Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Federal-State Joint Board on Universal Service	CC Docket No. 96-45

REPLY COMMENTS OF VERIZON[1]

The record demonstrates that the quarterly wire center line count data that eligible carriers submit to the universal service fund administrator are exempt from disclosure under the Freedom of Information Act ("FOIA"), and that no purpose would be served by disclosing these data to the public.

Most commenters agree that the Commission should provide confidential treatment for these data.[2] Even AT&T, which argues that the line count data of the incumbent local exchange carriers do not deserve the same protection as the same information for carriers such as itself, agrees with Verizon that the incumbents' data should be released only for purposes of analysis of the Commission's proxy model, and then only pursuant to a protective order, as has been done successfully in the past. ***See***

[1] The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Bell Atlantic Corporation (including the telephone companies formerly affiliated with GTE Corp.), d/b/a Verizon Communications. A list of these companies is attached to this pleading.

[2] ***See*** Public Utility Commission of Texas, 3-4; SBC, 1-4; Anchorage Telephone Utility, 1-5; Bell Atlantic, 1-7; GTE, 1-6; ***see also*** Montana Public Service Commission, 1-2.

AT&T, 3, 6-7, n.11. Indeed, AT&T's argument that its own data are more sensitive than the data of the incumbent carriers is proof itself that release of the data would be competitively harmful. By definition, competitively sensitive data is the type that a company earnestly desires to shield from its competitors, but just as earnestly would like to obtain *from* its competitors. This information is competitively sensitive for *all* carriers in the market, and it is entitled to protection under FOIA.

A few of the state regulatory commissions argue that the data should not be protected, primarily because somewhat similar data is publicly disclosed by state regulatory commissions in a small number of states.[3] However, the data available from those states is often in different formats, and for different time periods.[4] The overwhelming majority of states have provided confidential treatment when they have required carriers to submit this type of information. The fact that a few states release similar information does not alter the fact that the specific data that the carriers submit to the universal service fund administrator each quarter meet the FOIA exemption and that public release of the information would serve no purpose.

Vermont, in particular, argues that release of these data would not meet the FOIA standard of causing competitive harm to the carriers, claiming that the availability of similar data from public and private sources has not caused any harm in the past.[5]

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[3] ***See*** Vermont Public Service Board, 3-5; New York Department of Public Service, 1-2; Regulatory Commission of Alaska, 2-3.

[4] ***See, e.g.***, Regulatory Commission of Alaska, 2 (line counts by village or city, not wire center); New York Department of Public Service, 1-2 (line counts by switch).

[5] ***See*** Vermont Public Service Board, 4.

However, the assumption that no harm has occurred is untenable, as all incumbent local exchange carriers have lost market share, and it is impossible to exclude the possibility that competitors were assisted in gaining customers through knowledge of the incumbent's demand in each area where such data were available. As noted by Verizon and others, a carrier need not demonstrate actual competitive harm in order to invoke the FOIA exemption. ***See, e.g.***, Bell Atlantic, 2 n.2; AT&T, 4. It is sufficient that there is a showing of actual competition and a likelihood that substantial competitive injury will result from disclosure. That standard is easily met here, considering the increasingly competitive nature of the local exchange market and the demonstration by several carriers of the competitive usefulness of demand data at the wire center level.

Vermont's argument that estimates of wire center line counts are available from a variety of private sources, as well as the Commission's own Hybrid Cost Proxy Model, does not refute the competitive sensitivity of these data. As Verizon and others demonstrated in the Commission's Universal Service proceeding, the line count estimates from private sources that the Commission incorporated in the proxy model are highly inaccurate at the wire center level, varying as much as 100 percent or more from

actual line counts.[1] The public availability of similar, but less accurate, data cannot be used to deny FOIA exemption for proprietary data. ***See, e.g.***, *Trans-Pacific Policing Agreement, et al., v. United States Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999). Actual line count data are competitively sensitive precisely because it is the best information available about a carrier's actual demand in each wire center.

Finally, Vermont's arguments that disclosure is necessary to achieve public policy goals has already been refuted. Disclosure of line counts for wire centers that do not receive high cost support is not necessary for administration of the fund or targeting of support, and parties seeking these data to validate the accuracy of the proxy model can do so pursuant to a protective order. ***See, e.g***., AT&T, 2-3; SBC, 3.

For these reasons, the Commission should continue to provide confidential treatment to the line count data that carriers submit to the administrator for wire centers

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[1] ***See, e.g.***, Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45, 97-60, *ex parte* letter from Bell Atlantic to Magalie R. Salas, Jan. 16, 1998. Even at the statewide level, the line count estimates that the Commission obtained from PNR Associates were so inaccurate that they had to be "trued up" to match the actual line counts from the carriers' ARMIS reports. ***See*** *Federal-State Board on Universal Service*, Tenth Report and Order, 14 FCC Rcd 20156, ¶ 61 (1999).

that do not receive high cost support.

Respectfully submitted,

By: _____
Joseph DiBella
1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-6350

Attorney for the Verizon
telephone companies

Of Counsel
Michael E. Glover
Edward Shakin

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The Verizon telephone companies are the affiliated local telephone companies of Bell Atlantic Corporation (d/b/a Verizon Communications), including the telephone companies formerly affiliated with GTE Corporation. These are:

Bell Atlantic-Delaware, Inc.
Bell Atlantic-Maryland, Inc.
Bell Atlantic-New Jersey, Inc.
Bell Atlantic-Pennsylvania, Inc.
Bell Atlantic-Virginia, Inc.
Bell Atlantic-Washington, D.C., Inc.
Bell Atlantic-West Virginia, Inc.
Contel of Minnesota, Inc.
Contel of the South, Inc.
GTE Alaska Incorporated
GTE Arkansas Incorporated
GTE California Incorporated
GTE Florida Incorporated
GTE Hawaiian Telephone Company Incorporated
GTE Midwest Incorporated
GTE North Incorporated
GTE Northwest Incorporated
GTE South Incorporated
GTE Southwest Incorporated
GTE West Coast Incorporated
The Micronesian Telecommunications Corporation
New England Telephone and Telegraph Company
New York Telephone Company