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August 14, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
P.O. Box 3265
Harrisburg, PA 17105-3265

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SECTION OF CLERK

RE: Karen Drake v. MCI Communications Services, Inc., Docket No. C-20077785;
PETITION FOR ISSUANCE OF PROTECTIVE ORDER

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of MCI Communications Services, Inc.'s Petition for Issuance of a Protective Order in the above-captioned matter. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

RP

DOCUMENT
FOLDER

Amy A. Whitney

Amy A. Whitney
Counsel for MCI Communications Services, Inc.

AAW/das
Enclosures

cc: Honorable Marlane R. Chestnut
Karen Drake

DOCKETED
AUG 16 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge Marlane R. Chestnut

KAREN DRAKE,

Complainant

v.

MCI COMMUNICATIONS SERVICES, INC.,

Respondent

Docket No. C-20077785

DOCUMENT
FOLDER

**PETITION OF MCI COMMUNICATIONS SERVICES, INC.
FOR ISSUANCE OF PROTECTIVE ORDER**

MCI Communications Services, Inc. ("MCI" or "Company"), by its attorneys in this matter, Hawke McKeon & Sniscak LLP, hereby files this Petition for Issuance of a Protective Order pursuant to the provisions of 52 Pa. Code § 5.423 and Paragraph 1 of the Prehearing Order issued on June 6, 2007 in this matter. MCI requests that the Pennsylvania Public Utility Commission ("Commission") grant protective or confidential treatment to certain information to be disclosed in connection with this matter. In support of its Petition, MCI submits the following:

I. PETITION FOR PROTECTIVE ORDER

1. On or about May 25, 2007, the Commission served the Formal Complaint filed by Karen Drake ("Complainant") on MCI. On June 11, 2007, MCI filed a Request for Extension of Time to file its Answer. By notice dated June 15, 2007, the Commission granted a two-week

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extension. MCI timely filed its Answer and New Matter to the Formal Complaint on July 2, 2007. An Interim Order Setting Resolution Conference was issued July 5, 2007; however, mediation attempts were unsuccessful. This matter therefore has been scheduled for a hearing before Your Honor on October 1, 2007.

2. As has been its typical practice before this Commission in customer complaint proceedings, MCI intends to present Company employees as witnesses during the hearing. These witnesses intend to address entries in MCI's regularly-kept business records that are pertinent to MCI's defense in this proceeding and are prepared to testify as to the events that occurred on the basis of those business records.

3. In view of the Commission's May 15, 2007 Opinion and Order in *Rahman v. Verizon Pennsylvania Inc.*, Docket No. F-02009165, MCI intends to make these business records a part of the evidentiary record.

4. For the reasons set forth below, MCI submits that the Company's business records are confidential and proprietary and, therefore, should be given appropriate treatment by the parties to this proceeding and the Commission.

5. The Commission's Regulation at 52 Pa. Code § 5.423(a) provides that a "protective order to limit the disclosure of . . . confidential information on the public record" may be issued by considering factors including, *inter alia*:

- (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.

6. MCI considers the business records from which its witnesses will testify to be proprietary and confidential. The records contain customer specific information that may be subject to identity theft. Additionally, the records contain Company service information that is not available to the public through any means. The information contained in MCI's business records may be valuable to its competitors if permitted to be placed in the public record. 52 Pa. Code § 5.423.

7. In considering whether a Proprietary Order should issue, 52 Pa. Code § 5.423(a)(5) requires the Commission to consider other statutes or regulations dealing with the disclosure of information. The Commission has promulgated regulations at 52 Pa. Code §§ 63.131-63.137, which require that telephone companies such as MCI treat customer information and communications as confidential, and MCI is required to adopt appropriate procedures for safeguarding the confidentiality of customer information. 52 Pa. Code § 63.135(5). Customer information is defined broadly in 52 Pa. Code § 63.132 as follows:

Customer information – Information regarding a customer of a telephone company or information regarding the services or equipment ordered and used by the customer. The term includes a person's name, address and telephone number, occupation, information concerning toll calls, collect calls and third-party billed calls, local message detail information and information concerning services ordered or subscribed to by a customer. The term also includes bills, statements, credit history, toll records whether on paper, microfiche or electro magnetic media; computer records; interexchange carrier selection, service problems and annoyance call records.

