

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AT&T INC. and DOBSON
COMMUNICATIONS CORPORATION,

Defendants.

Civil No. 1:07-cv-1952 (ESH)

**PLAINTIFF UNITED STATES' PETITION FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANT AT&T INC. SHOULD NOT BE FOUND IN CIVIL CONTEMPT**

Plaintiff United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, presents this Petition for an Order requiring defendant AT&T Inc. ("AT&T") to show cause why it should not be found in civil contempt of the Preservation of Assets Stipulation and Order ("Preservation Order") entered by the Court on November 2, 2007, and the Final Judgment entered by this Court on March 20, 2008, in *United States v. AT&T Inc. and Dobson Communications Corporation*, No. 1:07-cv-1952 (D.D.C. 2008). Copies of the Preservation Order and Final Judgment are attached to this petition. Plaintiff United States represents as follows:

I.

THE DEFENDANT

1. Defendant AT&T is one of the named defendants in the Preservation Order and the Final Judgment. Defendant AT&T is a Delaware corporation with its principal place of

business at 208 S. Akard Street, Dallas, Texas, 75202-2233.

II.

JURISDICTION OF THE COURT

2. This Petition alleges violations of the Preservation Order and Final Judgment by defendant AT&T. This Court has jurisdiction under its inherent powers to enforce orders and Section XII of the Final Judgment, which provides:

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

III.

BACKGROUND

3. Defendants AT&T and Dobson Communications Corporation (“Dobson”) entered into an agreement dated June 29, 2007, pursuant to which defendant AT&T would acquire defendant Dobson. Plaintiff United States filed a civil antitrust Complaint on October 30, 2007, seeking to enjoin the proposed acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Concurrently, and with the defendants’ consent, plaintiff United States filed a proposed Final Judgment. The purpose of the proposed Final Judgment was to require defendant AT&T to divest promptly certain mobile wireless businesses in three Rural Service Areas (“RSAs”): Kentucky RSA-6 (CMA 448), Kentucky RSA-8 (CMA 450), and Oklahoma RSA-5 (CMA 600) (“Divestiture Assets” or “Management Trust Assets”). These divestitures were necessary to remedy the anti-competitive effects that plaintiff United States alleged would otherwise result from AT&T’s acquisition of Dobson.

5. Also at the same time, the parties filed a proposed Preservation Order, which was entered by the Court on November 2, 2007. The purpose of the Preservation Order was to ensure the competitiveness of the mobile wireless businesses in the three RSAs pending divestiture by defendant AT&T. The Preservation Order provided that the Divestiture Assets would be managed by an independent Management Trustee until sold to an appropriate buyer and specified defendants' duties with respect to the Divestiture Assets and the Management Trustee.

6. On November 15, 2007, defendant AT&T closed its acquisition of defendant Dobson. On March 20, 2008, this Court entered the Final Judgment.

IV.

CONDUCT REQUIRED BY THE PRESERVATION ORDER AND FINAL JUDGMENT

7. The provisions of the Preservation Order and of Section VIII the Final Judgment required defendant AT&T to take steps to ensure that the mobile wireless businesses to be divested were operated independently and separately from AT&T's businesses and were maintained as viable competitors. AT&T was required to protect the divested businesses' confidential information, support the Management Trustee and refrain from taking other actions that would diminish the value of the Divestiture Assets. These provisions were necessary in order to protect the competitive viability of the divested businesses so that a future buyer would preserve competition that would otherwise be lost as a result of AT&T's acquisition of defendant Dobson.

8. Relevant provisions of the Preservation Order include:

a. Section V.E requires defendant AT&T to "take all reasonable efforts to preserve

the confidentiality of information that is material to the operation of either the Management Trust Assets or defendants' businesses;"

b. Section VI.B requires defendant AT&T to take all steps necessary to ensure that "the management, sales and operations of the Management Trust Assets are independent from defendants' other operations;" that "the management of the Management Trust Assets will not be influenced by defendants;" and that "the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning marketing, pricing or sales of mobile wireless telecommunications services . . . generated by the Management Trust Assets will be kept separate and apart from defendants' other operations;"

c. Section VI.J provides "defendants shall not permit ... employees, officers or directors [other than those with responsibilities for assisting the Management Trustee] to be involved in the operations of the Management Trust Assets;" and

d. Section VI.K requires "defendants' employees [other than those with responsibilities for assisting the Management Trustee] shall not receive, or have access to, or use any material confidential information, not in the public domain, of the Management Trust Assets."

