

January 12, 2007

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

FILED/ACCEPTED

JAN 12 2007

Federal Communications Commission  
Office of the Secretary

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

Dear Ms. Dortch:

Cox Communications, Inc., on behalf of its affiliates Cox Virginia Telcom, Inc. and Cox Communications Rhode Island, LLC (collectively, "Cox"), hereby submits this response to the letter filed on December 6, 2006, by Verizon Communications ("Verizon") in the above-referenced proceeding.<sup>1</sup> In the December 6 Letter, Verizon tries once more to justify its use of E911 data despite the restrictions in Section 222 of the Communications Act and its interconnection agreements with a number of carriers in the affected markets, including Cox. Verizon again fails to provide any basis for its unauthorized use of this confidential customer and carrier proprietary data. The Commission therefore should exclude Verizon's E911 data from this proceeding and either dismiss the Petitions or require Verizon to produce alternative evidence justifying forbearance in the affected markets.

At the outset, the Commission should recognize the fundamental incompatibility of Verizon's CPNI arguments on the one hand and its confidentiality arguments on the other. Verizon is arguing that it has an unlimited right to access and use data from its E911 databases (both for areas where it currently administers the E911 database and areas where it formerly did so). At the same time, Verizon is arguing that it need not, and indeed cannot, disclose that information to other carriers participating in this proceeding because the information is commercially sensitive and therefore confidential. Taken together, these arguments are absurd. If the E911 data is too competitively sensitive for all carriers to see, then clearly it is too

No. of Copies rec'd 044  
List A B C D E

<sup>1</sup> See Letter from Joseph R. Jackson, Associate Director – Federal Regulatory Advocacy, to Marlene Dortch, WC Docket No. 06-172 (filed December 6, 2006) (the "December 6 Letter").

competitively sensitive for Verizon to compile and use.<sup>2</sup>

The December 6 Letter relies on two bases for its claim that the Commission must accept its E911 data. First, it claims the Commission's past acceptance of E911 data (without objection or analysis) means the information must be accepted in this case. Second, Verizon argues that its use of this data is consistent with federal law regarding customer and carrier proprietary information and complies with the terms of its carrier interconnection agreements. Neither of these arguments survives close scrutiny.

Verizon's claim that the Commission's past acceptance of E911 data in other proceedings requires acceptance here is wrong. Verizon does not claim, nor does it appear to be the case, that the Commission ever has held that voluntary carrier submissions of E911 data are permitted under Section 222. In the cases Verizon cites where E911 data was submitted, other carriers did not object, so the issue was not decided. In this case, several carriers have objected on the grounds that Verizon's use of the data is inconsistent with Section 222 of the Act and carrier interconnection agreements.<sup>3</sup> In other words, this is an issue of first impression for the Commission, and the lack of objections in previous cases where E911 data was submitted is irrelevant to the outcome in this case. The Commission must decide the parties' confidentiality rights on the merits, not Verizon's unexamined past practice of relying on E911 data.

When considered on the merits, Verizon's conduct in compiling E911 data internally and providing that information to the FCC is inconsistent with the privacy and competitive protections built into Section 222 of the Act. There is no question that Verizon employees were permitted to access and use private, proprietary and competitively sensitive information provided by competitive LECs for purposes other than the provision of E911 service. In the December 6 Letter, Verizon claims that its employees did not access customer information, but merely queried a database that includes customer data and pulled out the information necessary for the Petitions.<sup>4</sup> Even Verizon's rendition of the facts, however, admits that some Verizon employees

---

<sup>2</sup> Moreover, while Verizon's selective disclosure may have protected some measure of confidentiality for carrier E911 data, the result is that carriers are deprived of the ability to fully participate in this proceeding. This renders the Petitions ungrantable. Comments of Cox Communications, Inc. on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss, WC Docket No. 06-172 (filed October 30, 2006).

