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PA P.U.C.
SECRETARY'S BUREAU
Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements : I-00030099

ORDER DIRECTING VERIZON TO PROVIDE COMPLETE PROPRIETARY VERSION OF ITS FILING TO THE OTHER PARTIES

On October 2, 2003, the Commission adopted an order that established the procedural framework for this proceeding ("Procedural Order"). The Commission recognized that documents, information and other materials submitted to the Commission and provided to the parties in the course of this investigation may represent or contain proprietary or highly confidential information. Thus, the Commission simultaneously entered a Protective Order with an attached Confidentiality Agreement to ensure that such proprietary or confidential information is afforded protection from unwarranted disclosure, while permitting parties appropriate access to such proprietary or confidential information. The purpose of this unusual step was to ensure unimpeded access to such information on a timely basis, considering the extreme time constraints on this proceeding.

On October 31, 2003 Verizon served its Direct Testimony (St. 1.0, Direct Testimony of Berry and Peduto) upon all of the "footnote 14" CLECs¹, as well as the Commission's public parties. Each of the CLECs received the full text of the testimony, which is not proprietary, and a public set of the Attachments. Attachments 1, 3, 4, 5 and 8 are not proprietary and were also provided in full to all CLECs on October 31, 2003. Attachment 7 (the methods and procedures for Verizon's transport study) was redacted completely and was not provided based on a claim that it is proprietary.

On that date the CLECs also received public versions of Attachments 2 and 6, with a random number in place of CLEC names to protect information that Verizon characterizes

¹ Those CLECS identified in Footnote 14 of the Procedural order.

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as "CLEC proprietary information." Attachment 2 depicts the name of each CLEC and the number of loops it serves in each of the Metropolitan Statistical Areas ("MSAs") relevant to Verizon's switching testimony. Attachment 6 depicts the identity of the CLEC and the location of its central office collocation arrangements in the central offices pertinent to Verizon's transport testimony. In both cases, Verizon assigned a random numerical code to each CLEC and provided the CLECs being served with a public version of the documents in which the names had been replaced by the numeric codes. Verizon filed a proprietary version of the documents containing the names with the Commission (and provided it to the public parties) and provided each CLEC with its own code upon request. In the October 31 distribution the CLECs also received the text of Verizon's responses to the Commission's discovery, without the proprietary attachments.

As parties petitioned to intervene in the proceeding and requested proprietary information, Verizon provided its own proprietary information, which consisted only of the attachments to Verizon's responses to the Commission's discovery and Attachment 7 to the testimony. Verizon refused to identify the CLECs listed in Attachments 2 and 6 relying on a claim that the information therein was proprietary to the individual CLECs.

On November 10, 2003, counsel for AT&T sent an electronic message to counsel for Verizon requesting a complete copy of Verizon's October 31 filing, including all 3rd party data. Verizon did not respond that that request. AT&T sent another request for that information on November 19. Apparently counsel for Sprint also requested that information. According to AT&T, in an e-mail received late on November 20, 2003, Verizon for the first time indicated that it would not provide the information absent a Commission Order.

On November 20, 2003, we received an email from AT&T complaining of Verizon's refusal to provide the third party data. We sent the email to all parties with a notice that we were treating it as a motion to compel Verizon to provide the information. We permitted Verizon to file an answer to it no later than 5:00 pm on Monday November 24, 2003. We directed that Verizon's answer identify the CLECs whose proprietary information Verizon purported to be protecting, although we stated that Verizon need not connect those names to

either their collocation locations or the number codes used by Verizon in its filing to disguise the identity of those CLECs. We also directed Verizon to explain why it believes that the information that it is withholding is proprietary to the presently unidentified CLECs.

Verizon filed its answer on November 24, 2003. In its answer, Verizon averred that it would produce the requested information only upon waiver by each of the subject CLECs or upon an order by the Commission or the presiding officers in this case.

At the prehearing conference, we asked Verizon's counsel whether Verizon was relying on any documents to claim that the requested information is proprietary to the CLECs involved. She responded that she believed there were provisions in the standard contracts that made this information proprietary, but also that those contracts allowed Verizon to disclose the information upon a court or agency order.

We will order Verizon to disclose this information pursuant to the Commission's Protective order in this proceeding. First, Verizon has produced no document to support its claim that it has an obligation or excuse for withholding this information. Second, this information is already in the hands of the most dangerous competitor to any one CLEC, namely Verizon itself. Disclosure of this information to other CLECs pursuant to the protective order for the purpose of this proceeding is likely be of greater benefit to all CLECs, and to competition generally, than any additional harm to those CLECs whose information is being disclosed. Third, and most importantly, if Verizon is to rely upon this information in claiming that the FCC triggers have been met, the other parties to this case, including the CLECs, must have access to it to be able to effectively test the veracity of Verizon's claims.

Lastly, at the prehearing conference, counsel for AT&T asked whether this order would require Verizon to furnish an entire copy of the proprietary version of its petition to initiate this proceeding with all attachments. Verizon's counsel responded that Verizon had provided to any requesting parties everything in its proprietary submittal except for the key by which the specific CLECs listed in Attachments 2 and 6 may be identified. To ensure that there are no further misunderstandings regarding Verizon's duty to furnish the parties with its entire

filing, this order will so direct. If Verizon has, in fact, provided to any requesting parties everything in its proprietary submittal except for the key by which the specific CLECs listed in Attachments 2 and 6 may be identified, it may meet this requirement for those to whom its has provided everything except the key by providing either the key or the proprietary versions of Attachments 2 and 6. If any party believes that they have still not received everything in the proprietary version of the submittal, they are urged to try to resolve the matter with Verizon. If an informal resolution is not possible, we will entertain a further motion.

Order

THEREFORE, IT IS ORDERED:

That no later than December 2, 2003, Verizon Pennsylvania, Inc. shall provide to all requesting parties, by email, a copy of the proprietary version of its petition to initiate this proceeding filed on October 31, 2003, with all attachments. Access to all information in that filing shall be subject to the Protective Order entered by the Commission in this proceeding on October 3, 2003.

Date: November 26, 2003


MICHAEL C. SCHNIERLE
Administrative Law Judge


SUSAN D. COLWELL
Administrative Law Judge