**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Verizon Pennsylvania LLC and :

Verizon North LLC for Competitive Classification : P-2014-2446303

Of All Retail Services In Certain Geographic Areas, : P-2014-2446304

And For A Waiver Of Regulations For Competitive :

Services :

**ORDER**

**GRANTING PROTECTIVE ORDER**

On October 6, 2014, Verizon Pennsylvania LLC and Verizon North LLC (collectively referred to as Verizon or “the Companies”) filed with the Pennsylvania Public Utility Commission separate Petitions pursuant to Section 3016(a) of the Public Utility Code seeking to declare as competitive all protected or noncompetitive retail services offered by Verizon within their Philadelphia, Erie, Scranton-Wilkes Barre, Harrisburg, Pittsburgh, Allentown and York service regions. The Petitions also requested waivers of Commission regulations for competitive services. Pursuant to Section 5.14 of the Commission’s regulations, notice of the filings was published in the Pennsylvania Bulletin on October 11, 2014 establishing a ten (10) day period for submitting formal Protests. On October 6, 2014, the Commission assigned the filings to the Office of Administrative Law Judge for an expedited process resulting in a certification of the record to the full Commission after the submission of main and reply briefs. Also on October 6, 2014, Verizon filed a Petition for Protective Order.

On October 9, 2014, the Commission issued a Prehearing Conference Notice establishing an Initial Prehearing Conference for this case for Thursday, October 23, 2014 at 1:00 p.m. in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Conference Order dated October 9, 2014 was issued setting forth various procedural issues that would govern the Initial Prehearing Conference. In particular, the Prehearing Conference Order directed parties to indicate any objections to the proposed Protective Order in their Prehearing Memoranda.

On October 17, 2014, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement. On October 20, 2014, AT&T Corp. and Teleport Communications America, LLC (collectively “AT&T”) filed a Petition to Intervene. On October 20, 2014, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed an Answer and Petition to Intervene. On October 20, 2014, the Communications Workers of America and International Brotherhood of Electrical Workers (CWA) filed a Protest and Answer. On October 20, 2014, Full Service Network (FSN) filed a Petition to Intervene. On October 21, 2014, the Pennsylvania Telephone Association (PTA) filed a Petition to Intervene. On October 21, 2014 the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Verification, Public Statement and Notice of Appearance. On October 21, 2014, a letter was submitted by Richard Simpson of Plymouth Meeting, PA. On October 21, 2014, a letter was submitted by the Pennsylvania Burglar and Fire Alarm Association (PBFAA). On October 23, 2014, Verizon filed an Answer to AT&T’s Petition to Intervene.

The Initial Prehearing Conference convened on Thursday, October 23, 2014, as scheduled. No party indicated any objection to Verizon’s proposed Protective Order.

The Commission’s Rules of Practice and Procedure permit the Commission to issue protective orders limiting the availability of certain proprietary or confidential information. 52 Pa.Code §§ 5.362 and 5.423. The party seeking the protective order has the burden to establish that the potential harm to the party of providing the information would be substantial and the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process. Petition for Protective order of GTE North Inc., 1996 Pa PUC LEXIS 95, Docket No. G-00940402, Order (entered August 8, 1996); ITT Communications Services’ Petition for a Protective Order, 1991 Pa PUC LEXIS 193, Docket No. R-912017, Order (entered November 5, 1991). If that burden is satisfied, the least restrictive means of limitation which will provide the necessary protection from disclosure will be applied. 52 Pa.Code § 5.423(a).

In considering whether to issue a protective order, the Commission, pursuant to Section 5.423(a), should consider the following factors:

(1)  The extent to which the disclosure would cause unfair economic or competitive damage.

(2)  The extent to which the information is known by others and used in similar activities.

(3)  The worth or value of the information to the party and to the party’s competitors.

(4)  The degree of difficulty and cost of developing the information.

(5)  Other statutes or regulations dealing specifically with disclosure of the information.

52 Pa.Code § 5.423(a). The Commission’s regulations further provide detail regarding restrictions placed on the proprietary material, access to proprietary material by representatives of parties, special restrictions and the return of proprietary information at the conclusion of the proceeding. 52 Pa.Code §§ 5.423(c)-(f).

Section 5.423, however, must be balanced against Commission regulations that also provide that the Commission’s records, including the record of this proceeding, may be accessed by the public pursuant to 52 Pa.Code §§ 1.71-1.77. In particular, Section 1.71 of the Commission’s regulations provides: “The Commission’s record maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the act and other applicable laws.” 52 Pa.Code § 1.71.

In this case, Verizon averred that “while much of the testimony [submitted with its Petition] is based on public data, the testimony contains some proprietary, competitively sensitive information about Verizon’s business and that of its competitors, which has been marked proprietary and redacted from the public version of the filing.” Verizon further indicated that it anticipates that discovery in this case may require the production of other proprietary and competitively sensitive information that pertains to business practices, operations or financial matters, among other things, that are commercially sensitive or that are ordinarily considered and treated as confidential by the producing party. Verizon added that it, and other market participants, would be substantially harmed if proprietary and confidential information about market share and business plans were provided to parties without restriction and that such material should be kept confidential. Verizon concluded that the proposed Protective Order is a reasonable way to protect the confidentiality of the parties’ sensitive information while still permitting the parties and the Commission to use it as appropriate for purposes of the instant complaint because the limitation on the disclosure of sensitive non-public information will not prejudice the rights of the parties and will not frustrate the ability of the public to access information that is already publicly available. I agree.

