

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of
Pennsylvania, Inc.

v.

Verizon North Inc.

DOCKETED

JUN 21 2003

DOCUMENT

Docket No.

BTL

C-20027195

SECRETARY'S BUREAU

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ORDER #3 - PROTECTIVE ORDER

IT IS ORDERED THAT:

1. This Protective Order, submitted by Verizon Pennsylvania Inc. and Verizon North Inc., is hereby granted with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the 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 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 INFORMATION" (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, competitive strategies, market share projections, marketing materials that have not yet been used, customer-identifying information, or customer prospects for services that are subject to competition.

3. Proprietary Information and Highly Confidential Proprietary 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 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 Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information and Highly Confidential Proprietary Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information and Highly Confidential Proprietary 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 may afford access to Proprietary Information made available by another party ("the producing party") to the party's expert(s), subject to the following restrictions.

i. Such expert(s) may not hold any of the following positions with any competitor of the producing party: (a) an officer, board member, stockholder, partner, owner other than stock of the producing party or an employee of any competitor of the producing party 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; or (b) an officer, board member, stockholder, partner, owner other than stock of any affiliate of a competitor of the producing party; provided, however, that any 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 \$100,000 and/or constituting less than a 2% interest in a business does not, in itself, establish a significant potential for violation.

ii. If a party's 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 Proprietary Information. Proprietary Information or other material designated as "Highly Confidential" shall be produced for inspection by a party's counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge.

c. No other persons may have access to the Proprietary 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 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 or Highly Confidential Information available to any person as provided in paragraph 4 of this Protective Order, 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 acknowledgment form.

6. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

7. Any public reference to Proprietary 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 or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

8. Parts of any record in this proceeding containing Proprietary 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 ordering paragraph 7 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary 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 9 shall be decided on motion or petition by the presiding officer or the Commission as provided by

52 Pa. Code §5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

9. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary 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 or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary 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 or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

10. 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 or Highly Confidential information shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Date: June 9, 2003


Cynthia Williams Fordham
Administrative Law Judge

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of
Pennsylvania, Inc.

v.

Verizon North Inc.

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Docket No.

C-20027195

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of
_____ (the retaining party) and is not, or has no knowledge or basis for
believing that he/she is: (1) an officer, board member, stockholder, partner or owner other than
stock of any competitor of _____ (the "Producing Party") or
an employee of any competitor of the Producing Party 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; or (2) an officer, board member, stockholder, partner, or owner other
than stock of any affiliate of a Competitor of the Producing Party.

The undersigned has read and understands the Protective Order that deals with the treatment of
Proprietary 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 paragraph 4 (a)(ii) of the
Order prior to submitting this Affidavit.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE

Service List

Julia A. Conover, Esquire
Susan DeBusk Paiva, Esquire
Verizon Pennsylvania Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103
Bus. (215) 963-6001/6068
Fax (215) 563-2658
julia.a.conover@verizon.com
suzan.d.paiva@verizon.com

Patricia Armstrong, Esquire
Regina L. Matz, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street Suite 500
P.O. Box 9500
Bus. (717) 255-7627
Fax (717) 236-8278
parmstrong@ttanlaw.com
rmatz@ttanlaw.com
The Rural Telephone Company Coalition

Zsuzsanna E. Benedek, Esquire
Sprint Communications Company and the United Telephone of Pa
240 North Third Street, Suite 201
Harrisburg, PA 17101
Bus. (717) 236-1385
Fax (717) 238-7844
sue.e.benedek@mail.sprint.com

Robert C. Barber, Esquire
AT&T Communications of PA Inc.
3033 Chain Bridge Road, Room 3-D
Oakton, VA 22185
Bus. (703) 691-6061
Fax (703) 691-6093
rcbarber@att.com

Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236
Bus. (717) 237-7160
Fax (717) 237-7161
dclearfield@wolfblock.com
akohler@wolfblock.com
AT&T Communications of PA Inc.

Angela T. Jones, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
Bus. (717) 783-2525
Fax (717) 783-2831
anjones@state.pa.us

Kenneth L. Mickens, Esquire
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
Bus. (717) 787-1976
Fax (717) 772-2677
kmickens@state.pa.us

Philip R. McClelland, Esquire
Barrett C. Sheridan, Esquire
Joel H. Cheskis, Esquire
Shaun A. Sparks, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Bus. (717) 783-5048
Fax (717) 783-7152
pmccllland@paoca.org bsheridan@paoca.org
jcheskis@paoca.org ssparks@paoca.org

Michelle Painter, Esquire
MCI Worldcom Inc.
1133 19th Street NW
Washington, DC 2003
Bus. (202) 736-6204
Fax (202) 736-6242
michelle.painter@mci.com

Kathleen Misturak-Gingrich, Esquire
Eckert, Seamons, Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6067
Fax (717) 237-6019
kmg@escm.com
MCI Worldcom Inc.

John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Bus (717) 236-7714
Fax (717) 236-7816
jpovilaitis@ryanrussell.com
Qwest Communications Corporation

Kristin L. Smith, Esquire
Qwest Communications Corporation
1801 California Street, Suite 4900
Denver CO 80202
Bus. (303) 672-2820
Fax (303) 295-7069
klsmi23@qwest.com