KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209
(202) 326-7900
FACSIMILE:
(202) 326-7999

October 21, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Access to Confidential Materials in WC Docket No. 04-313 and CC Docket No. 01-338.

Dear Ms. Dortch:

By letters dated October 6 & 7, 2004, the law firm of Kelley Drye & Warren, LLP, submitted "Acknowledgements of Confidentiality" on behalf of numerous individuals associated with the so-called Loop and Transport CLEC Coalition who seek access to Confidential Information filed in the above-referenced proceedings.[1] It does not appear that these letters were available on the Commission's Electronic Comment Filing System until October 20.[2] Pursuant to paragraph 8 of the Protective Order adopted in these proceedings,[3] the Verizon telephone companies (collectively, "Verizon") hereby object to the disclosure of Confidential Information to the following five individuals:

Anthony Abate, President and CTO, SniP LiNK, LLC
Paul Hanser, Senior Director, Net. Engineering, Eschelon Telcom, Inc.

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[1] *See* Letter from Stephanie A. Joyce, Kelley Drye & Warren, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket No. 01-338 (FCC filed Oct. 6, 2004); Letter from Stephanie A. Joyce, Kelley Drye & Warren, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket No. 01-338 (FCC filed Oct. 7, 2004).

[2] Although Dee May of Verizon was on the service list for both letters, she received the October 6 letter by mail only on October 19, and she has yet to receive the October 7 letter.

[3] Order, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 41-313; CC Docket No. 01-338, DA 04-3152 at Attachment A (FCC rel. Sept. 29, 2004) ("Protective Order").

Bonnie Johnson, Director of ILEC Relations, Eschelon Telecom, Inc.
Raymond Smith, Manager of ILEC Performance, Echelon Telecom, Inc.
Kim Isaacs, ILEC Relations Process Specialist, Eschelon Telecom, Inc.

The Protective Order provides that Confidential Information filed with the Commission in this proceeding may not be provided to persons "involved in competitive decision-making." Protective Order ¶ 2. The titles of these individuals indicate that they are likely to be involved in competitive decision-making, i.e., involved in advising or participating in business decisions made in light of the type of confidential information provided in this proceeding. *See* Protective Order ¶ 2.

As for Mr. Abate, it is all but inconceivable that a company's President and CTO would not be involved in competitive decisionmaking. Similarly, Mr. Hanser's title indicates that he is involved in decisions about network engineering and design, which are important business decisions. As for the remaining Eschelon executives, their titles indicate that they are involved in negotiations with ILECs regarding interconnection, collocation, etc. These, too, are plainly business decisions made in light of the type of competitively sensitive information provided in this proceeding.

Based on the information in the record, these individuals are not eligible to have access to Confidential Information pursuant to the Protective Order. Verizon objects to their having access to Confidential Information submitted in these proceedings without further clarification of their positions.

That some of these individuals may already have been given access to confidential information does not diminish the importance of restricting their access to such information on a going-forward basis. The Commission has previously ruled that a delay in filing objections does not render the objections invalid because the need to protect the integrity of the Commission's process for review of confidential information outweighs the procedural oversight that caused delay, especially where, as here, the party whose employees are blocked from viewing confidential information is represented by able outside counsel. *See* Order Ruling on Joint Objections, *GTE Corp., Transferor and Bell Atlantic Corp., Transferee* , 14 FCC Rcd 3364, 3365 n.6 (1999). In view of Verizon's objections, these individuals should cease to have access Confidential Information unless and until Verizon's objections are resolved in their favor by the Commission and, if appropriate, any court of competent jurisdiction. *See* Protective Order, ¶ 8.

Respectfully submitted,

/s/ J.C. Rozendaal

J.C. Rozendaal
Counsel for the Verizon telephone companies

cc: Stephanie A. Joyce, Kelley Drye & Warren, LLP (via facsimile and overnight delivery).