Commission regulations at 52 Pa. Code §§ 63.131(b) and 63.135(2)(v) indicate that a customer can authorize the release of customer information and arguably, a customer has waived confidentiality as to the name, address and telephone number upon the public filing of a Formal

Complaint. However, in the instant case, Complainant has not waived the confidentiality of other customer information, which would undoubtedly be included in business records to be introduced during the course of this proceeding.

8. Limiting the disclosure of the business records to allow its use only in connection with this litigation will not frustrate the prompt, orderly and fair resolution of this proceeding, nor will it infringe upon Complainant's due process rights.

9. The potential harm to the customer of disclosure of customer information and competitive harm to MCI is substantial and outweighs any need for public disclosure of the business records.

10. For the foregoing reasons, entry of a Protective Order is necessary to protect public disclosure of the business records provided by MCI and is consistent with the Commission's Regulations. Therefore, good cause exists for entry of such an Order.

11. MCI requests that Your Honor issue an Order granting proprietary treatment to the business records described above and that the Order prohibit disclosure of records and the information contained therein to any person except as provided by the Order.

12. Further, MCI requests that the business records be sealed and not be made available for public inspection in the Commission's files. The Order should restrict the use of the information except in testimony, written advocacy, and initial or final decisions issued by the Commission in this particular proceeding and, when so used, should require that the document be designated as containing proprietary and confidential information, and be sealed and filed separately from the public record.

WHEREFORE, MCI Communications Services, Inc. respectfully requests that Your Honor enter the attached Protective Order.

Respectfully submitted,



Amy A. Whitney
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Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for MCI Communications Services, Inc.

Dated: August 14, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service By First Class U.S. Mail

Karen Drake
6238 Clearview Street
Philadelphia, PA 19138

Honorable Marlane R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

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SECRETARIAT OF COMMONWEALTH

Dated this 14th day of August, 2007.



Amy A. Whitney

Counsel for MCI Communications Services, Inc.

non-complainant customers, MCI methods and procedures, MCI manuals, MCI customer service agent scripts and/or job aids, and other competitively sensitive business information.

3. 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 for Proprietary Information inasmuch as the report folders are not subject to public disclosure. To the extent that 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 Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information shall be made available to parties, their counsel of record in this proceeding, and their consultants, subject to the following:

(a) To the extent required for participation in this proceeding, a party may afford access to Proprietary Information made available by another party ("the producing party") to the party's consultants, provided that such consultant has not previously violated the terms of a recent Commission Protective Order and executes **Appendix A** to this Protective Order before reviewing such information, and provided that the consultant is not an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. A consultant will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both.

(b) No other persons may have access to Proprietary 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 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. The Proprietary Information may not be publicly disclosed.

5. Prior to making Proprietary Information available to any person as provided in Paragraph 4(a) of this Protective Order, the party shall deliver a copy of this Protective Order to such person and shall receive a written acknowledgement from that person in the form attached to this Protective Order and designated as **Appendix A**. A party 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 Information by affixing an appropriate proprietary stamp or similar designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

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

8. Parts of any record in this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective 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).

9. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the

production of Proprietary Information on any proper ground, including but not limited to, irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary, the party claiming that the information is Proprietary 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 Information, shall be immediately returned upon request to the party furnishing such Proprietary Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been destroyed.

Marlane R. Chestnut
Administrative Law Judge

Dated: _____

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KAREN DRAKE,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-20077785
	:	
MCI COMMUNICATIONS SERVICES, INC.,	:	
	:	
Respondent	:	

TO WHOM IT MAY CONCERN:

The undersigned has read and understands the Protective Order that deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned is not precluded from being provided access to Proprietary Information by virtue of Paragraph 4(a) of the Protective Order.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATED: _____