

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

WILLIAM LEE and JOANNE MCPARTLIN,	§	
Individually, and as Representatives of	§	
plan participants and plan beneficiaries of the	§	
VERIZON MANAGEMENT PENSION	§	
PLAN,	§	
	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:12-CV-4834-D
VS.	§	
	§	
VERIZON COMMUNICATIONS INC.,	§	
et al.,	§	
	§	
Defendants.	§	

**ORDER**

Plaintiffs have filed a November 28, 2012 application for temporary restraining order (“TRO”). Defendants Verizon Communications Inc., et al. (collectively, “Verizon”) have responded to the application, and plaintiffs have replied. The court now schedules the TRO application for disposition.

I

Verizon requests that the court treat the TRO application as a preliminary injunction application and conduct expedited proceedings. Verizon represents that it seeks to engage in substantial activity in advance of an anticipated December 10, 2012 closing, and while the markets are closed. It therefore requests that it be permitted to submit its responsive briefing on December 3, 2012 and that the court decide the preliminary injunction application by December 7, 2012.

In reply, plaintiffs request that the court enter a TRO to ensure that the proposed transaction does not go through. They state that they do not oppose expedited briefing, but they request that an evidentiary hearing be convened before the court decides the injunction issue so that they can

present facts not set forth in their current pleadings.

The court concludes that plaintiffs' application should be decided as a TRO application. It is Verizon, not plaintiffs, who desires a conclusive preliminary injunction-type ruling by December 7. But a preliminary injunction is decided on a more complete record<sup>1</sup> than can reasonably be developed between now and when briefing must be commenced and completed, if the court is to rule by December 7. Because this would not be fair to plaintiffs, and because they are apparently willing to assume the risk that the transaction will go through if their TRO application fails,<sup>2</sup> the court declines to adjudicate the TRO application as a preliminary injunction application. Instead, the court will rule on the application as a TRO application under the procedures and schedule set forth below.

## II

Pursuant to Fed. R. Civ. P. 43(c), the court will decide the TRO application on the basis of affidavits, deposition excerpts, and/or exhibits. *See, e.g., FSLIC v. Dixon*, 835 F.2d 554, 558-59 (5th Cir. 1987); *E. E. Maxwell Co. v. Arti Decor, Ltd.*, 638 F. Supp. 749, 751 n.3 (N.D. Tex. 1986). The court will convene an evidentiary hearing only if necessary to resolve a controlling fact issue that involves a determination of witness credibility.

## A

If plaintiffs desire to submit briefing and evidence in addition to what they have already filed, they must file it electronically no later than December 3, 2012 at noon CST. Any brief they

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<sup>1</sup>*See generally United States v. Holy Land Found. for Relief & Dev.*, 445 F.3d 771, 789 (5th Cir. 2006) (addressing more extensive requirements involved in adjudicating preliminary injunction applications versus *ex parte* restraining orders).

<sup>2</sup>"This court has long held that the denial of an application for a temporary restraining order is not appealable." *In re Lieb*, 915 F.2d 180, 183 (5th Cir.1990).

file must comply with local civil rule 7.2, except that the page limit of LR 7.2(c) is hereby enlarged to 50 pages. Supporting materials must be set out in an appendix, in the form prescribed by § II(D) of this order. The brief must include citations to each page of the appendix that supports each assertion made concerning the evidence.

B

Verizon must electronically file its opposition materials, and a separate brief, no later than December 5, 2012 at noon CST.

The brief must comply with local civil rule 7.2, except that the page limit of LR 7.2(c) is hereby enlarged to 50 pages. Opposition materials must be set forth in an appendix, in the form prescribed by § II(D) of this order. The brief must include citations to each page of the appendix that supports each assertion made concerning the evidence.

C

Plaintiffs may file a reply brief, but not additional evidence (without leave of court), provided they file it electronically no later than December 6, 2012 at 4:00 p.m. CST. The brief must comply with local civil rule 7.2, except that the page limit of LR 7.2(c) is hereby enlarged to 25 pages.

D

Evidentiary materials must be set out in an appendix that meets the following requirements: (A) The appendix must be assembled as a self-contained document, separate from the brief. (B) Each page of the appendix must measure 8½ x 11 inches. Non-documentary exhibits (*e.g.*, videotapes and other physical exhibits) and oversized exhibits (*e.g.*, maps and schematic drawings) that are included in the appendix must be placed in an envelope that measures 9 x 12 inches. (C)

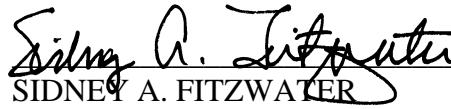
Each page of the appendix must be numbered legibly in the lower, right-hand corner. The first page must be numbered as “1,” and succeeding pages must be numbered sequentially through the last page of the entire appendix (*i.e.*, the numbering system must not re-start with each succeeding document in the appendix). An envelope that contains a non-documentary or oversized exhibit must be numbered as if it were a single page.

III

The court will decide the TRO application on the written submissions, unless it notifies the parties that it is convening an evidentiary hearing or oral argument.

**SO ORDERED.**

November 29, 2012.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE