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Federal Communications Commission DA 01-2995

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of Verizon New Jersey Inc.,	)	CC Docket No. 01-347
et al., For Authorization To Provide	)	
In-Region, InterLATA Services	)	
In New Jersey	)	

PROTECTIVE ORDER

Adopted: December 20, 2001 **Released: December 20, 2001**

By the Common Carrier Bureau:

1. Documents submitted to the Commission in the course of section 271 proceedings may represent or contain confidential or proprietary information. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Common Carrier Bureau hereby enters this Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person.

(a) Stamped Confidential Documents. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

(b) Documents Submitted by the Department of Justice. Consistent with the District Court Opinion and Order filed April 11, 1996 in *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C.), a document submitted by the Department of Justice that bears any confidential

marking from proceedings in that case or was to be treated as confidential by agreement between the original submitting party and the Department of Justice shall be stamped as confidential upon its submission in the course of this section 271 proceeding. Regardless of whether the Department of Justice stamps such a document as confidential, however, any document that bears any confidential marking from proceedings in *United States v. Western Elec. Co.* will be deemed a "stamped confidential document" for purposes of this order. For the purposes of any document submitted by the Department of Justice in this section 271 proceeding, all references herein to the person or counsel that originally designated the document as confidential shall be deemed references to the entity, or its counsel, that originally submitted the document to the Department of Justice (if any), in addition to the Department of Justice.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment A for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C. location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 271 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

12. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

14. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

15. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

16. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 4(j) and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, the Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood,
Bureau Chief
Common Carrier Bureau

ATTACHMENT A

CC DOCKET NO. 01-347

I have received a copy of the Protective Order in CC Docket No.01-347. I have read the order and agree to comply with and be bound by the terms and conditions of this Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Protective Order.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE: