizon’s General Counsel.

⁶ Opposition of Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.net to Joint Objection of Comcast Corporation and AT&T Corp. to Disclosure of Confidential Information (“Opposition”).

⁷ *Id.* at 2.

⁸ Declaration of John P. Frantz in Response to Joint Objection of Comcast Corporation and AT&T Corp. to Disclosure of Confidential Information (“Frantz Declaration”).

⁹ Mr. Frantz’s declaration also lists his duties, none of which involve competitive decision-making.

¹⁰ Frantz Declaration at 2.

¹¹ Declaration of William P. Barr in Response to Joint Objection of Comcast Corporation and AT&T Corp. to Disclosure of Confidential Information (“Barr Declaration”).

¹² Barr Declaration at 1.

¹³ Joint Response of Comcast Corporation and AT&T Corp. to Opposition of Verizon to Joint Objection of Comcast and AT&T to Disclosure of Confidential Information (“Joint Response”).

¹⁴ *Id.* at 4 citing *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Order Ruling on Joint Objections, 13 FCC Red 13478 (1998) (“*WorldCom-MCP*”); and *In the Matter of GTE Corporation, Transferor and Bell Atlantic*

analogize are, however, distinguishable. In *WorldCom-MCI*, we found that two Bell Atlantic attorneys who were excluded from reviewing confidential documents had submitted “cursory affidavits” which did “not adequately explain their roles as ‘Senior Vice President’ for the company.”¹⁵ Moreover, one of the senior vice presidents was described on the Bell Atlantic web site as being “actively involved in significant and strategic decisions at Bell Atlantic” and as playing “an important role in the technical development and management of the company.”¹⁶ In *Bell Atlantic-GTE*, Sprint admitted that it relied upon the advice of two in-house counsels who subsequently were excluded from reviewing confidential documents “to inform business strategies or decisions.”¹⁷ Neither in-house counsel submitted a declaration prior to the Commission’s Order to support their request for access.

6. In this case, the Applicants’ Joint Response provides no evidence that Mr. Frantz is involved in competitive decision-making at Verizon, *i.e.*, that his responsibilities are “such as to involve such counsel’s *advice and participation* in any or all of the client’s business decisions.”¹⁸ In fact, the record contains no evidence to rebut the declarations of Messrs. Frantz and Barr that Mr. Frantz is *not* involved in competitive decision-making at Verizon. Therefore, in the absence of any countervailing information, we find that Mr. Frantz is eligible, pursuant to the *Protective Order*, to review confidential information submitted by Comcast Corporation and AT&T Corp. in this matter.

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 309, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310, the Joint Objection of Comcast Corporation and AT&T Corp. to Disclosure of Confidential Information, filed herein on July 18, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief
Media Bureau

Corporation, Transferee for Consent to Transfer of Control, Order Ruling on Joint Objections, 14 FCC Rcd 3364 (1999) (“*Bell Atlantic-GTE*”).

¹⁵ *WorldCom-MCI*, 13 FCC Rcd at 13479 ¶ 2.

¹⁶ *WorldCom-MCI*, 13 FCC Rcd at 13479 n.5. This language was removed from the Bell Atlantic website after it was cited to the Commission by WorldCom and MCI.

¹⁷ *Bell Atlantic-GTE*, 14 FCC Rcd at 3365 ¶ 2.

¹⁸ *Protective Order* at para. 2 (emphasis added). See also *Matsushita Elec. Indus. Co. v. United States*, 929 F.2d 1577, 1579 (Fed. Cir. 1991).