

DISCLAIMER

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IN THE MATTER OF

VERIZON VIRGINIA INC

CASE NO. PUC020046

**To verify compliance with the
conditions set forth in 47 U.S.C. § 271(c)**

Hearing Examiner's Ruling

March 29, 2002

On March 20, 2002, the Commission established this proceeding to attempt to verify whether Verizon-Virginia, Inc. ("Verizon") meets the requirements of § 271(c) of the Telecommunications Act of 1996 ("Act"). In accordance with the Commission's directives, the Hearing Examiner convened a procedural conference on March 27, 2002. Based on the discussions that occurred during the procedural conference and in order to facilitate the efficient conduct of this proceeding I find that a protective agreement and additional procedures should be adopted. Accordingly, **IT IS DIRECTED THAT** the following Protective Agreement and other procedures be adopted.

PROTECTIVE AGREEMENT

Any documents, materials, and information to be produced by Verizon, either for itself or for its affiliates, or to be produced by any other interested parties ("Interested Parties") in this proceeding in response to Commission orders, Hearing Examiner's rulings, and data requests, or properly propounded interrogatories or requests for production of documents from Verizon, Staff, or Interested Parties, which documents, materials, or information the producing party designates and clearly marks as confidential ("Confidential Information"), shall be produced, examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Verizon, Staff, or Interested Parties shall be used solely for the purposes of this proceeding.

(2) Access to Confidential Information shall be specifically limited to Verizon, Staff, or Interested Parties, their counsel and to support personnel who are working on this case under the direction of their counsel and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding, so long as counsel for such party has executed an Agreement to Adhere to Protective Ruling ("Agreement"), which is Attachment A to this Ruling. Staff and Staff counsel are not required to sign the Agreement but are hereby ordered to preserve the confidentiality of the materials. Upon execution, all Agreements shall be promptly forwarded to the producing party and to the Commission's Hearing Examiner at Office of Hearing Examiners, P.O. Box 1197, Richmond, VA 23218-1197.

(3) In the event that Verizon, Staff, or Interested Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under Paragraph (2) above, the party desiring permission shall obtain the consent of

counsel for the producing party. In the event of a negative response, the party seeking disclosure permission may apply to the Commission for such permission.

(4) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under Paragraph (2) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(5) Verizon and Interested Parties shall not disclose information in their possession that may be held to be confidential by a third party without express authorization of the third party.

(6) Where a party contends that they should not be required to produce, other than to Staff, specific documents, materials, or information due to their commercially or competitively sensitive nature (“Competitively Sensitive Information”), or that access to Competitively Sensitive Information should be restricted, such party shall bear the burden of proving that such specific documents, materials, or information should not be discoverable, or access should be restricted by appropriate motion directed to the Hearing Examiner for this matter.

(7) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(8) In the event Verizon, Staff, or an Interested Party seeks to introduce at any hearing, or file with the Commission testimony, exhibits, or studies that disclose Confidential Information, other than the information discussed in Paragraph 5, the party seeking such introduction shall:

(a) if such information is prefiled, file such testimony, exhibits or studies with the Commission under seal and serve on all parties of record copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party shall, upon signing Attachment A hereof, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the Confidential Information; or

(b) notify the producing party at least three (3) days in advance of any hearing regarding testimony, exhibit, or study that is not prefiled unless a shorter period would not unduly prejudice the producing party.

(9) In the event Verizon, Staff, or an Interested Party seeks to introduce at any hearing or file with the Commission testimony, exhibits, or studies that disclose Confidential Information covered by Paragraph 5, the party seeking such introduction shall:

(a) if such information is prefiled, file such testimony, exhibits or studies with the Commission under seal and serve on all parties of record copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Other parties will be granted access to this proprietary information only if they have entered secured agreement from the third party that holds the information proprietary; or

(b) notify the producing party and the party that holds the information proprietary at least three (3) days in advance of any hearing regarding testimony, exhibit, or study that is not prefiled unless a shorter period would not unduly prejudice the producing party.

