

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petitions of the Verizon Telephone)	
Companies for Forbearance Pursuant to)	WC Docket No. 06-172
47 U.S.C. § 160(c) in the Boston, New York,)	
Philadelphia, Pittsburgh, Providence, and)	
Virginia Beach Metropolitan Statistical)	
Areas)	

**SPRINT NEXTEL CORPORATION'S
COMMENTS IN SUPPORT OF MOTION TO DISMISS AND,
ALTERNATIVELY, OF MOTION TO COMPEL**

On behalf of its wireless, long distance, and competitive local exchange carrier (“CLEC”) operations, Sprint Nextel Corporation (“Sprint Nextel”) submits these comments in support of (1) the motion to dismiss filed by ACN Communications Services and sixteen other carriers, and (2) the motion to compel filed by Broadview Networks and three other carriers.¹ The two motions affect the petitions for forbearance filed by the Verizon Telephone Companies (“Verizon”) and assigned to this docket.² Those petitions seek sweeping deregulation of its incumbent local exchange carrier

¹ Public Notice DA 06-2056 (rel. Oct. 18, 2006). See Letter from Andrew Lipman, Bingham McCutchen, to Marlene Dortch, FCC (filed Oct. 16, 2006) (“Motion to Dismiss”); Letter from Brett Freedson, Kelley Drye, to Marlene Dortch, FCC (filed Oct. 11, 2006; amended Oct. 13, 2006) (“Motion to Compel”).

² On September 6, 2006, Verizon filed six petitions, labeled “Petition of the Verizon Telephone Companies for Forbearance,” for the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach metropolitan statistical areas (“the petitions”). The Commission, on its own motion, has deferred the comment cycle on the six petitions. Public Notice DA 06-2057 (rel. Oct. 18, 2006).

(“ILEC”) operations in six of the nation’s major MSAs. The motions raise very troubling questions about Verizon’s conduct in preparing and presenting the petitions, and in refusing to allow affected parties to review them.

The Motion to Dismiss

Verizon’s petitions rely very heavily on competitive information derived from E911 databases. The petitions show Verizon accessed, researched, and exploited the databases. In doing so, the seventeen moving parties argue, Verizon “brazenly” and “unlawfully” misappropriated customer and carrier proprietary network information belonging to competitors and competitors’ customers.³ Information provided to E911 databases is, they believe, perhaps the most sensitive information of any competitor: the identity and location of its customers. The movants also provide evidence that Verizon has likely violated interconnection agreements that expressly and consistently prohibit use of these sensitive data submissions for any purpose other than E911 administration.⁴

It is indeed ironic if, as it appears, “Verizon is misusing information it obtained *exclusively* by virtue of its position as the ILEC in an effort to demonstrate that it does not have market power as the ILEC.”⁵ It is even more disturbing to note that Verizon apparently used E911 database contents for the Virginia Beach MSA, a year and a half after it lost its privileged position as E911 administrator there. That does suggest, as the movants point out, that beyond simply misusing information within the five databases it

³ Motion to Dismiss at 1, 2.

⁴ Id. at 3-4.

⁵ Id. at 3.

currently administers, Verizon may have improperly retained Virginia Beach data for its own purposes.⁶

The motion also legitimately questions whether Verizon's conduct undermines confidence in the integrity and impartiality of E911 administrators nationwide – confidence essential to the effectiveness of the nation's emergency response systems.⁷ Moreover, Verizon's petitions are only the latest of many ILEC petitions filed under section 10 of the Act,⁸ and more ILEC petitions may follow in the years ahead. The industry, state commissions, and the public will want to know whether the Commission believes Verizon's use of E911 data information here is somehow permissible.

The motion also points out that Verizon's declarations refer to competitive information subject to protective order in the Verizon-MCI merger proceeding.⁹ They signal that Verizon personnel reviewed and analyzed that confidential information while fashioning these petitions. The Verizon-MCI protective order, however, clearly directed that:

Persons obtaining access to Confidential information ... under this Protective Order shall use the information solely for the preparation and conduct of this license transfer proceeding ... and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, *shall not use* such documents or information for *any* other purpose, *including without limitation* business, governmental, or commercial purposes, or in other administrative, *regulatory or judicial proceedings*.¹⁰

⁶ *Id.* at 2. These facts inevitably raise questions about whether Verizon has misused, or is now misusing, other E911 databases it administers elsewhere in the country.

