

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In The Matter of the Joint Application	)	Docket NO. UT-050814
of	)	
	)	
VERIZON COMMUNICATIONS	)	COVAD’S ANSWER TO
INC., and MCI, INC.	)	VERIZON’S MOTION
	)	TO MODIFY THE PROTECTIVE
For Approval of Agreement and Plan	)	ORDER
of Merger	)	
	)	

Covad Communications Company (“Covad”) answers Verizon Communications, Inc.’s (“Verizon”) motion to modify the protective order as follows:

I.

Verizon has moved to modify the protective order to limit in this docket the disclosure of “highly confidential” information it produces to the Federal Communication Commission (“FCC”) in the MCI/Verizon merger proceedings to outside counsel or consultants. Verizon’s motion is without merit. The current protective order provides Verizon with more than adequate protection against the improper disclosure of “highly confidential” information. Moreover, Verizon’s motion, if allowed, would impose an undue burden and unnecessary expense on Covad.

II.

In its motion, Verizon has not explained why the limitations in the current protective order do not provide adequate protection with regard to highly confidential information it produces to the FCC. In fact, the current order is more than adequate to protect Verizon from an unwanted disclosure of such information. Under the current protective order, any person who desires access to highly confidential information must

execute Exhibit C to the protective order and, upon doing so, is precluded from sharing such information except as may be allowed under the terms of the order. The order provides that no “Highly Confidential Information” be made available to anyone except, among others, the Commission, Commission staff, the presiding officer, counsel of record, in-house counsel, outside experts, authors of a document, persons to whom a copy of such document was sent prior to production in this docket, persons who had access to a document prior to production and any mediator approved by the parties. Consequently, there is no risk that “Highly Confidential Information” can be inadvertently disclosed to persons within an organization who are not entitled to see such information or who might use the information in a manner contrary to the order or detrimental to any legitimate Verizon interest – regulatory, business or otherwise.

Moreover, one of the few persons employed by a party to this proceeding who may view “Highly Confidential Information” would be in-house counsel.<sup>1</sup> However, in-house counsel for a party is bound by the same legal and ethical obligations as outside counsel for a party to comply with the terms and conditions of the protective order. Merely because in-house counsel is also an employee rather than just an agent for a party (like outside counsel) does not increase the risk that “Highly Confidential Information” would be improperly disclosed to persons within an organization not entitled to view it. And between the protections provided by the order as well as the ethical obligations prohibiting the violation of the order, Verizon can rest assured that its highly confidential information will remain just that.

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<sup>1</sup> Others might include only the following: an author of a document, persons to whom a copy of such document was sent prior to production in this docket and persons who had access to a document prior to production. However, production to these persons would of course only extend to the document they authored or received or had access to prior to production in this docket.

### III.

Verizon's motion, if allowed, would impose an unnecessary expense upon Covad. In this docket, Covad's counsel of record in this case is the company's senior counsel for the Qwest region (Greg Diamond). Covad is not represented by outside counsel in this proceeding. If Verizon's motion is allowed, Covad would be required to retain outside counsel or an outside consultant solely for the purpose of reviewing "Highly Confidential" information Verizon may produce to the FCC. Because Covad is already represented by counsel of its own choosing in this docket, it should not be required to incur additional expense just to satisfy the unfounded and unexplained fear of Verizon that somehow highly confidential information produced to in-house counsel will be shared with the wrong persons at Covad.

Nonetheless, in an effort to accommodate Verizon's concerns, before filing this answer, Covad offered to Verizon that it would agree to limit the disclosure of highly confidential information produced to the FCC to only a single in-house attorney. This person is not and would not be engaged in developing, planning, marketing, or selling products or services, determining the costs thereof, or designing prices thereof to be charged or potentially charged to customers for a party. This accommodation would only apply if a party in this docket is not already represented by outside counsel. In this case, Covad advised Verizon that Mr. Diamond would qualify for this limitation. Verizon rejected this very reasonable accommodation.

Like any outside counsel, Mr. Diamond is fully aware of the legal and ethical obligations attendant to compliance with a Commission protective order. Mr. Diamond

has been practicing law for over 18 years and is licensed to practice law in Washington. He was in private practice for that entire time until 2003. As a partner with the telecommunications practice group at Davis Wright Tremaine in Seattle, Mr. Diamond has represented numerous telecommunication carriers before this Commission and before other state commissions in the western United States, including representing AT&T in numerous state regulatory dockets involving the merger of U S West and Qwest. Mr. Diamond has signed off on numerous protective orders in such proceedings. As such, Mr. Diamond, as counsel for Covad in this docket, stands in the same position as outside counsel would if they were of record for Covad. Verizon has offered no reason to distinguish between the two types of lawyers.

WHEREFORE, Covad prays for entry of an order, (1) denying Verizon's motion to modify the protective order or; (2) in the alternative, modifying the protective order to provide that any "Highly Confidential" information Verizon produces to the FCC shall only be made available in this docket to outside counsel, a single in-house lawyer for a party and any outside consultants, subject to proper execution of the protective order.

RESPECTFULLY SUBMITTED this 11th day of July, 2005.

COVAD COMMUNICATIONS COMPANY

By /s/ Gregory T. Diamond

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