

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ACTIVEVIDEO NETWORKS, INC.,

Plaintiff,

v.

VERIZON COMMUNICATIONS, INC., et al.,

Defendants.

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ACTION NO. 2:10CV248

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ORDER ON MOTIONS TO SEAL

This matter is before the Court to resolve pending post-trial motions to seal (ECF Nos. 986, 997, 1005) filed by Defendants, Verizon Communications, Inc., Verizon Services Corp., Verizon Virginia, Inc. and Verizon South, Inc. (collectively “Verizon”) and (ECF. No. 1017) filed by Plaintiff, ActiveVideo Networks, Inc. (“ActiveVideo”). In accordance with Local Civil Rule 5, the Clerk provided public notice of the Motions to Seal by docketing the motions clearly describing them as motions to seal, and docketing a separate notice with respect to each motion. No interested party has filed any objection to any of the four motions to seal.

In addition to the motion and related filings, the Court has reviewed in camera each memorandum and accompanying exhibits submitted for filing under seal.

In Ashcraft v. Conoco, Inc., 218 F.3d 282 (4th Cir. 2000), the Fourth Circuit specified three prerequisites to sealing Court filings.

[B]efore a district court may seal any Court documents it must (1) give public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.

Id. at 288 (citing Stone v. Univ. of Md. Med. Sys. Corp., 855 F.2d 178, 181 (4th Cir. 1988), and In re Knight Pub. Co., 743 F.2d 231, 235-36 (4th Cir. 1984)). Even when no third party challenges a motion to seal, the Court must still ensure the motion is supported by good cause. Auburn Univ. v. IBM Corp., No. 3:09-cv-694-MEF, unpublished, available at 2010 WL 3927737, at *2 (M.D. Ala. Oct. 4, 2010).

A. Documents to be Maintained Under Seal

With respect to those documents ordered sealed below, the Court FINDS that the documents to be sealed generally address matters of commercial interest to the parties and not of general interest to the public. The matters addressed in the documents to be sealed concern the competitive positions of the parties with respect to the technology at issue in this litigation; the opinions of retained experts and corporate executives concerning the general market position of Verizon and its competitors in the video-on-demand market place; opinions concerning the reasons for that general market position, and the importance of the challenged technology in maintaining that position. The documents also address agreements among providers of video services not generally publically available and of a highly proprietary nature.

While some of the information contained in documents to be sealed is available publicly, and in fact may have been derived from publicly available sources, the Court FINDS that the redacted versions of the documents already filed in the record adequately disclose the parties' positions while preserving the confidentiality of materials not generally available to the public, or that the burden of preparing redacted versions would not be justified based on the limited value of redacted versions to the public record. Accordingly, the Court ORDERS the following documents to be maintained under seal in connection with the pending motions they support.

Motion to Seal, ECF No. 986:

ECF No. 993- Attachment A to the Declaration of Eric Lin

ECF No. 994- Attachment A to the Declaration of Howard S. K. Wan

Motion to Seal, ECF No. 997:

ECF No. 1012- Defendant's Opposition to Motion for Award of Prejudgment Interest, Post-Judgment Interest and Damages for Defendants' Continuing Infringement. Public Version, filed at ECF No. 1000

ECF No. 1013- Exhibits 2, 3, and 4 to the Declaration of G. Stillman

Motion to Seal, ECF No. 1005

ECF No. 1030- Memorandum of Law in Support of Defendants' Opposition to Plaintiff's Motion for a Permanent Injunction. Public Version, filed at ECF No. 1008 and ECF No. 1014-2

ECF No. 1031- Declaration of Dennis W. Carlton, Public Version, with CV, filed at ECF No. 1010.

ECF No. 1032- Exhibits B and D-J to the Declaration of Brent Van Norman

Motion to Seal, ECF No. 1017

No documents to be maintained under seal.

B. Documents to be Unsealed

The following documents do not appear to relate to commercially sensitive or proprietary information, and concern matters which, though relevant to the parties' competitive position in the marketplace, do not reveal or diminish any proprietary interest otherwise served by

maintenance under seal in connection with the pending motions. Accordingly, the Court DENIES the following Motions to Seal in part and ORDERS the following documents requested to be filed under seal, to be re-filed by counsel, in the public record via CM/ECF with appropriate docket references to the respective underlying motions which they support as exhibits:

Motion to Seal, ECF No. 1017:

ECF No. 1023- Exhibit 1 to the Declaration of Michael Wagner in Support of Plaintiff's Reply in Support of Motion for an Award of Prejudgment Interest, Post-Judgment Interest and Damages for Defendants' Continuing Infringement. This document was previously ordered filed in the public record, and the reasons for denying sealing are explained in that Order. (ECF. 1072).

This Order speaks only to those documents specifically identified in the parties' motion and may not be cited to or relied on by the parties to seal or otherwise restrict access to documents already in the public record. In addition, the Order speaks to these documents only in connection with the pending written motions they support, and the Court makes no finding with respect to the propriety of sealing these or similar documents in connection with future proceedings, including the propriety of sealing documents introduced as evidence, or relied upon by the Court in awarding the relief sought by the motions. See Va. Dept. of State Police v. The Washington Post, 386 F.3d 567, 576-78. (4th Cir. 2004).

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DOUGLAS E. MILLER
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

September 20, 2011