⁷ *Id.* at 4-5.

⁸ 47 U.S.C. § 160.

⁹ Motion to Dismiss at 5-6.

¹⁰ Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Order Adopting Protective Order, WC Docket No. 05-75, DA 05-647 (rel. Mar. 10, 2005) at 3 (emphasis added).

The Commission cannot yet know the full extent to which Verizon has distributed and misused that information. The circumstances do suggest, however, that Verizon has likely violated the Commission's order in selectively exploiting that record while preparing the six petitions.

The movants argue that Verizon's violations were "clearly knowing and intentional."¹¹ When parties that had signed the protective order requested fully nonredacted copies of the filings, Verizon refused. It withheld key information on grounds that it was "CLEC and customer proprietary information" that it was under an obligation not to disclose to third parties.¹² Yet Verizon disclosed that information to its own personnel to use. In fact, the Verizon declarant authoring its E911 conclusions describes his work as "support[ing] the development of key marketing strategies,"¹³ a role that ordinarily would disqualify him from seeing competitors' information under any protective order. Moreover, as the motion points out, the apparently misused "information runs throughout the entirety of the petitions," such that the Commission cannot hope somehow "to segregate the tainted from the non-tainted evidence in Verizon's filing."¹⁴

Even apart from whether Verizon has unlawfully misappropriated confidential data, it is an open question whether the data Verizon used is reliable. "Even if Verizon were now to grant other parties access to the selected information that *it* extracted from

¹¹ Motion to Dismiss at 6.

¹² Letter from Sherry Ingram, Verizon, to Patrick Donovan, Bingham McCutchen (Sept. 6, 2006). A copy was submitted in this docket with a letter from Joseph Jackson, Verizon, to Marlene Dortch, FCC (filed Sept. 26, 2006).

¹³ Petition, Att. A (Decl. of Quentin Lew, Judy Verses, and Patrick Garzillo) at ¶ 3.

¹⁴ Motion to Dismiss at 6.

the databases,” it would remain the only party that was able to work with the original source data.¹⁵ Because no other party can expect to have access to the underlying sources, it is impossible for Verizon’s evidentiary claims to be truly vetted.¹⁶ For that reason alone, the Commission could disregard the data. That is especially true when the party presenting it may have acted unlawfully in selectively compiling data from privileged sources available to no one else. Without that data, the petitions lack any sufficient support to go forward.

For all these reasons, and in light of the seriousness of the issues involved, Sprint Nextel agrees that the petitions should be dismissed. The Commission should refer the matter to the Enforcement Bureau for investigation. With the lawfulness of Verizon’s conduct in doubt, with the accuracy and legitimacy of its evidence uncertain, and with a statutory clock otherwise running, the Commission should not leave the petitions pending, but should deny them on procedural grounds until the circumstances of Verizon’s conduct have been thoroughly and appropriately reviewed. If the Commission concludes that Verizon’s conduct was improper, however, it should simply deny the petitions with prejudice on that ground.

The Motion to Compel

If the Commission does not act promptly to dismiss Verizon’s petitions, the Commission must grant the motion to compel filed by Broadview and three other

¹⁵ Id. at 7.

¹⁶ Verizon also failed to provide information by wire center, despite the Commission’s insistence on granularity in the *Qwest Omaha Order*. Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha MSA, 20 FCC Rcd 19415 at ¶ 69 n.186 (“reject[ing] the idea of measuring facilities-based coverage on an MSA basis,” because “[u]sing such a broad geographic region would not allow us to determine precisely where facilities-based competition exists”).

carriers. Indeed, the Commission must do more than merely grant the motion as filed by the four, jointly-filing parties. It must ensure *all* affected parties have the same, unfettered access to complete and nonredacted copies of Verizon's submissions, subject only to the provisions of the Commission's Protective Order previously issued in this proceeding.¹⁷ The movants are plainly right that "[t]he public interest demands that all parties impacted by the Verizon Petitions have a meaningful opportunity to comment on whether Verizon's forbearance requests in fact justify relief."¹⁸

Verizon advised interested parties, including Sprint Nextel, that it would not provide fully nonredacted copies of its petitions and declarations even to individuals under the Protective Order. It refused to disclose its data on competitors, except in aggregated form, because the information is "CLEC and customer proprietary," which it said could never be released without each affected carriers' consent.¹⁹ Yet, as the seventeen carriers seeking dismissal point out, if the data is proprietary to others, it is doubtful whether Verizon has made any legitimate or lawful use of the data.