The proposed Protective Order balances Verizon’s right to restrict certain information from public disclosure with the public’s right to access information, and does so in the least restrictive means. Furthermore, the proposed Protective Order retains the right of nonproducing parties to question or challenge the designation of a document or information as proprietary, with the producing party retaining the burden of demonstrating that protection is appropriate. Finally, no party has opposed Verizon’s Petition. Verizon’s Petition, therefore, will be granted.

ORDER

THEREFORE,

IT IS ORDERED:

1. This Protective Order, submitted by Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) is hereby established for use in this proceeding with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all written, recorded or graphic material, whether produced or created by a party or another person or entity, including but not limited to, correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY” (hereinafter collectively referred to as “Proprietary Information”).

In addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Order pertaining to such material. Such “HIGHLY CONFIDENTIAL” information shall be only such Proprietary Information that constitutes or describes the producing party's marketing plans, including, *inter alia*, costing and pricing aspects thereof, competitive strategies, market share projections, marketing materials that have not yet been used, network deployment, customer-identifying information, or customer prospects for services that are subject to competition.

3. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information and Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked and sealed, and accompanied by a copy of this Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures.

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel of record, including in-house counsel and outside counsel who are actively engaged in this proceeding, including partners, associates, secretaries, paralegals and employees of such counsel may afford access to Proprietary Information made available by another party (“the producing party”) pursuant to the following procedures:

i. To the party’s witness(es) or expert(s) subject to the restrictions that such witness(es) or expert(s) may not hold any of the following positions with any competitor or affiliate of a competitor of the producing party: an officer, board member, significant stockholder, partner, owner (other than owner of stock) or an employee of any competitor or affiliate of a competitor of the producing party where such witness or expert is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; provided, however, that any witness or expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at less than $500,000 and/or constituting less than a 10 % interest in a business does not, in itself, establish a significant potential for violation.

ii. To a party's independent expert retained to render professional services in this proceeding, subject to the restriction that if the independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the producing party, said independent expert must: (1) advise the producing party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

b. Highly Confidential Information. Proprietary Information or other material designated as “Highly Confidential” shall be produced for inspection only by a party's witnesses and counsel of record, including in-house counsel and outside counsel of the reviewing party who are actively engaged in this proceeding, including partners, associates, secretaries, paralegals and other such employees of counsel. If the inspecting witness or counsel desires to disclose “Highly Confidential” material to persons other than the witness or counsel of record as described above, she or he shall notify the producing party's counsel three (3) business days prior to such disclosure, to allow the producing party time to raise the issue orally with the Commission or the presiding Administrative Law Judge if there is any objection to such disclosure. Highly Confidential Information may be disclosed under the terms of this provision only to persons who meet the qualifications of 4(a)(i) and (ii) above. If upon inspection the requesting party disagrees with the designation of any of the material as “Highly Confidential” and the producing party does not revise the designation, that issue may also be submitted orally to the Commission or the Administrative Law Judge for resolution.

c. No other persons may have access to the Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

5. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in numbered Paragraph 4, above, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as “Appendix A”. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

6. A producing party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten or printed designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the producing party insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.

7. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. §552(b)(4) until such time as the information is found to be non-proprietary.

8. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. §66.1(2) until such time as the information is found to be non-proprietary.

9. Any public reference to Proprietary Information or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Parts of any record in this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross-examination, argument and responses to discovery, and including reference thereto as mentioned in number Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 11 shall be decided on motion or petition by the presiding officer or the Commission as provided by 52 Pa. Code §5.365(c)(5). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

11. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the admissibility of Proprietary Information or Highly Confidential Information; to refuse or object to the production of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary Information or Highly Confidential Information, the party claiming that the information is Proprietary Information or Highly Confidential Information retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed.

Date: October 24, 2014

Joel H. Cheskis

Administrative Law Judge

APPENDIX A

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Verizon Pennsylvania LLC :

And Verizon North LLC for Competitive : Docket No. P-2014-2446303

Classification of all Retail Services in Certain :

Geographic Areas, and for a Waiver of : Docket No. P-2014-2446304

Regulations for Competitive Services :

**TO WHOM IT MAY CONCERN:**

The undersigned is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the retaining party) and hereby acknowledges that he/she does not hold any of the following positions with any competitor or affiliate of a competitor of the producing party (an officer, board member, significant stockholder, partner, owner or an employee) who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party.

The undersigned has read and understands the Protective Order that deals with the treatment of Proprietary Information and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order.

In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of numbered Paragraph 4 (a)(ii) of the Order prior to submitting this Acknowledgement.

|  |  |  |
| --- | --- | --- |
| DATE |  | SIGNATURE  PRINT NAME  ADDRESS  EMPLOYER |

**P-2014-2446303 & P-2014-2446304**

**Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of all Retail Services in Certain Geographic Areas, and for a Waiver of Regulations for Competitive Services**

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