

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3215

(202) 326-7900

FACSIMILE:
(202) 326-7999

May 9, 2018

Via ECFS and Email

Ms. Marlene H. Dortch
Office of the Secretary
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: ***CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC v. Verizon Services Corp., et al., Docket No. 18-33, File No. EB-18-MD-001***

Dear Ms. Dortch:

Verizon moves to strike Paragraphs 4-7 and 16-20 of Robert Montenegro's April 23, 2018 Reply Declaration ("Montenegro Reply Decl."), or in the alternative to compel the production of the documents on which he purports to rely in those Paragraphs.¹ Throughout his Reply Declaration, Mr. Montenegro characterizes the "negotiations and business proposals exchanged between CenturyLink and Verizon" about the 2014 Service Agreement.² He then discusses particular alleged proposals at length and asserts that certain negotiation documents support CenturyLink's view of the contract.³ But he expressly declines to produce or attach the documents on which he relies for his supposed characterizations of the parties' negotiations.⁴

¹ Verizon files this motion pursuant to 47 C.F.R. §§ 1.727(a) and 1.729(h). "CenturyLink" refers to complainants CenturyLink Communications LLC f/k/a Qwest Communications Company, LLC, together with its subsidiaries and affiliates. "Verizon" refers to defendants Verizon Services Corp; Verizon Virginia LLC; Verizon Washington, DC, Inc.; Verizon Maryland LLC; Verizon Delaware LLC; Verizon Pennsylvania LLC; Verizon New Jersey Inc.; Verizon New York Inc.; Verizon New England Inc.; Verizon North LLC; and Verizon South Inc.

² Montenegro Reply Decl. ¶ 4.

³ See, e.g., *id.* ¶¶ 5-7, 18.

⁴ See *id.* ¶ 5 n.3.

Ms. Marlene H. Dortch

May 9, 2018

Page 2

These Paragraphs in Mr. Montenegro's Reply Declaration violate the Commission's rules. The Commission requires a complainant to "attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply."⁵ Further, the Bureau has stated that section 1.726(e) in this case requires CenturyLink to "attach *as exhibits to its pleadings*" all documents "upon which it relies . . . in its pleading[s]."⁶ Mr. Montenegro's Reply Declaration violates that requirement by arguing at length about documents that CenturyLink failed to timely attach to its reply papers.⁷ The Bureau should strike the offending Paragraphs in his Reply Declaration for that reason alone.⁸

Mr. Montenegro's suggestion that he withheld the relevant documents "due to confidentiality concerns" lacks merit.⁹ For one thing, neither section 1.726(e) of the Commission's rules nor the Bureau's February 9 Letter Ruling creates any exception for confidential documents. For another, the Bureau has entered an extensive Protective Order that provides sufficient protection for any sensitive documents that CenturyLink wishes to designate as Confidential or Highly Confidential.¹⁰ Both parties have already produced a wealth of sensitive information subject to that Protective Order, and CenturyLink offers no justification for its failure to use the same process to attach the documents on which Mr. Montenegro relies.

CenturyLink's clear and unjustified violation of the Commission's rules warrants striking the relevant Paragraphs in Mr. Montenegro's Reply Declaration in their entirety.¹¹ If the Bureau

⁵ 47 C.F.R. § 1.726(e).

⁶ Letter from Lisa Saks, FCC, to Brendon Fowler, counsel to CenturyLink, and Curtis L. Groves, Verizon at 2 (Feb. 9, 2018) ("February 9 Letter Ruling") (emphasis added).

⁷ See Montenegro Reply Decl. ¶¶ 4-7, 16-20.

⁸ See Order, *Core Commc'ns, Inc. v. Verizon Md. Inc.*, 19 FCC Rcd 1935, ¶ 9 (EB 2004) (noting that the "Commission has broad authority to take strong measures to redress problems in the discovery process," including to "refuse to consider otherwise relevant evidence [that] could and should have been produced earlier in the proceeding").

⁹ Montenegro Reply Decl. ¶ 5 n.3.

¹⁰ See Letter from Lisa Saks, FCC to Brendon Fowler, counsel to CenturyLink, and Curtis L. Groves, Verizon (Feb. 9, 2018).

¹¹ See, e.g., Memorandum Opinion & Order, *Maritime Commc'ns/Land Mobile, LLC*, 29 FCC Rcd 12856, ¶ 1 n.1 (2014) (granting motion to strike pleading that went "beyond the scope of [filer's] authorized participation"); Order, *Staton Holdings, Inc. v. MCI Worldcom Commc'ns, Inc.*, 19 FCC Rcd 8699, ¶ 14 (EB 2004) (granting motion to strike letter that was "filed in violation of the Commission's formal complaint rules and procedures"); *Himmelman v. MCI*

Ms. Marlene H. Dortch

May 9, 2018

Page 3

declines to do so, however, it should in the alternative order CenturyLink to produce all documents relevant to Mr. Montenegro's characterizations of the parties' negotiation process.¹² At a minimum, the production of such documents is necessary for Verizon to evaluate – and, if necessary, fully respond to – Mr. Montenegro's arguments about the contract negotiations. As Verizon has already explained, many of Mr. Montenegro's assertions about the negotiation process are wrong.¹³ The Bureau should not allow him to contradict Verizon's description of that process based on vague allusions to documents that CenturyLink refuses to produce.

Respectfully submitted,

/s/ Joshua D. Branson

Joshua D. Branson

Cc: Marc S. Martin, Perkins Coie
Brendon P. Fowler, Perkins Coie
Adam L. Sherr, CenturyLink Communications, LLC

Commc'ns Corp., 17 FCC Rcd 5504, ¶ 19 n.56 (2002) (granting motion to strike filing that included claim that “should have been raised in earlier filings”).

¹² See 47 C.F.R. § 1.729(h) (“[t]he Commission may allow additional discovery, including, but not limited to, document production”).

¹³ See generally Decl. of Christopher A. Alston ¶¶ 3-25 (filed Apr. 12, 2018).