<sup>3</sup> This does not imply inconsistent positions on the part of the parties that are now raising objections. In cases where the Commission requested that carriers submit E911 data, no violation of the interconnection agreements or Section 222 of the Act would have occurred. In contrast, here Verizon's submission of E911 data is completely voluntary for the purposes of gaining a regulatory advantage.

<sup>4</sup> December 6 Letter at 3. For the reasons described in CompTel's reply comments on the motion to dismiss, Verizon's account of this incident is improbable; CompTel's description of how Verizon accumulated its E911 data is much more likely. See CompTel's Reply Comments in Support of Motion to Dismiss, WC Docket No. 06-172, at 2 (filed November 6, 2006) ("In order

who are not involved in the management of its E911 databases or the provision of telecommunications services were given access to the information contained in the E911 databases.<sup>5</sup> Section 222 prohibits Verizon from “permit[ting] access” to customer proprietary network information for purposes other than the provision of telecommunications service. Therefore, Verizon’s description of its data gathering in this case is essentially an admission that it has ignored the restrictions in Section 222.<sup>6</sup>

Even if Verizon’s conduct does not violate Section 222(c)’s prohibition on revealing customer proprietary information, Verizon still has flouted the statute by improperly accessing, using, and disclosing carrier proprietary information protected by Section 222(b). Verizon claims that this is permissible because it did not obtain E911 data from other carriers for the

---

to derive those raw numbers and determine whether the listing 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.”). Moreover, Verizon’s attorney’s representation that the employees given access only looked at particular pieces of non-proprietary data is unverified and therefore of little or no evidentiary value. *See, e.g.*, *International Telecharge Inc. v. Southwestern Bell Telephone Company, et al., Memorandum Opinion and Order*, 11 FCC Rcd 10061, 10076 (Comm. Car. Bur. 1996) (rejecting “unverified chart” because “counsel’s argument cannot substitute for evidence”); *Comcast Cablevision of Philadelphia, Inc., Memorandum Opinion and Order*, 18 FCC Rcd 22020, 22024 n.19 (Med. Bur. 2003) (“no evidentiary value may be given to the unverified “Longley-Rice” contour provided by Comcast”); *Engle Broadcasting v. Comcast of Southern New Jersey, Memorandum Opinion and Order*, 16 FCC Rcd 17650, 17652 (Cab. Serv. Bur. 2001) (“We resolve this evidentiary conflict by accepting the verified statement offered by Comcast”). Verizon’s unverified evidence is particularly questionable in this case because each of Verizon’s forbearance Petitions was accompanied by a 30-page verifying declaration.

<sup>5</sup> In fact, Verizon’s declarants state that their jobs involve “marketing, strategic planning, and business development,” “multicultural sales and marketing, market research and market analytics, as well as competitive intelligence” and “the development of key marketing strategies[.]” *See* Petition of the Verizon Telephone Companies for Forbearance (Virginia Beach), WC Docket No. 06-172, Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Virginia Beach Metropolitan Statistical Area at 1, 2; (Filed September 6, 2006) (“Virginia Beach Petition”); Petition of the Verizon Telephone Companies for Forbearance (Providence), WC Docket No. 06-172, Declaration of . Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Providence Metropolitan Statistical Area at 1, 2 (filed September 6, 2006). In other words, the employees who were given access to the E911 data are involved in precisely the types of activities that even Verizon acknowledges are covered by Section 222. December 6 Letter at 1-2. Verizon, of course, has not proposed any way in which these marketing employees could be shielded from the knowledge they obtained while preparing the declaration when they perform their regular marketing-related duties.

<sup>6</sup> *See* 47 U.S.C. § 222(c)(1).

purposes of providing telecommunications service.<sup>7</sup> This argument revolves around Verizon's conceit that it is not acting as a telecommunications carrier when it manages the E911 database, so Section 222 ceases to apply.

