

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

In the Matter of	)	
	)	
NTCH, Inc.,	)	EB Docket No. 14-212
	)	File No. EB-13-MD-006
Complainant,	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless,	)	
	)	
Defendant.	)	

**OPPOSITION OF VERIZON WIRELESS**

The Bureau should deny NTCH’s challenge to Verizon’s Discovery Designation.<sup>1</sup> NTCH opposes Verizon’s designation of sensitive roaming rate and other information provided in response to interrogatories as “highly confidential.” The designation was appropriate. This is competitive data that includes rates and traffic volumes Verizon receives from and pays to dozens of other carriers – some of which (including Verizon) compete directly with NTCH. The Commission has consistently treated such data as highly confidential. Allowing NTCH business personnel access to this data would give NTCH a significant competitive advantage over other carriers and would impair Verizon’s business.

DISCUSSION

1. Verizon appropriately designated roaming rate and other information as “highly confidential.” This data includes: (1) information about the rates and rate structure for

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<sup>1</sup> NTCH Challenge to Verizon Discovery Designation, EB Docket No. 14-212, File No. EB-13-MD-006 (Apr. 30, 2015) (“NTCH Challenge”).

Verizon’s LTE in Rural America (“LRA”) program; (2) information about the rates, terms and conditions in an agreement with a Verizon reseller; and (3) information about roaming rates, traffic volume, and pricing terms and conditions with dozens of other carriers. The term “highly confidential information” is defined in the Proposed Protective Order (which is nearly identical to protective orders used by the Commission in other cases) as confidential information “which the Submitting Party believes in good faith would materially impair its business if disclosed to personnel employed by the Reviewing Party.”<sup>2</sup> This information qualifies as highly confidential because Verizon competes head-to-head for roaming and wholesale business in all of the markets where NTCH operates and may operate in the future. If NTCH business employees were to gain access to this information they could use it to establish pricing and rate structures designed to take roaming and resale business away from Verizon. For example, if a reseller wanted to enter a market where NTCH operates, NTCH could use information about Verizon’s lowest resale rates to design a wholesale offer. Likewise, NTCH could use the roaming rate information to win roaming business from Verizon.

The potential for competitive harm is not limited to Verizon. The roaming and reseller rate information Verizon seeks to protect provides insight into the cost structures of other carriers that use Verizon’s network. It includes roaming rate and traffic volume information associated with those carriers. NTCH personnel could use the information to compete with those entities. In fact, for this reason even within Verizon the company protects information about its resale customers from disclosure to Verizon employees on the retail side of its business.

Verizon is not aware of any circumstance in which the Commission has denied highly confidential protection for information such as this. For example, the Wireline Competition

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<sup>2</sup> Letter from Tamara L. Preiss, Verizon to Rosemary McEnery, Deputy Chief, Market Disputes Resolution Division, EB Docket No. 14-212; File No. EB-13-MD-006 (Apr. 24, 2015) (attaching a proposed Protective Order (“Proposed Protective Order”) at Section 1.d.

Bureau recently adopted a Special Access Protective Order covering information submitted in response to its special access data request.<sup>3</sup> That order, like the Proposed Protective Order submitted in this proceeding, prevents information designated as highly confidential from being viewed by business employees of a competitor.<sup>4</sup> The categories of information that may be designated as highly confidential include the rates associated with channel terminations or transport facilities, and terms of non-tariffed agreements with an ILEC – information analogous to that which Verizon seeks to protect.<sup>5</sup> In the roaming context, the Commission has already considered and rejected a request to make roaming agreements public, finding that such agreements were confidential and that giving carriers access to their competitors’ prices could restrict competition and encourage carriers to maintain artificially high prices.<sup>6</sup>

2. None of NTCH’s arguments challenging Verizon’s designation has merit. Each of NTCH’s arguments is addressed briefly below.

*Relevance of the information.* NTCH claims the information Verizon seeks to protect is relevant to determining whether roaming rates Verizon offered to NTCH are reasonable.<sup>7</sup> This is correct – but the argument misses the point. In designating the information as highly confidential, Verizon is not challenging whether the information is relevant. In fact, Verizon agrees that some of this information – *i.e.*, the roaming rates Verizon pays to and receives from

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<sup>3</sup> Special Access for Price Cap Local Exchange Carriers, *Order and Data Collection Protective Order*, 29 FCC Rcd 11657. (WCB 2014) (“Special Access Protective Order”).

<sup>4</sup> *See id.*, 29 FCC Rcd at 11662 ¶ 13.

<sup>5</sup> *Id.*, 29 FCC Rcd at 11677-78.

<sup>6</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15839-40 ¶ 62.

<sup>7</sup> NTCH Challenge at 2.

other carriers – is relevant, and key, to this proceeding. But the question here is whether NTCH business personnel should have access to the information – and they should not.<sup>8</sup>

*NTCH's use of the information.* NTCH suggests that the information should be made available to its business personnel because those individuals would be required under the terms of the Proposed Protective Order to use the information only to prosecute its Complaint.<sup>9</sup> This argument likewise misses the point. The highly confidential designation, which has been used by the Enforcement Bureau in other complaints,<sup>10</sup> recognizes that it is nearly impossible for a business person not to use such information in his or her business dealings. NTCH business personnel cannot simply “forget” Verizon’s roaming rate and other information when making business decisions.

*Necessary expertise.* NTCH claims that it may not be able to effectively prosecute this case unless those NTCH employees with the expertise to evaluate the highly confidential roaming rate and other information are allowed access to it.<sup>11</sup> NTCH is not limited in its ability to prosecute its Complaint. To the extent NTCH requires expertise to evaluate the highly confidential information provided by Verizon, the Proposed Protective Order provides a means for hiring outside consultants who can see the information and prepare advocacy materials on behalf of NTCH. The only restriction is that these consultants agree to abide by the terms of the Proposed Protective Order.

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<sup>8</sup> Verizon has argued elsewhere that the LTE in Rural America and reseller rates are not relevant to determining whether Verizon’s offered roaming rates are commercially reasonable, *see* Statement of Facts of Verizon Wireless, EB Docket No. 14-212, File No. EB-13-MD-006 (Aug. 4, 2014) at 11, n 38, but Verizon produced these rates in response to the Bureau’s discovery order. The Bureau will determine the extent to which these rates have any probative value in determining the commercial reasonableness of Verizon’s offered rates.

<sup>9</sup> NTCH Challenge at 3.

<sup>10</sup> *See* Special Access Protective Order; *Worldcall Interconnect Inc. v. AT&T Mobility*, EB Docket No. 14-221, File No. EB-14-MD-011.

<sup>11</sup> NTCH Challenge at 4.

*Typical designations.* Finally, NTCH argues that highly confidential designations are typically limited to strategic planning documents, plans for service rollouts, customer information, and other similar information.<sup>12</sup> There is no basis for limiting Verizon's designation to particular document types, and NTCH cites no supporting authority or basis for doing so. Indeed, as discussed above, the Special Access Protective Order includes non-public pricing and contract terms among the recognized categories of highly confidential information.<sup>13</sup> The information designated by Verizon is appropriate because it satisfies the definition of highly confidential information in the Proposed Protective Order. It is also the kind of information the Commission affords highly confidential protection elsewhere.

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> Special Access Protective Order, 29 FCC Rcd at 11677-78.



**Certificate of Service**

I hereby certify that on this 7<sup>th</sup> day of May a copy of the foregoing “Opposition of Verizon Wireless” in EB Docket 14-212 was sent by US Mail and electronic mail to the following party:

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/s/

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