9. Finally, Section VIII of the Final Judgment provides that defendant AT&T "shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Divestiture Assets during the period that the Divestiture Assets are managed by the Management Trustee."

V.

VIOLATIONS OF THE PRESERVATION ORDER AND FINAL JUDGMENT

10. Defendant AT&T violated Sections V.E, VI.B, VI.J and VI.K of the Preservation Order and Section VIII of the Final Judgment in a number of ways. These violations were material and jeopardized the efficacy of the Final Judgment in resolving the alleged competitive problem.

11. First, defendant AT&T failed to segregate and make reasonable efforts to preserve the confidentiality of information that was material to the operation of the Management Trust Assets. Consequently, unauthorized employees and other agents repeatedly directly accessed confidential information about the Management Trust Assets and indirectly received such information from personnel who were permitted to use confidential information to support the Trust. In some situations, this information was used by AT&T to compete for and win customers away from the Management Trust.

12. Prior to closing, defendant AT&T failed to segregate material confidential information of the Management Trust and after the consummation of the acquisition, information about Management Trust accounts was maintained in the same computer database as defendant Dobson accounts that were acquired by AT&T. Consequently, AT&T's employees who were not involved in the management or operations of the Management Trust Assets were able to access all account information for all Management Trust accounts. The procedure adopted by AT&T – a warning message identifying that the customer account was part of the Management Trust Assets – did not stop unauthorized employees from accessing and obtaining material confidential information about the Management Trust Assets. In addition, AT&T failed to make reasonable

efforts to protect the Management Trust's confidential information, in that AT&T did not adequately inform and instruct employees and agents of their confidentiality obligations under the Preservation Order and Final Judgment, track who received guidance, take steps to ensure that the limited guidance provided was read or understood, and ensure that the guidance was not misleading.

13. In addition, defendant AT&T failed in other circumstances to ensure that its employees did not receive, or have access to, material information, not in the public domain, of the Management Trust Assets in violation of the Preservation Order. On numerous occasions after the closing of the AT&T/Dobson transaction, competitively sensitive information about the expiration of Management Trust accounts' contracts was circulated to AT&T's personnel who were not involved in the operations of the Management Trust.

14. Second, defendant AT&T violated Sections VI.B and VI.J of the Preservation Order by failing to take all steps necessary to ensure that the operation of the Management Trust Assets was independent from its other businesses. Without authorization from the Management Trustee, AT&T waived early termination fees for numerous Management Trust customers who switched their wireless service from the Management Trust to AT&T.

15. The provisions of the Preservation Order and Final Judgment that defendant AT&T breached are integral to achieving the remedy agreed to in this case. They protect the competitive viability of the Divestiture Assets during the period of time between the consummation of the transaction and the purchase of the Divestiture Assets by an appropriate buyer. The provisions also preserve the value and competitiveness of these businesses by ensuring that AT&T does not have an unfair advantage in competing for Management Trust

accounts because of its ability to access confidential information or influence the competitive decisions relating to the Divestiture Assets. Ultimately, the Preservation Order and Final Judgment provisions seek to preserve each divested business so that competition would remain as vigorous as it would have been absent the AT&T/Dobson transaction.

16. By failing to comply with its duties under Sections V.E, VI.B, VI.J and VI.K of the Preservation Order, defendant AT&T is in civil contempt of the Preservation Order and Section VIII of the Final Judgment.

VI.

PRAYER

WHEREFORE, for the foregoing reasons, plaintiff United States respectfully requests that this Court enter an Order directing defendant AT&T to appear before this Court at a time and place to be fixed in said Order, to show cause why it should not be adjudged in civil contempt of this Court, and prays for the following relief:

- (1) that defendant AT&T be found in civil contempt for the violations of the Preservation Order and Final Judgment described above;
- (2) that defendant AT&T be ordered to pay an amount deemed appropriate by the Court for contempt of the Preservation Order and Final Judgment;
- (3) that plaintiff United States be awarded costs and attorneys fees incurred in investigating defendant AT&T's conduct and filing this Petition to Show Cause; and

(4) that plaintiff United States have any and all other relief as the Court may deem justified.

Dated: January 14, 2009

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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