The Commission anticipated and rejected this argument more than ten years ago. In the *First Local Competition Order*, the Commission specifically held that "access to call-related databases . . . must be provided to, and obtained by, requesting carriers in a manner that complies with Section 222 of the Act."<sup>8</sup> In other words, the Commission already has decided that the information in E911 databases administered by incumbent carriers is subject to Section 222, and that when carriers administer those databases they are fully bound by the restrictions included in the statute. Verizon's view that its provision of E911 database services is not subject to Section 222 is therefore flatly inconsistent with Commission precedent. Moreover, the Commission has recognized specifically that carriers can have regulatory obligations in connection with databases that are ancillary to their carrier roles.<sup>9</sup> In particular, for close to fifteen years the Commission has treated 911 and E911 database information as a network element subject to unbundling, a requirement that directly contradicts Verizon's notion that its provision of E911 services is "no different" than the provision of database services by non-carriers.<sup>10</sup> Thus, Commission precedent firmly establishes that Verizon is subject to the full panoply of Section 222 regulations when it manages E911 databases and it cannot simply use that information for its own purposes (as it has in this case) with impunity.

Moreover, even if there were no authority that directly contradicted Verizon's claims, its argument makes no sense. Carriers provide E911 data to Verizon pursuant to the same interconnection agreements that govern all terms of the intercarrier relationship, including the exchange of telecommunications services between the carriers.<sup>11</sup> Even if some services that Verizon performs pursuant to these agreements are not strictly "telecommunications services" in and of themselves within the meaning of the Act, the agreements by which Verizon receives the E911 data are entered into expressly and entirely for the purposes of providing

---

<sup>7</sup> See December 6 Letter at 3.

<sup>8</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15745-46 (1996). "Call-related databases" includes, among other databases, the line information database, 911 databases and E911 databases.

<sup>9</sup> See, e.g., 47 C.F.R. § 51.319(f), (g) (various databases falling within unbundling obligations for incumbent LECs); Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd 3528, 3533-30 (1992) (requiring incumbent LECs to make line information database information available to other carriers).

<sup>10</sup> 47 C.F.R. § 51.319(f); December 6 Letter at 3.

<sup>11</sup> There is no provision in any interconnection agreement that suggests Verizon is immune from section 222 while administering the E911 database.

telecommunications services. Further, carriers provide E911 data to Verizon only because doing so will enable Verizon to facilitate E911 service to all competitive LEC customers, and Verizon does not dispute that E911 itself is a telecommunications service. That is more than enough to bring Verizon within the restrictions of Section 222(b).

Verizon goes even farther afield when it claims that Section 222(b) should not apply to it when it is performing its E911 database duties because the statute does not apply to database managers that are not telecommunications service providers.<sup>12</sup> The Commission has recognized that the chief purpose of Section 222(b) is to keep carriers from trying to gain a competitive advantage by abusing information they receive from other carriers as a result of intercarrier information exchange.<sup>13</sup> Obviously, a database administrator like Neustar cannot compete with any carrier, so there is no need for the protection of Section 222(b) in that context.<sup>14</sup> Verizon, on the other hand, has the ability and every incentive to use E911 database information to enhance its competitive position. Applying Section 222(b) to its handling of customer and carrier proprietary information is the only sensible course. If Verizon wanted to gain immunity from the coverage of the Act for its data management services, then it should have assigned those duties to a separate affiliate.<sup>15</sup>

Accepting Verizon's construction of the coverage of Section 222(b) would read into the statute a giant loophole to the ban on use of carrier proprietary information. Under Verizon's view of the statute, carriers that provide both E911 database management and telecommunications services could make unlimited use of E911 data. Indeed, if Verizon's argument is correct, then Verizon could use E911 data for any purpose, including marketing and competitive strategy, because there would be no internal restrictions on passing the E911 data to any division of the company. Congress could not have intended such a nonsensical result. Consequently, the Commission should reject Verizon's distinction between its E911 database

---

<sup>12</sup> *See id.* 3.

<sup>13</sup> Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1572-73 (1998) ("*Second Slamming R&O*"); Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, *Order on Reconsideration and Petitions for Forbearance*, 14 FCC Rcd 14409, 14449-50 (1999).

