

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

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

MOTION TO DISCLOSE INFORMATION DESIGNATED CONFIDENTIAL

The Verizon telephone companies (“Verizon”)¹ request that the Commission disclose one piece of information contained only in the non-public version of the Commission’s Memorandum Opinion and Order in WC Docket No. 06-172 (the *Verizon 6 MSA Forbearance Order*²). Specifically, Verizon requests that the Commission publicly disclose the aggregated market-share figure in the third sentence of paragraph 27 of the *Verizon 6 MSA Forbearance Order*. Verizon makes this request so that it can state the figure in open court during oral argument on Verizon’s pending challenge to the *Verizon 6 MSA Forbearance Order* in the D.C. Circuit; both Verizon and the Commission have cited the figure in their briefs in the case. *See, e.g.*, Verizon Opening Br. 19-20, 34; FCC Br. 14, 24, 33-34 & n.105.

¹ The Verizon telephone companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² 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).

Though designated highly confidential in the Commission’s order, that market-share figure is not confidential at all, because it is an aggregated figure that does not reveal any commercially sensitive information about any particular company and, moreover, already has been disclosed in at least one public filing with the Commission. In addition, Verizon has requested the consent of every company that could conceivably be affected by this motion. One already has consented; while Verizon has not received a response from the other three, none has stated that the figure is, in fact, confidential.

1. As an initial matter, the Commission should publicly disclose the market-share figure identified above in advance of the oral argument on Verizon’s petition for review of the *Verizon 6 MSA Forbearance Order*, because doing so would not reveal any competitively sensitive information about any particular carrier. The figure shows only that, “*in the aggregate*,” the residential market shares of cable companies in the Boston, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs do not exceed a certain threshold percentage. *Verizon 6 MSA Forbearance Order* ¶ 27 (emphasis added). The figure is not confidential for at least two reasons. First, disclosing that *aggregated* figure does not reveal the specific market share of any *individual* cable company. The Commission previously has recognized that aggregated data ordinarily are not competitively sensitive and therefore are not entitled to confidential treatment.³

Second, the figure does not even reveal the aggregated market shares of cable companies in individual MSAs. Rather, it reflects only that the aggregated cable-company market share in

³ See Report and Order, *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 64 (1998) (“Aggregation of data ensures that confidential materials are released in a form that removes confidentiality issues.”); see also *id.* ¶ 9 n.39 (citing cases).

each MSA does not exceed a certain threshold percentage. The figure can be contrasted with the actual, MSA-specific combined cable-company market-share figures that are stated in footnote 90 of the *Verizon 6 MSA Forbearance Order*. Verizon does not seek disclosure of those more specific (though still aggregated) figures.

Furthermore, the non-confidential nature of the market-share figure in question is confirmed by the fact that it already has been revealed in at least one public filing — apparently without objection from any cable company.⁴ In these circumstances, prohibiting disclosure of the aggregated figure serves no genuine interest in confidentiality.

2. Counsel for Verizon has contacted counsel for all the cable companies that submitted data for the five MSAs in question — Comcast, Charter, Cox, and RCN — to request their consent to the relief requested in this motion.⁵ In disclosing the cable-coverage threshold in the *Omaha*⁶ and *Anchorage*⁷ Orders, the Wireline Competition Bureau noted that the parties

⁴ See Letter from Mary C. Albert, counsel for COMPTTEL, to Marlene H. Dortch, Secretary, FCC, *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, Attach. 1, at 2 (filed July 2, 2008) (describing the “tests applied by the Commission in the Verizon 6 MSA Order” and including the market-share figure in paragraph 27).

⁵ Consent of the cable companies that submitted information for the New York MSA is unnecessary because the Commission did not use their information, claiming that it “lack[ed] sufficient evidence” to calculate a market share for the New York MSA. *Verizon 6 MSA Forbearance Order* ¶ 27.

⁶ 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 Rcd 19415 (2005), *petitions for review dismissed in part and denied in part, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁷ 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*, 22 FCC Rcd 1958 (2007), *petitions for review dismissed, Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. June 14, 2007).

whose information appeared in those orders had “consent[ed] to the public disclosure of” the information in question.⁸ Verizon is authorized to state that RCN has consented to the relief sought here.⁹ Verizon 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, because granting the relief requested would not result in the disclosure of any actual confidential information.

Finally, because oral argument in the D.C. Circuit proceeding is scheduled for Monday, November 17, 2008, Verizon respectfully requests that the Commission act on this motion by Monday, November 3, 2008, so that, if the motion is not granted, Verizon has sufficient time to address with the D.C. Circuit clerk’s office the potential need to discuss at the oral argument information the Commission has deemed highly confidential.

⁸ Public Notice, *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area*, 22 FCC Rcd 13561 (2007); Public Notice, *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting ACS of Anchorage, Inc. Forbearance Relief in the Anchorage, Alaska Study Area*, 22 FCC Rcd 11962 (2007).

⁹ To the extent that disclosing the market-share figure at issue could be thought to reveal information from the non-public version of the *Omaha Order* — a notion which with Verizon does not agree — Qwest likewise has authorized Verizon to state its consent to the relief requested in this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 10th day of October 2008, I caused copies of the foregoing Motion To Disclose Information Designated Confidential to be served upon each of the parties on the attached list by first-class mail, postage prepaid.

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