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

In the Matter of the Joint Application of
VERIZON COMMUNICATIONS INC., and
MCI, INC.
For Approval of Agreement and Plan of Merger

DOCKET NO. UT-050814
INTEGRA TELECOM'S RESPONSE TO
VERIZON'S MOTION TO MODIFY
PROTECTIVE ORDER

I. INTRODUCTION

Integra is concerned about Verizon's Motion to Modify Protective Order ("Motion") for two reasons. First, the scope of the additional protections sought by Verizon is unclear. The Motion, as written, does not appear to specify whether the additional protections apply only to certain documents that have already been produced to the FCC, or whether the additional protections would apply to documents that have yet to be produced to the FCC and that may also be produced in this proceeding. Integra is concerned that the Motion is overly broad and would essentially rewrite the protective order that, ironically, Verizon and MCI insisted that the parties sign in this proceeding and that permits party employees to access highly confidential information.

Integra is also concerned that, if granted, the Motion would restrict access to documents and information that may be necessary for competitors like Integra to prove their cases in this docket. Integra is the largest competitor in Verizon territory in Washington, but Integra does not have the resources to hire outside counsel or an outside expert in this docket. Instead, Integra's internal employees will be handling this matter. There is no legitimate reason why Integra's in-house counsel and in-house expert or experts, who are not engaged in developing or marketing products, should not be allowed access to highly confidential information. To hold otherwise

1 RESPONSE TO MOTION TO MODIFY PROTECTIVE ORDER

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1 would immunize Verizon from testimony or cross-examination by competitors on those
2 documents simply because the competitors do not employ outside counsel or experts. Unlike the
3 FCC proceeding, apparently no competitor has hired an outside expert in this case, and only one
4 has hired outside counsel. Therefore, it appears that every competitor in this case would be
5 precluded from submitting testimony on the highly confidential information at issue. While it is
6 important to safeguard Verizon's confidential information, it also is important and in the best
7 interests of the citizens of the state of Washington to have fully informed and effective testimony
8 from the carriers that compete with Verizon in Washington on a daily basis. Accordingly, the
9 Commission should ensure that, consistent with the terms of the protective order already agreed
10 to by Verizon and MCI, select party employees are able to review the highly confidential
11 documents at issue.

12 II. RESPONSE

13 Integra is concerned that Verizon's Motion may create the exception that swallows the
14 rule. Verizon negotiated a protective order in this docket that treats highly confidential
15 information a certain way – in-house counsel and other select party employees who meet certain
16 criteria are permitted to obtain and use highly confidential information. Indeed, the protective
17 order in this case was proposed by Verizon and MCI, who insisted that the parties accept their
18 proposed terms and modified the protective order only slightly in response to the concerns of
19 other parties. Integra did not oppose the protective order in this docket because it permitted in-
20 house lawyers and regulatory employees, and other mutually agreed-upon employees, to have
21 access to confidential and highly confidential information.

22 Now Verizon wants to change the terms of the protective order. It wants to have
23 *additional* protections for certain highly confidential information. It wants to restrict access to
24 certain highly confidential information to only outside counsel and experts and, in some cases, to
25

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1 prevent copying of highly confidential information, thereby limiting or preventing its use in
2 testimony and at the hearing. This additional layer of protection beyond what the parties
3 negotiated at the prehearing conference in this docket would prevent Integra and any other party
4 whose in-house counsel and experts will be handling this matter from accessing certain
5 documents.

6 The scope of the Motion is unclear, and the Commission should deny it.¹ In the Motion,
7 Verizon asks that its documents that are produced to the FCC that are covered by the FCC's
8 protective order should be subject to the same restrictions in this docket. It is unclear from
9 Verizon's Motion whether the documents subject to the additional protections – those produced
10 to the FCC that are highly confidential – have already been produced and are finite in number or
11 whether Verizon continues to produce highly confidential documents to the FCC on an ongoing
12 basis that would be subject to the additional protections.² If the Motion were granted, then
13 Verizon would effectively escape the obligations it agreed to – indeed, that it *insisted on* – in the
14 Commission's protective order, which included allowing in-house counsel and certain party
15 employees access to highly confidential information. It is likely that some of the same highly
16 confidential information will be produced to the FCC and to the Commission. Verizon's Motion
17 apparently would preclude parties in this proceeding from accessing highly confidential

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20 ¹ Notably, Verizon has not explained why it did not notify the Commission or the parties of the
21 additional protections provided by the FCC protective order at the prehearing conference, which
22 was held exactly one month after the FCC issued its second protective order.

