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May 22, 2013

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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Connect America Fund A National Broadband Plan for Our Future High-Cost Universal Service Support, WC Docket No. 10-90; In the Matter of Federal -State Joint Board on Universal Service High-Cost Universal Service Support, WC Docket No. 05-337

Dear Ms. Dortch:

Attached is Verizon's request for confidential treatment of the wire center boundary mapping data to be submitted to the FCC's Study Area Boundary Data Collection website on May 23, 2013. If for any reason this request is not granted, Verizon requests that the data and all copies be returned to us.

Sincerely,

A handwritten signature in cursive script that reads "Maggie McCready".

Attachment

cc: Steve Rosenberg
Suzanne Yelen

pursuant to Section 0.459(b) of the Commission’s Rules, 47 C.F.R. §0.459(b), is provided below.

I. VERIZON’S SHAPEFILES SATISFY THE REQUIREMENTS OF § 0.459 OF THE COMMISSION’S RULES.

The material for which Verizon seeks confidentiality falls squarely within the requirements of Section 0.459 of the Commission’s rules. As demonstrated below, Verizon has satisfied each of the elements of Section 0.459, and disclosure of this information would result in substantial competitive harm to both Verizon and TomTom.

(1) *Identification of the specific information for which confidential treatment is sought.* Verizon requests confidential treatment for the shapefiles, which bear the legend “Confidential – Not for Public Disclosure – Property of TomTom North America Inc” in the name of the files as well as in the comments field of the uploading mechanism. The shapefiles contain detailed compilations of geographic data describing Verizon’s wire center and study area boundaries. Verizon is seeking confidential treatment for both the wire center and study area boundaries. These detailed compilations of data are the proprietary work product of TomTom.

(2) *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.* Verizon is submitting the shapefiles as required by the *Study Area Boundary Order* and *Reconsideration Order* referred to in the first paragraph above.

(3) *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The items for which confidentiality is requested are shapefiles (detailed compilations of data) that Verizon has licensed for a

fee pursuant to a license agreement with TomTom. These shapefiles are “commercial”³ in nature, and they are “confidential” in that they “would customarily not be released to the public.”⁴ The courts have elaborated that material “is ‘confidential’ . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”⁵ Both of these considerations apply in this instance, as further explained in point (5) below.

(4) Explanation of the degree to which the information concerns a service that is subject to competition. All the services provided by Verizon are subject to intense competition.⁶ TomTom’s mapping services are also subject to competition.

(5) Explanation of how disclosure of the information could result in substantial competitive harm. TomTom licenses geographic data such as the data compilations

³ See *Board of Trade of the City of Chicago v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms “commercial” and “financial,” as used in Section 552(b)(4), their ordinary meanings).

⁴ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992) (citing the Senate Committee Report).

⁵ *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy*, 975 F.2d at 873.

⁶ See, e.g., *Verizon Communications Inc. and MCI Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 105 (2005) (“intermodal competitors, including facilities-based VoIP and mobile wireless providers, are likely to capture an increasing share of mass market local and long distance services.”), ¶ 64 (“there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors.”); see also *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185 (2009).

contained in the shapefiles to entities for a fee. Other entities also offer geographic data in the commercial marketplace, and TomTom's ability to compete in this market is contingent on its ability to assemble and maintain geographic data products that customers are willing to pay for. Public release of the shapefiles would be a direct release into the public domain of data compilations that are only available from TomTom for a fee.

Verizon does not own the data in the shapefiles. Verizon licenses that data pursuant to a commercial license agreement with TomTom. Pursuant to their license agreement, TomTom only permits Verizon to use such information for limited purposes. Verizon is explicitly prohibited by contract from releasing TomTom geographic data to any third party without TomTom's consent. Verizon sought, and obtained, such consent from TomTom with respect to disclosing the data in the shapefiles to the Commission, but only on condition that Verizon seek to preserve the confidentiality of such data. If, after Verizon's submission, the shapefiles were publicly disclosed, TomTom's proprietary data would lose its substantial value, thus impairing TomTom's competitive position.

In addition, it is unlikely that TomTom, and possibly other vendors, for that matter, would ever again consent to have their data disclosed to the Commission in this fashion. Accordingly, disclosure of the shapefiles would substantially impair the Commission's ability to get this and other data in the future. The inability of the Commission to preserve the confidentiality of proprietary data compilations submitted in regulatory proceedings such as these would directly impair the effectiveness or efficiency of Commission programs.

Confidentiality also is essential because disclosure of such information, in addition to harming TomTom, would seriously injure Verizon's competitive position. Verizon does not maintain its own independent data compilations of the sort contained in the shapefiles. If Verizon is not able to protect the confidentiality of this information, it may have difficulty obtaining it from such commercial vendors in the future.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure. The information for which Verizon seeks confidential treatment is information that neither Verizon nor TomTom releases to the public. Verizon also limits the internal circulation of this information to only those with a need to know. TomTom protects this information in its license agreements by requiring written consent before it may be disclosed to third parties, and, as it has here, typically requires that such third parties likewise be subject to obligations of confidentiality.

Due to the unique requirements pertaining to the submission of the shapefiles (i.e., the requirement to upload the files via a specific website), Verizon cannot attach this request to the pertinent data. Therefore, Verizon is filing this request with the Wireline Competition Bureau in advance of its submission of the shapefiles. Verizon will note in its submission that this request is intended to cover those shapefiles.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties. The shapefiles are not available to the public. They can only be obtained by a third-party that enters into a license agreement with TomTom, which entails the payment of significant licensing fees to TomTom. The shapefiles can only be disclosed with TomTom's written consent.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure. Given the sensitive nature of the shapefiles for which confidentiality is requested and the prospect of serious competitive harm, Verizon requests that confidential treatment apply indefinitely.

II. CONCLUSION

For these reasons, pursuant to Sections 0.457 and 0.459 of the Commission's Rules, Verizon requests that the shapefiles marked "Confidential – Not for Public Disclosure" be treated as confidential under the Commission's rules and precedent and withheld in their entirety from public inspection, and that any distribution of them within the Commission should be limited to a "need to know" basis. In the event that any person or entity requests access to the documents or seeks to make any or all of them part of the public record, Verizon requests to be notified immediately so that it can oppose such request or take other action as necessary to safeguard TomTom's data.

Respectfully Submitted,

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