**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :

America for a Public, On-the-Record Commission :

Investigation of the Safety, Adequacy, and : P-2015-2509336

Reasonableness of Service Provided by Verizon :

Pennsylvania, LLC :

**ORDER**

**GRANTING PETITION FOR PROTECTIVE ORDER**

On October 21, 2015, the Communications Workers of America (CWA) filed with the Pennsylvania Public Utility Commission a Petition requesting that the Commission open an investigation into the safety, adequacy and reasonableness of service provided by Verizon Pennsylvania, LLC (Verizon). The Petition was docketed at P-2015-2509336. In its Petition, CWA indicated that it is the authorized bargaining unit for approximately 4,700 employees of Verizon who are directly responsible for operating and maintaining the physical facilities that are used to provide telecommunications service to the public. CWA averred that it conducted an investigation of the conditions at Verizon under which its members work and the investigation showed deferred maintenance or other indications that Verizon should be increasing its budget for certain repair and maintenance. CWA further averred that there are “numerous instances throughout the Commonwealth of physical plant in an appalling state of disrepair that pose a safety hazard to utility employees and the public.” CWA asked that the Commission conduct an in-depth in-person examination and audit of Verizon records and physical plant throughout Verizon’s service areas, adopt detailed findings of fact, order Verizon to take specific, detailed remedial actions and impose substantial civil penalties on Verizon for repeated and willful failure to comply with the Public Utility Code, Commission regulations and standard industry practices for protecting the safety of the public and utility employees. CWA provided specific examples in support of its Petition.

On November 3, 2015, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement.

On November 10, 2015, Verizon and Full Service Network (FSN) filed separate Answers to CWA’s Petition.

Also on November 10, 2015, the Small Business Advocate (OSBA) filed a Notice of Appearance, a Notice of Intervention and a Public Statement.

Additional pleadings and filings in the form of letters have been filed at this docket.

On February 16, 2016, the Commission issued a Hearing Notice establishing an Initial Prehearing Conference for this case for Friday, March 18, 2016 10:00 a.m. in Hearing Room 5 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Conference Order was issued dated February 18, 2016.

The Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention on February 24, 2016.

The Initial Prehearing Conference convened on March 18, 2016 as scheduled. During the Initial Prehearing Conference, various procedural matters were discussed. Most notably, extensive discussion was held regarding a procedural schedule for this case. A Scheduling Order was issued dated March 22, 2016.

In response to the Scheduling Order, Verizon filed a Petition for Interlocutory Review and Answer to a Material Question on March 29, 2016. On April 8, 2016, CWA, Verizon, the OCA and I&E filed briefs in response to the Petition. On April 21, 2016, the Commission issued an Opinion and Order granting the Petition, answering each of the questions in the negative and returning the matter to the Office of Administrative Law Judge.

On May 6, 2016, Verizon filed a Motion to Hold the Proceeding in Abeyance and for a Continuance. On May 16, 2016, CWA filed an Answer opposing Verizon’s Motion. By email dated May 17, 2016, the parties were informed that a ruling on Verizon’s Motion would be delayed until a discussion was held at the Further Prehearing Conference. The parties were encouraged to work amongst themselves to resolve the remaining procedural issues.

On May 19, 2016, Verizon submitted a Motion for Admission of Jennifer L. McClellan *pro hac vice*.

On May 25, 2016, counsel for CWA indicated via email that CWA and Verizon have reached an agreement regarding the procedural schedule for this proceeding. Scheduling Order #2 was issued on May 26, 2016 memorializing the procedural schedule agreed to by the parties and granting Verizon’s motion for admission *pro hac vice*.

On July 8, 2016, Verizon submitted a Petition for Protective Order. In the Petition, Verizon stated that discovery in this case may require the production of proprietary and competitively sensitive information, including customer proprietary information, and that Verizon will be substantially harmed if such information were filed and or provided to the parties without restriction. Verizon attached a proposed protective order to its motion and argued that adoption of that 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 case. By email on July 12, 2016, counsel for CWA indicated that the parties were attempting to resolve the concerns raised by regarding the Petition Verizon and requested the 20-day response period to do so.

On July 28, 2016, Verizon submitted a revised Petition for Protective Order that has been agreed upon by all parties to the proceeding. Verizon submitted the revised Petition noting that the parties will not be filing an answer to the Petition.

The Petition for a Protective Order will be granted because it is unopposed.

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 addition, the interests of keeping material proprietary or confidential must be viewed in light of the Pennsylvania Right to Know Law. 65 P.S. § 67.102.