23 ² In response to its inquiry for more detail on what types of documents would be subject to the
24 additional protections, Verizon provided Integra with general descriptions of some of the
25 documents. Verizon stated that its descriptions were “not exhaustive or comprehensive.”

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1 documents and information simply because the documents and information were or may be
2 produced to the FCC. It potentially would render meaningless the portions of the Commission's
3 protective order concerning highly confidential information because, for the information
4 produced at the FCC, the FCC's protections would take the place of the Commission's protective
5 order.

6 Interestingly, Verizon's Motion is not a two-way street. It would create a distinction
7 between certain highly confidential information produced by Verizon, which would be restricted
8 to outside counsel and experts only, and similar information that may be produced by others in
9 this proceeding at Verizon's request, which apparently would be available to Verizon employees
10 who sign the Commission's protective order.

11 Integra does not desire to capitalize on the discrepancy between the FCC's protective
12 order and the Commission's protective order. However, Integra also does not want to be
13 precluded from accessing information that is necessary for its case, and Integra should not be
14 required to hire outside counsel or an outside expert, especially after Verizon and MCI insisted
15 on terms of a protective order in this docket that do not require the parties to hire outside counsel
16 or experts and have failed to explain why, after insisting on those already restrictive terms, they
17 now seek to impose additional restrictions.

18 The substantial restrictions that may be feasible in the FCC proceeding in Washington
19 D.C., where most parties employ outside counsel and experts, are not necessarily feasible or
20 justified in the state of Washington. Unlike the FCC proceeding, only three competitors have
21 intervened in this case, apparently none have hired outside experts, and only one has hired
22 outside counsel. It is in the best interests of the Commission and Washington consumers to
23 allow the competitors to present their cases with a full understanding of the merger's effect on
24 competition. Accordingly, the Commission should allow party employees who are responsible
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4 RESPONSE TO MOTION TO MODIFY PROTECTIVE ORDER

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1 for presenting their employers' cases in this proceeding, and who are not engaged in developing,
2 planning, marketing, or selling products or services, to review the documents subject to any
3 additional protections. To hold otherwise would constrain the ability of the competitors in this
4 docket to effectively prove their cases to the Commission. Verizon has already agreed to those
5 terms and would not be harmed by them.

6 At the very least, the *Commission* should determine whether party employees may see
7 certain information. Integra intends to demonstrate that, through its policies and actions, Verizon
8 attempts to suppress competition, and that Verizon's proposed merger with MCI will negatively
9 affect competition in Washington. Highly confidential documents that relate to the state of
10 competition in Washington, which also happen to have been produced to the FCC, are relevant to
11 Integra's case. Certain Integra employees, who also represent the company as attorneys or
12 witnesses in this docket, should have access to those documents even if other documents that
13 relate solely to financial performance or other matters are outside the scope of Integra's review.
14 The Commission, not Verizon, should make that determination.³


22 ³ By suggesting this alternative, Integra does not waive, and expressly reserves, its right to
23 challenge the additional protections afforded to the highly confidential documents that are
24 subject to such limited review.
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1 WHEREFORE, for the reasons stated above, Integra respectfully requests that the
2 Commission deny Verizon's Motion or, in the alternative, impose conditions sufficient to allow
3 certain party employees to have access to certain highly confidential information that is subject
4 to any additional protections granted by the Commission.

5 Dated this 11th day of July, 2005.

6 Respectfully submitted,

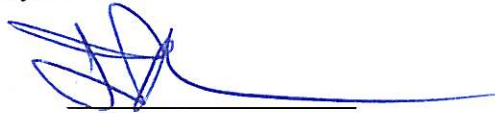
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Portland, Oregon this 11th day of July, 2005.



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