Beyond this, however, as the motion explains, Verizon has "unilaterally restricted the scope of its disclosure."²⁰ Verizon claims its mass market retail, business and enterprise, and wholesale markets have suddenly become fully competitive in these six MSAs. But it has refused to provide interested parties any access to key data that it pretends would support its deregulatory demands. Leaving aside whether Verizon has unlawfully abused its favored ILEC position to manufacture its "evidence" -- and leaving

¹⁷ Protective Order, DA 06-1870 (rel. Sept. 14, 2006).

¹⁸ Motion to Compel at 6.

¹⁹ Id. at 5.

²⁰ Id. at 2.

aside whether that data, as manipulated by Verizon, is even accurate -- there is nothing in the Protective Order that entitles Verizon to deny covered parties full and timely access to *any* content of its submissions in this docket.

Certainly, Verizon has pointed to nothing in the Protective Order that would justify its refusal. The movants explained, “[t]he Protective Order, on its face, applies to *all* privileged or confidential information submitted in this proceeding, and does not exempt from disclosure *any* information included in the Verizon Petitions and accompanying materials on which the Commission ultimately may rely.”²¹ Remarkably, despite having many months to prepare the petitions, and surely anticipating that this critical redacted information would be sought, Verizon apparently never even bothered to seek any special Commission treatment for the information before adoption of a standard Protective Order. Instead, Verizon assumed that, as the ILEC, it could access, manipulate, and exploit for its own purposes proprietary information belonging to others, but could not disclose it even under the Protective Order, precisely because the data belongs to others.

The Commission has an obligation to ensure that, before acting on any petition or rulemaking, the public has ample opportunity to learn of, to examine, and to comment on any submissions to the record. The Administrative Procedure Act²² demands integrity in these proceedings – far more integrity than Verizon apparently is willing to allow. Under the APA, the public has a right to “review and analyze *all* of the information submitted to

²¹ Id. at 3 (emphasis added).

²² 5 U.S.C. § 553, et seq. (“APA”).

the Commission,” without unilateral and self-serving limits dictated by Verizon.²³

Without that access, parties cannot offer fully informed comments on whether Verizon has met its burden of proof for forbearance under section 10 on any aspect of the petitions.²⁴ Absent a complete review by interested parties, and lacking a thorough critique of Verizon’s supposed evidence, the Commission cannot have any confidence that the petitions are accurate or fairly presented. The Commission cannot have a sufficient record to justify anything but dismissal for failure to meet the petitioner’s burden of proof.

Accordingly, unless the petitions are dismissed, the Commission must grant the motion to compel, and in fact allow *all parties* timely and complete access to the full record.

Respectfully submitted,

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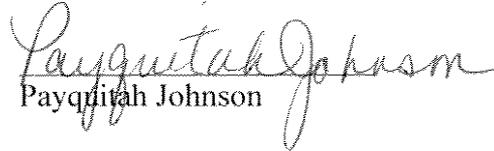
October 30, 2006

²³ Motion to Compel at 6. Granting any forbearance petition – whether in whole or part, by Commission order or by default – would be unlawful if the Commission failed to provide the public notice and opportunity to review and comment.

²⁴ E.g., Petition for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers, 18 FCC Rcd 24648 at ¶ 24 (2003) (noting a petitioner must “provide evidence demonstrating with specificity why [it] should receive relief”).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments in Support of Motion to Dismiss and, Alternatively, of Motion to Compel, filed by Sprint Nextel Corporation in WC Docket No. 06-172, was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 30th day of October, 2006 as follows:


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