<sup>14</sup> In any case, no competitive LEC (or incumbent LEC, for that matter) ever would provide E911 data to database managers like Neustar without certainty that the information could not be disclosed to other telecommunications carriers. Confidentiality generally is assured by the same types of contractual provisions that are in Verizon's interconnection agreements but that Verizon has seen fit to ignore.

<sup>15</sup> If that were the case, of course, Verizon would not have had access to the E911 data.

functions and its telecommunications service functions as the convenient *ad hoc* justification that it is.

There also is no basis for Verizon's claim that it has not "used" the E911 data within the meaning of Section 222.<sup>16</sup> Verizon apparently believes that it is not violating Section 222(b) unless it uses customer or carrier proprietary information for direct marketing purposes. The statute includes no such limitation, and the Commission has expressly recognized that Section 222(b) is not so limited.<sup>17</sup> Rather, no carrier – including Verizon – may use customer or carrier proprietary information for any purpose that is not specifically authorized by the statute or the Commission's rules. In this case, Verizon seeks to use the E911 data, which consists entirely of proprietary data, to secure a reduction in regulations applicable to it as an incumbent LEC. Section 222 does not authorize such use of customer or carrier proprietary information, so Verizon's use of E911 data is improper and should not be allowed in this proceeding.<sup>18</sup>

Even if there were any doubt about whether Verizon's use of E911 data is permitted under Section 222 (and there is not), Verizon is not entitled to the benefit of that doubt because its use of E911 data violates its interconnection agreements. Verizon does not even address this issue in the December 6 Letter and its previous responses on this point are unpersuasive. Moreover, Verizon likely has violated confidentiality provisions in its database administrator contracts with local public safety entities. This is particularly the case where Verizon relies on E911 data for communities like Virginia Beach where it no longer administers the E911 database.<sup>19</sup> It is highly unlikely that Verizon's database management contracts permit it to mine data for its forbearance petitions, and it is inconceivable that those agreements permit Verizon to continue mining E911 data that remains in its possession after the contracts expire.

The Commission should not allow Verizon to gain forbearance by abusing the confidentiality of other carriers' data in violation of its interconnection agreements. Indeed, if the Commission signals to Verizon that it is acceptable to mine its E911 databases for the types of competitively sensitive information Verizon has submitted here, competing carriers may have to seriously rethink whether they can continue providing that information to other carriers that also manage E911 databases. Obviously, that would create significant problems for emergency services providers and endanger the continued success of E911. Moreover, these considerations may force public safety authorities to reconsider their reliance on Verizon and other incumbent carriers for E911 database services, so that they can avoid misuse of the underlying customer data.

---

<sup>16</sup> December 6 Letter at 1-2.

<sup>17</sup> *Second Slamming R&O*, 14 FCC Rcd 1508, 1573 n.340.

<sup>18</sup> Verizon's suggestion that it is not using the E911 data "for business or marketing purposes" is, at a minimum, disingenuous. December 6 Letter at 2. Verizon filed its petitions only because grant of them would serve its business interests.

<sup>19</sup> Virginia Beach Petition at 5.

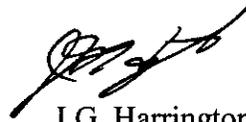
Marlene H. Dortch, Esq.

January 12, 2006

Page 7 of 7

Rather than reward Verizon for its misuse of competing carriers' CPNI, the Commission should exclude Verizon's E911 data from this proceeding. Verizon's Petitions rely almost exclusively on E911 data for factual support, so the Commission should either dismiss the Petitions entirely or require Verizon to provide alternative evidence demonstrating the competitive conditions in the six markets for which it requests forbearance. The Commission also should make clear that in the future it will not accept voluntary carrier submissions of data culled from E911 databases.

Respectfully submitted,



J.G. Harrington

Jason E. Rademacher

Counsel for Cox Communications, Inc.