In this case, as Verizon noted in the original petition, the company anticipates that discovery in this case may require production of proprietary and competitively sensitive information, including but not limited to information that is either specified as confidential by its terms or pertains to business practices, operations or financial matters that are commercially sensitive or that are ordinarily considered and treated as confidential by the producing party. Verizon added that, in order to evaluate whether to enter a protective order, the Commission must balance the potential harm to the producing party of disclosure of the information against the public’s interest in free and open access to the administrative process. Verizon added that it would be substantially harmed if proprietary and confidential information about its business plans were filed or provided to parties without restriction because it would then become public information available for review by actual or potential competitors of Verizon. Verizon submitted that adopting the protective order attached to the petition 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 case.

As such, the Petition for a Protective Order will be granted. The parties have demonstrated that the potential harm 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. The parties have also demonstrated that the least restrictive means which will provide the necessary protection from disclosure will be applied. The Petition for Protective Order balances the Commission regulations that provide that Commission records may be accessed by the public with the need to keep such information protected. This is true, in part, because of the public interest in promoting the free exchange of information in this proceeding and because the Petition for Protective Order applies the least restrictive means of limitation which will provide the necessary protection from disclosure. The Petition for Protective Order is consistent with the Commission’s regulations.

Furthermore, the Petition for a Protective Order is unopposed.

As such, the Petition for a Protective Order will be granted because it is consistent with applicable Commission regulations and unopposed.

ORDER

THEREFORE,

IT IS ORDERED:

1. This Protective Order, submitted by Verizon Pennsylvania 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, network performance, 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 no expert or consultant participating in this proceeding shall use on behalf of any other client, disclose to any other client or third party, or disclose in any other proceeding, any proprietary, confidential, or highly confidential information received as a result of their participation in this proceeding.

b. Highly Confidential Information. Proprietary Information or other material designated as “Highly Confidential” shall be produced for inspection only by a party's counsel of record at the producing party’s office or another mutually agreed location. 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. For purposes of this paragraph, outside expert witnesses engaged by the Office of Consumer Advocate, the Office of Small Business Advocate or the Bureau of Investigation and Enforcement who qualify under the provisions of paragraph 4(a)(i) and sign Appendix A to this Order shall be treated as counsel of record with regard to the production of Highly Confidential Information. For purposes of this paragraph, material designated as “Highly Confidential” may be produced for inspection to counsel of record for the Office of Consumer Advocate, the Office of Small Business Advocate or the Bureau of Investigation and Enforcement by sending physical or electronic copies to the receiving party’s location subject to the limitations of this paragraph regarding further use or disclosure of such material.

c. Notwithstanding Paragraphs 4(a) and (b) above, Proprietary Information and Highly Confidential Information shall be produced for inspection to counsel of record for the Communications Workers of America at the producing party’s office or another mutually agreed location. Counsel of record may request the producing party to provide an index of the Proprietary or Highly Confidential Information prior to or in lieu of producing the material for inspection. 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. For purposes of this paragraph, Susan M. Baldwin, expert witnesses engaged by the Communications Workers of America, shall be treated as counsel of record with regard to the production of Proprietary and Highly Confidential Information if she qualifies under the provisions of paragraph 4(a)(i) and signs Appendix A to this Order. Material designated as “Proprietary” or “Highly Confidential” may be produced for inspection to Ms. Baldwin by sending physical or electronic copies to her location subject to the limitations of this paragraph regarding further use or disclosure of such material.

d. 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 pursuant to Section 102 (“Public Record”) of the Pennsylvania Right to Know Law (“RTKL”). 65 P.S. § 67.102. Additionally, it is understood that some of the Proprietary Information or Highly Confidential Information shall be deemed to constitute trade secret or confidential proprietary information within the meaning of Sections 102 and 708(b) (11). *Id.* §§ 67.102, 67.708(b) (11), and other information is exempt under Section 708(b)(6) as personal identification information.

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.

Dated: August 3, 2016

Joel H. Cheskis

Administrative Law Judge

**P-2015-2509336 – PETITION OF COMMUNICATIONS WORKERS OF AMERICA - FOR A PUBLIC, ON-THE-RECORD COMMISSION INVESTIGATION OF SAFETY, ADEQUACY AND REASONABLENESS OF SERVICE PROVIDED BY VERIZON PENNSYLVANIA LLC.**

***Revised 7/7/16***

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APPENDIX A

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :

America for a Public, On-the-Record :

Commission Investigation of the Safety, : Docket No. P-2015-2509336

Adequacy, and Reasonableness of Service :

Provided by Verizon Pennsylvania LLC :

**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 |