

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMPTEL’S REPLY COMMENTS IN SUPPORT OF MOTION TO DISMISS

COMPTEL, through counsel, hereby submits this reply to Verizon’s Opposition to Motion To Dismiss filed by ACN Communications Services, Inc. *et al.* and its Response to Motion to Compel Disclosure of Other Carriers’ Confidential Information filed by Broadview Networks, Inc. *et al.* in the above-captioned proceeding. Verizon has provided no rational justification or legal authority for its use of its competitors’ carrier confidential information. Accordingly, the Commission should grant the Motion to Dismiss or in the alternative, the Motion to Compel.

Not surprisingly, Verizon takes contradictory positions in its Response to the Motion to Compel and its Opposition to the Motion to Dismiss, claiming in one that the E911 data is confidential carrier information¹ and in the other that it is not.² Regardless of whether any third party carriers’ interconnection agreements specifically identify E911

¹ Verizon’s Response to Motion to Compel Disclosure of Other Carriers’ Confidential Information at 1.

² Verizon’s Opposition to Motion To Dismiss at 1-2 (CLEC interconnection agreements are silent with respect to the confidentiality of E911 data). Verizon should be estopped from arguing that the E911 data is not carrier confidential information in light of its admission in the Response to Motion to Compel that even the E911 aggregate information is confidential. Verizon’s Response to Motion to Compel at 2.

information as confidential, the Verizon Template Interconnection Agreement attached to the Opposition plainly states, “The provisions of this Section 10 [Confidentiality] shall be in *addition to*, and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222. . . .” Verizon Template at Section 10.7 (emphasis added). As COMPTEL showed in its Comments in Support of the Motion to Dismiss, Section 222 authorizes telecommunications carriers, such as Verizon, that receive or obtain proprietary information from another carrier for purposes of providing any telecommunications service to use such information only for providing such service.

Verizon’s contention that other carriers’ E911 data submitted with its Petitions, “merely provide the raw numbers of E911 listings that certain carriers have obtained, together with an indication of whether the listings are business or residential”³ provides no defense to its violation of Section 222(b). In order to derive those raw numbers and determine whether the listings were business or residential, Verizon would have had to cull through and sort each and every competitive carrier’s E911 data and strip away any customer specific information. Such manipulation of its competitors’ E911 data to support its forbearance Petitions is clearly a “use” of the confidential and proprietary data for a purpose other than “delivering or assisting in the delivery of emergency services.”⁴ The fact that the Commission, the Department of Justice and state regulatory authorities have relied upon E911 data submitted by Verizon and other Bell Companies in support of

³ *Id.* at 6.

⁴ 47 U.S.C. § 222(g) (prohibiting the use of carrier confidential information except for the purpose of delivering or assisting in the delivery of emergency services.)

their requests for relief in other proceedings,⁵ does not nullify the prohibitions in Section 222(b) and 222(g).

COMPTEL submits that the appropriate remedy for Verizon's misuse of other carriers' confidential information in violation of Section 222 is dismissal of the six forbearance Petitions or at, the very least, removal of the carrier confidential information from the Petitions and institution of a forfeiture proceeding pursuant to 47 U.S.C. §503. If the Commission disagrees, it must compel Verizon to make available to all parties that executed the Protective Order the entire unredacted versions of the Petitions. Verizon's argument that it need not produce third party carriers' confidential information to any of the parties that executed the Protective Order because none of those parties has demonstrated to Verizon's satisfaction that the information is reasonably necessary to determine whether Verizon has met its burden of proof⁶ is ludicrous. If the third party carrier information is not reasonably necessary to determine whether Verizon has met its burden of proof, it should be stricken from the Petitions. To the extent that Verizon seeks to rely on the confidential information to meet its burden of proof, however, it cannot be the sole judge of what data is and is not necessary for other parties to challenge its claims.

Verizon admits that no carrier has provided it with "proof of authorization" to view another carrier's confidential data.⁷ Significantly, what Verizon does not say is whether it obtained "proof of authorization" from any of the carriers to use their confidential information in its Petitions. Verizon had an obligation to secure such

⁵ Opposition to Motion to Dismiss at 4-5; Response to Motion to Compel at 3.

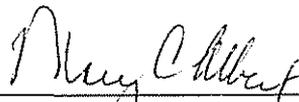
⁶ Response to Motion to Compel at 3.

⁷ *Id.* at 2.

authorization from the carriers whose confidential data it used. There is absolutely no basis for holding Verizon to a standard different from that which it seeks to apply to the parties that executed the Protective Order. As a result, Verizon should be directed to submit the proofs of authorization it has obtained from each carrier whose confidential information is included in the Petitions. If Verizon is unable to produce such proofs of authorization, the Petitions must be dismissed or the confidential information stricken.

For the foregoing reasons and those stated in COMPTTEL's Comments, the Commission should grant the Motion to Dismiss the six Verizon forbearance Petitions and, pursuant to 47 U.S.C. §503(b), institute a forfeiture proceeding against Verizon for its violation of 47 USC §222. In the alternative, the Commission must either strike the confidential third party data from the record or order Verizon to make unredacted copies of the six forbearance Petitions available to all parties that execute the Protective Order in this proceeding.

Respectfully submitted,



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