



Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants AT&T Corp., AT&T Mobility LLC, AT&T Services Inc., (collectively, “AT&T” or “Defendant”), Cellco Partnership d/b/a Verizon Wireless (collectively, “Verizon” or “Defendant”), T-Mobile USA, Inc. (“T-Mobile” or “Defendant”), Intervenor Nokia of America Corporation (“Nokia” or “Intervenor”) and Ericsson Inc. (“Ericsson” or “Intervenor”), hereby provide their Preliminary Invalidation Contentions with respect to the claims identified by Plaintiff Cobblestone Wireless, LLC (“Plaintiff”) in its previously served Infringement Contentions in the above captioned matters (“Infringement Contentions”).

## **I. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS**

### **A. ASSERTED CLAIMS**

According to the Infringement Contentions regarding U.S. Patent No. 9,094,888 (the “888 Patent” or the “Asserted Patent”), Plaintiff asserts the following claims, and priority date in its Infringement Contentions (collectively, “Asserted Claims”).

<b>Asserted Patent</b>	<b>Asserted Claims</b>	<b>Asserted Priority Date</b>
U.S. Patent No. 9,094,888 (the 888 Patent)	9, 10, 12, 20, 21, and 23	April 29, 2011

Defendants and Intervenor contend that each of the Asserted Claims is invalid under at least one or more of 35 U.S.C. §§ 102, 103, or 112.<sup>1</sup> Pursuant to the Patent Rules, Defendants and Intervenor do not provide any contentions regarding any claims not asserted by Plaintiff. To the extent that the Court permits Plaintiff to assert additional claims against Defendants and/or Intervenor in the future, Defendants and Intervenor reserve all rights to amend or supplement these Preliminary Invalidation Contentions or to otherwise disclose new or supplemental invalidity

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<sup>1</sup> Intervenor’s contentions are only for those claims of the patents specifically asserted against its equipment.

contentions regarding such claims. Furthermore, because discovery is ongoing,<sup>2</sup> Defendants and Intervenor reserve the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references, should discovery yield additional information or references. Defendants and Intervenor further reserve the right to amend these contentions in response to any claim construction rulings, as permitted by the Patent Rules or with permission of the Court.

The Infringement Contentions are deficient in multiple respects and do not provide Defendants and Intervenor with sufficient information to understand the specific accused features and components and the alleged factual and evidentiary bases for Plaintiff's infringement allegations. Among other things, the Infringement Contentions lack the specificity required by P. R. 3-1, fail to properly identify accused instrumentalities, and fail to explain adequately Plaintiff's infringement theories for numerous claim elements. Plaintiff has prejudiced Defendants' and Intervenor's ability to understand, for purposes of preparing these Preliminary Invalidity Contentions, what Plaintiff alleges to be the scope of the Asserted Claims. If Plaintiff modifies any assertion or contention in its Infringement Contentions, or presents any new assertion or contention relevant to these Preliminary Invalidity Contentions to the extent allowed by the Patent Rules or the Court, Defendants and Intervenor reserve the right to supplement or otherwise amend these initial Invalidity Contentions.

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<sup>2</sup> Defendants' and Intervenor's ongoing efforts include but are not limited to: serving subpoenas on prior artists and inventors regarding prior art, seeking additional information related to the references and systems disclosed in these Preliminary Invalidity Contentions, and seeking additional information related to available prior art systems, as well as Plaintiff's Infringement Contentions and the products accused of infringing therein. In addition, Defendants and Intervenor have not yet had the benefit of taking the deposition of any of the named inventors or those that worked with the named inventors, or of the named inventors, authors, and entities listed on any references or systems identified in these Preliminary Invalidity Contentions. Further, should Plaintiff or any third party identify or produce any further prior art, Defendants and Intervenor reserve the right to review and supplement these Preliminary Invalidity Contentions with any such art.

