

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
NTCH, Inc.,)
)
Complainant)
)
v.)
)
Cellco Partnership d/b/a Verizon Wireless)
)
Defendant)

File No. EB-13-MD-006

NTCH CHALLENGE TO VERIZON DISCOVERY DESIGNATION

NTCH, Inc. (“NTCH”), by counsel, pursuant to the proposed Protective Order in the above captioned proceeding (“Protective Order”), hereby respectfully submits this challenge to the designation by Cellco Partnership d/b/a Verizon Wireless, LLC (“Verizon”) of certain information as “Highly Confidential” in its Response to Interrogatories. Prior to the filing of this Challenge, NTCH contacted Verizon to attempt to resolve this dispute without the need for FCC intervention but was unable to do so.

NTCH acknowledges that the information produced under seal by Verizon should remain confidential unless the Commission changes its current policy on transparency of rates.¹ However, Verizon’s designation of this material as “Highly Confidential,” rather than “Confidential,” is incorrect and, for the reasons set forth below, this information should instead be designated as “Confidential.”

¹ NTCH is currently reviewing the terms of the Net Neutrality Order regarding transparency of rates to determine whether the new transparency requirement extends to roaming rates.

The primary distinction between information designated as “Confidential” and that designated as “Highly Confidential” is that, under the terms of the proposed Protective Order, the latter may not be shared with employees of NTCH who are involved in business negotiations with Verizon over roaming rates.² Verizon has justified this designation by arguing that allowing “business people” at NTCH to access the information would give NTCH “a significant competitive advantage and/or an advantage in negotiations over Verizon.”³ NTCH disagrees.

First, it appears that Verizon is objecting to the review by NTCH’s personnel of the rate information in the context of this very proceeding. The premise of the Commission’s Declaratory Ruling in response to T-Mobile’s petition is that rates offered by carriers to retail customers and MVNOs, among others, are directly relevant to the establishment of commercially reasonable rates. The same is even more true of rates that under Title II must be not unreasonably discriminatory. In other words, the rates which emerge from this proceeding will necessarily be informed by, and related to, the rates now produced by Verizon. NTCH here cannot be left in the position of not knowing how the rates stack up against rates offered to others and how reasonable they are in comparison to rates offered to others.

Of course, further negotiations would be impossible without access to this information by NTCH. To the extent that anyone gets a “competitive advantage” in this context, it is *Verizon* which is trying to hold all the cards in the negotiation without showing those cards necessary for NTCH to make an informed offer. Making the information available to NTCH would simply put the parties on an even footing in assessing what rates are reasonable.

Regardless of the lack of even a theoretical competitive advantage from this information, the Commission must not allow the potential of such an advantage to affect its judgment on

² See Protective Order, ¶ 6 and 8.

³ Verizon Proposed Protective Order Transmittal Letter, sent April 24, 2015.

access to information. The terms of the proposed Protective Order make clear that the information contained in the interrogatory responses may only be used for purposes of the Complaint⁴, and NTCH intends to fully abide by that restriction. While some of the individuals involved in the prosecution of this Complaint may be involved in business negotiations, this is inevitably the result of NTCH's small size; it does not have enough staff to fully segregate these two activities. NTCH will not share this information with individuals, even within the company, who are not involved in the prosecution of this Complaint.

Perhaps even more importantly, the information denominated by Verizon as "Highly Confidential" is not really in that category. Highly Confidential information usually includes material such as strategic planning memos, plans for service rollouts, internal information regarding products and services, customer information and lists, and other information that would help a competitor to anticipate the disclosing party's next moves and use that knowledge for competitive advantage. None of the information at issue here is remotely within that category.

In fact, Section 211 of the Communications Act would ordinarily (but for the 1994 Order forbearing from enforcement of that section⁵) require rate information like that at issue here to be made publicly available as a matter of course. And until most telecom traffic was de-tariffed, rate information was mandatorily disclosed to everyone by filing with the Commission. Obviously the law would not require companies to routinely disclose rate information if the material disclosed constituted "highly confidential" information. Nor did the Commission, in granting forbearance, declare this information confidential. To now treat routine rate

⁴ Protective Order at ¶ 11.

⁵ *Second Report and Order in Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411 at ¶ 181 (1994).

information as highly confidential would directly contradict the statutory premise that such information is presumptively *not* confidential at all.

NTCH also believes that this designation undermines its ability to fully prosecute its complaint in that it restricts the access of those with the most expertise about the wireless market realities and the relevance of the information to roaming negotiations, namely, NTCH operational personnel. While NTCH's Counsel is relatively knowledgeable about the issues facing smaller carriers involved in roaming negotiations with Verizon, NTCH's operational personnel can put the rate information in the context of different service situations to evaluate how or why a particular rate might or might not be reasonable. This designation, if it is allowed to stand, would prevent NTCH personnel from being fully involved in the preparation of crucial aspects of briefs prepared using the discovery materials, and will be unable to advise NTCH Counsel on how to utilize this information in those pleadings, given the overall context of the wireless industry. It is *this* disadvantage, not the theoretical advantage in future business negotiations, which should be the most concerning to the Commission, as its primary responsibility here is to ensure the fairest proceeding possible and the best result.

For the reasons stated herein, NTCH asks that the Commission determine that all information designated by Verizon as "Highly Confidential" in their Response to Interrogatories, should instead be designated as "Confidential."

Respectfully submitted,



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April 30, 2015

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CERTIFICATE OF SERVICE

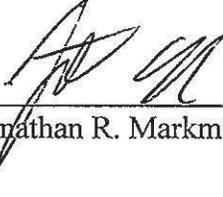
I, Jonathan R. Markman, do certify that I sent the foregoing Challenge to Verizon
Discovery Designation to be delivered, on this 30th day of April, 2015, via email to:

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