(10) Oral testimony regarding Confidential Information, if ruled admissible by the Hearing Examiner, will be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(11) In the event Verizon, Staff, or an Interested Party seeks to introduce at a hearing testimony, exhibits or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party at least ten (10) days in advance of any such hearing unless a shorter period is necessary or would not unduly prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken *in camera* and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party. That portion of the transcript recording such testimony shall be placed in the record under seal.

(12) No person authorized under this Protective Ruling to have access to Confidential Information or Competitively Sensitive Information shall disseminate, communicate, or reveal any such Confidential Information or Competitively Sensitive Information to any person not specifically authorized under this Ruling to have access.

(13) Insofar as the provisions of this Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding as to the Confidential Information.

(14) This Ruling does not preclude Verizon, Staff, or any Interested Party from arguing, prior to public disclosure, that documents, materials, and information received under the Ruling should not be treated as Confidential or Competitively Sensitive. But in no event shall any party disclose Confidential or Competitively Sensitive Information it has received subject to this Ruling absent a finding by the Hearing Examiner or the Commission that such information does not require confidential treatment. Any party objecting to treating information as either Confidential or Competitively Sensitive may file a motion, following the procedures set forth below, seeking *in camera* review by the Hearing Examiner of the documents alleged to be subject to treatment as Confidential or Competitively Sensitive. The burden of proving that

documents, materials, or information should be treated as Confidential or Competitively Sensitive shall be upon the proponent of maintaining the documents, materials, or information in such confidence.

(15) A producing party is obligated to separate non-confidential and non-competitively sensitive documents, materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to provide the non-confidential and non-competitively sensitive documents, materials, and information.

(16) Any party who obtains Confidential Information or Commercially Sensitive Information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities which might attach from such misuse.

OTHER PROCEDURES

(17) Rule 5 VAC 5-20-150 requires the filing of an original and fifteen copies of applications, petitions, responsive pleadings, briefs, and other documents. Moreover, the Commission's Order of March 20, 2002, in this proceeding specified the filing of an original and fifteen copies of testimony and exhibits, and other documents. For this case, up to twelve of the copies filed with the Commission may be electronic versions in either MS Word or PDF formats on separate CDs or disquettes.

(18) Rule 5 VAC 5-20-260 contains procedures to be followed concerning discovery. The Commission's Order of March 20, 2002, provides for expedited discovery. To facilitate expedited discovery Verizon, Staff, and Interested Parties are encouraged to utilize e-mail to file and respond to discovery. However, use of e-mail will not eliminate the requirement to file a paper copy of interrogatories and data requests with the Clerk of the Commission. Verizon, Staff, and Interested Parties also may provide paper or electronic copies of documents in response to interrogatories. A copy of interrogatories and data requests should be served on Verizon, Staff, and Interested Parties. Verizon, Staff, and Interested Parties are encouraged to specify relevant checklist items for each interrogatory and data request. The Commission's Order of March 20, 2002, provided for objections to interrogatories and data requests to be made within three calendar days. Based on discussions during the procedural conference, the time for objections to interrogatories is hereby extended to the longer of: (i) three calendar days, or (ii) two business days. Furthermore, any motions to compel discovery must be filed with the Clerk of the Commission and the Hearing Examiner no later than two business days after either the responding party's objection or the date for response if no objection was made. Motions filed with the Hearing Examiner may be e-mailed to askirpan@scc.state.va.us.

(19) Verizon, Staff, and Interested Parties may utilize e-mail to serve copies of pleadings, motions, interrogatories and data requests, testimony and exhibits, brief, and other documents on other parties, including Verizon and Staff, unless otherwise directed.

Alexander F. Skirpan, Jr.
Hearing Examiner

**BEFORE THE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA**

IN THE MATTER OF

VERIZON VIRGINIA INC

CASE NO. PUC020046

**To verify compliance with the
conditions set forth in 47 U.S.C. § 271(c)**

AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____, hereby acknowledge having read and understood the terms of the Protective Ruling entered in this proceeding by the Hearing Examiner on March 29, 2002, and agree to treat all Confidential Information and Competitively Sensitive Information that I receive, review, or to which I have access in connection with this Case No. PUC020046 as set forth in the Hearing Examiner's Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____