**B. CLAIM CONSTRUCTION**

Because the Court has not yet construed any terms of any claim of the Asserted Patent, Defendants' and Intervenor's Preliminary Invalidity Contentions are based on (1) Defendants' and Intervenor's present understanding of the Asserted Claims, and (2) the claim constructions Plaintiff appears to be proposing based on the Infringement Contentions, all without regard to whether Defendants and Intervenor agree with Plaintiff's apparent or expressed claim constructions. Defendants and Intervenor reserve the right to supplement or otherwise amend these Preliminary Invalidity Contentions in response to any proposed claim constructions or alleged supporting evidence offered by Plaintiff, any report from any expert witness for Plaintiff regarding claim construction issues, any claim construction briefing filed by Plaintiff, and any position taken by Plaintiff concerning claim construction, infringement, or invalidity.

Defendants and Intervenor take no position on any matter of claim construction in these Preliminary Invalidity Contentions. If Defendants' and Intervenor's apparent claim constructions herein are consistent with any explicit, apparent, or implied claim constructions in the Infringement Contentions, no inference is intended and no inference should be drawn that Defendants and Intervenor agree with any of Plaintiff's claim constructions. Any statement herein describing or tending to describe any claim element is provided solely for the purpose of understanding and/or applying the cited prior art. Defendants and Intervenor expressly reserve the right (1) to propose any claim construction Defendants and Intervenor consider appropriate, (2) to contest any claim construction proposed by Plaintiff that Defendants and Intervenor consider inappropriate or inaccurate, and/or (3) to take positions with respect to claim construction issues that are inconsistent with, or even contradictory to, claim construction positions expressed or implied in these Preliminary Invalidity Contentions.

Prior art not included in these Preliminary Invalidity Contentions, whether now known to Defendants and Intervenor, might become relevant depending on the claim constructions proposed by Defendants and Intervenor and/or the Court's claim construction rulings. Defendants

and Intervenors reserve all rights to supplement or modify the positions and information in these Preliminary Invalidity Contentions, including without limitation the prior art and grounds of invalidity set forth herein, pursuant to P.R. 3-6 after the Court has construed the asserted claims.

**C. ONGOING DISCOVERY AND SUPPLEMENTATION**

Defendants' and Intervenors' investigation, including its investigation of prior art and grounds for invalidity, is ongoing. Furthermore, Defendants' and Intervenors' invalidity positions will be the subject of expert testimony. Defendants and Intervenors base these Preliminary Invalidity Contentions on their current knowledge and understanding of the Asserted Claims, Plaintiff's Infringement Contentions, the prior art, and other facts and information available as of the date of these contentions. Defendants and Intervenors reserve the right to supplement these Preliminary Invalidity Contentions, including, without limitation, by adding additional prior art and grounds of invalidity in accordance with the Federal Rules of Civil Procedure, the Local Rules, the local Patent Rules, the Docket Control Order, any Order issued by this Court, or otherwise.

**D. PRIORITY DATE OF THE ASSERTED PATENT**

Plaintiff's Infringement Contentions contain allegations regarding the priority dates to which Plaintiff alleges it is entitled for each of the Asserted Claims. *See e.g.*, March 13, 2023 Infringement Contentions in 2:22-cv-00474-JRG-RSP at 4. Defendants and Intervenors do not agree that Plaintiff is entitled to the alleged priority dates for each of the Asserted Claims.

Any reference to an "asserted priority date" in these Preliminary Invalidity Contentions refers to the priority dates identified in Plaintiff's Infringement Contentions. Reference to a "priority date" or an "asserted priority date" should not be construed to mean that Defendants and Intervenors agree that the Asserted Patent is in fact entitled to such priority date, or that Plaintiff has provided proper notice as to its contentions for priority dates. To the extent Plaintiff alleges that any prior art relied on in these Preliminary Invalidity Contentions does not actually qualify as prior art to an Asserted Patent, Defendants and Intervenors reserve the right to rebut those

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