

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FILED/ACCEPTED

JUL 30 2008

Federal Communications Commission  
Office of the Secretary

In the Matter of

Petitions of Qwest Corporation for  
Forbearance Pursuant to 47 U.S.C. § 160(c) in  
the Denver, Minneapolis-St. Paul, Phoenix,  
and Seattle Metropolitan Statistical Areas

WC Docket No. 07-97

In the Matter of

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

**EMERGENCY MOTION TO MODIFY PROTECTIVE ORDER**

Pursuant to paragraph 12 of the *First Protective Order*<sup>1</sup> and paragraph 5 of the *Second Protective Order*<sup>2</sup> in WC Docket No. 07-97, the Verizon telephone companies (“Verizon”)<sup>3</sup> request that the Commission modify the *First* and *Second Protective Orders* to permit the use of confidential information contained in the non-public version of the Commission’s Memorandum

<sup>1</sup> First Protective Order, *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, 22 FCC Rcd 10129 (Wireline Comp. Bur. 2007) (“*First Protective Order*”).

<sup>2</sup> Second Protective Order, *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, 22 FCC Rcd 10134 (Wireline Comp. Bur. 2007) (“*Second Protective Order*”).

<sup>3</sup> The Verizon telephone companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

Opinion and Order in WC Docket No. 07-97 (the *Qwest 4 MSA Forbearance Order*<sup>4</sup>) in Verizon's pending challenge to the Commission's Memorandum Opinion and Order in WC Docket No. 06-172 (the *Verizon 6 MSA Forbearance Order*<sup>5</sup>).

Verizon filed a similar motion in January 2008 to gain authority to provide the D.C. Circuit with complete copies of prior Commission rulings on similar petitions for forbearance, which the Wireline Competition Bureau granted on February 8, 2008.<sup>6</sup> Verizon seeks the same modifications to the *First* and *Second Protective Orders* so that counsel for parties to Verizon's petition for review can provide the *Qwest 4 MSA Forbearance Order* to the D.C. Circuit and can cite that order, on the same terms and conditions that the Bureau permitted in its February 8 *Protective Order Modification Order*. Specifically, Verizon requests permission (i) for those persons eligible to sign, and who have signed, the *First* and *Second Protective Orders* to obtain and review copies of the complete, unredacted version of the *Qwest 4 MSA Forbearance Order*; (ii) to provide the court of appeals with that unredacted order under seal; and (iii) to refer to, and quote from, that unredacted order in under seal submissions to the court of appeals.<sup>7</sup>

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<sup>4</sup> Memorandum Opinion and Order, *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, FCC 08-174 (rel. July 25, 2008) ("*Qwest 4 MSA Forbearance Order*"), petition for review pending, No. 08-1257 (D.C. Cir. filed July 29, 2008).

<sup>5</sup> Memorandum Opinion and Order, *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*, 22 FCC Rcd 21293 (2007) ("*Verizon 6 MSA Forbearance Order*"), petition for review pending, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008).

<sup>6</sup> Memorandum Opinion and Modified Protective Orders, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, et al.*, 23 FCC Rcd 1716 (2008) ("*Protective Order Modification Order*").

<sup>7</sup> Although this motion seeks relief only from the *Protective Orders* in the *Qwest 4 MSA Forbearance* docket, Verizon files this motion in the *Verizon 6 MSA Forbearance* docket as

Counsel for Verizon has contacted counsel for all the parties whose confidential information appears in the *Qwest 4 MSA Forbearance Order* — Qwest Corporation, Comcast Corporation, Cox Communications, Inc., the CLEC Group, Time Warner Telecom Inc., PAETEC Communications, Inc., Integra Telecom, Inc., and XO Communications, Inc. — to request their consent to the modification proposed herein. In modifying the protective orders in the Omaha and Anchorage proceedings, the Bureau noted that the parties whose confidential information appeared in those orders had “consented to modifying” the protective orders “in the manner” Verizon sought there (and seeks here). *Protective Order Modification Order* ¶ 5. Verizon can report that counsel for Qwest, Time Warner, Integra, the CLEC Group, and PAETEC have *already* consented to such modification; Verizon anticipates that the others also will consent, and it will inform the Commission of any further information it receives from counsel for those parties. Even if one or more parties were to refuse such consent, however, that would not provide a basis for denying this motion: Verizon’s due process rights to challenge a Commission order cannot be contingent on the beneficence of third parties.

Verizon has argued in its appeal of the *Verizon 6 MSA Forbearance Order* that the Commission acted unlawfully in departing, without sufficient explanation, from the *Omaha Forbearance Order*.<sup>8</sup> As the D.C. Circuit has recognized, it is appropriate in such circumstances to consider subsequent orders “where, as here, the later case is part of a pattern of arguably inconsistent decision-making that began before the challenged action.” *AT&T Inc. v. FCC*, 452

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well, so that all parties that might participate in the judicial proceeding are aware of Verizon’s intent to provide the court with the unredacted version of the *Qwest 4 MSA Forbearance Order*.

<sup>8</sup> Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Red 19415 (2005), *petitions for review dismissed in part and denied in part, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

F.3d 830, 839 (D.C. Cir. 2006). If Verizon cannot provide the D.C. Circuit with the actual data on which the Commission relied in the *Qwest 4 MSA Forbearance Order*, it will be unable effectively to argue that the Commission's denial of Verizon's petitions for forbearance is part of a pattern of arguably inconsistent decision-making. Basic principles of due process prohibit the Commission from frustrating Verizon's right to seek judicial review of the *Verizon 6 MSA Forbearance Order* by prohibiting use of the information on which it based its decision in the *Qwest 4 MSA Forbearance Order*. See, e.g., *Jifry v. FAA*, 370 F.3d 1174, 1183 (D.C. Cir. 2004) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a *meaningful* manner.") (internal quotation marks omitted; emphasis added).

Finally, because Verizon's reply brief is due on Monday, August 25, 2008, Verizon files this motion on an emergency basis, seeking expedited relief. The Bureau granted Verizon's prior motion 22 days after Verizon filed it and then required Verizon to give five days' advance notice before filing briefs under seal quoting confidential portions of the *Omaha Forbearance Order* and the *Anchorage Forbearance Order*.<sup>9</sup> Such a schedule, if followed here, would preclude Verizon from being able to quote from the confidential portions of the *Qwest 4 MSA Forbearance Order* in its reply brief. Verizon therefore respectfully requests that the Commission act on this motion on an expedited basis and rule by August 4, 2008. If the Commission does not grant this motion by that date, Verizon will deem it denied and seek relief from the D.C. Circuit.

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<sup>9</sup> Memorandum Opinion and Order, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, FCC 06-188, 22 FCC Rcd 1958 (rel. Jan. 30, 2007), *petitions for review dismissed, Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. June 14, 2007).

Respectfully submitted,

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July 30, 2008

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## CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of July 2008, I caused copies of the foregoing Emergency Motion To Modify Protective Order to be served upon each of the following by first-class mail, postage prepaid:

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