

BEFORE THE WASHINGTON 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

REPLY OF COMMISSION STAFF  
TO VERIZON NORTHWEST'S  
MOTION TO MODIFY  
PROTECTIVE ORDER NO. 2

**I. INTRODUCTION**

*1* On June 28, 2005, the Commission entered a seventeen-page protective order intended to govern the treatment of documents designated "Highly Confidential" by any party to this proceeding. On July 5, 2005, Verizon Northwest filed a motion to modify the protective order in this case requesting that the Commission adopt – at the state level – some, but not all, provisions contained in protective orders entered by the Federal Communications Commission (FCC) in the parallel Verizon/MCI merger proceeding. On July 8, 2005, the Commission issued a notice of opportunity to file an answer to Verizon's motion to amend the protective order. The Commission should deny Verizon's motion.

## II. ARGUMENT

### A. Verizon Northwest Has Not Demonstrated That The “Highly Confidential” Protective Order Entered in This Case Is Inadequate to Protect Verizon’s Interests

2           Although Verizon successfully persuaded the FCC that certain documents contain information “so sensitive (even given [their] Highly Confidential designation) that [they] should not be copied by anyone,” it has made no showing here that the WUTC’s protective order is inadequate to protect Verizon’s interests.<sup>1</sup> Even the FCC recognized that: “such materials are necessary to develop a more complete record on which to base the Commission’s decision in this proceeding and therefore require their production. We are mindful of their highly sensitive nature, but we must also protect the right of the public to participate in this proceeding in a meaningful way.” *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Order Released May 25, 2005, at 3. Contrary to the impression left by Verizon Northwest, the FCC did not authorize Verizon to unilaterally decide which documents can be copied and which cannot. The FCC went on to say:

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<sup>1</sup> Paragraph 6 of the FCC’s Second Protective Order provides: *Prohibited Copying*. If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential Designation) that it should not be copied by anyone, it shall bear the additional legend “Copying Prohibited,” and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

We conclude that the protections adopted in the Second Protective Order will give appropriate access to the public while protecting a Submitting Party's competitively sensitive information, and will thereby serve the public interest. To the extent that a Submitting Party believes that its submissions should be covered by the Second Protective Order, the Submitting Party must file a letter specifically describing the information for which additional protection is sought and explaining why additional protection is necessary, and the Submitting Party may only file documents under the Second Protective Order that are specifically authorized by the Bureau.

*Id.*

Even if the FCC had authorized Verizon to place the legend "Copying Prohibited" on any document Verizon chooses, there is no reason why such authority should be granted in the context of this state proceeding.

3           This is not the first time the Commission has reviewed a proposed merger transaction. To the contrary, in the recent past, the Commission reviewed and approved, with conditions, four mergers. In each of those cases, the Commission's "Highly Confidential" protective order adequately protected the utilities' competitively sensitive information. *See In the Matter of the Application of Puget Sound Power & Light Company and Washington Natural Gas Company for an Order Authorizing the Merger of Washington Energy Company and Washington Natural Gas Company with and into Puget Sound Power and Light Company, and Authorizing the Issuance of Securities, Assumption of Obligations, Adoption of Tariffs, and Authorizations*

*in Connection Therewith, WUTC Docket No. UE-960195, Protective Order (May 22, 1996); In the Matter of the Application of PacifiCorp and Scottish Power PLC for an Order (1) Disclaiming Jurisdiction or, in the Alternative, Authorizing the Acquisition of Control of PacifiCorp by Scottish Power and (2) Affirming Compliance with RCW 80.08.040 for PacifiCorp's Issuance of Stock in Connection with the Transaction, WUTC Docket No. UE-981627, First Supplemental Order – Protective Order (February 18, 1999); In the Matter of the Application of GTE Corporation and Bell Atlantic Corporation for an Order Disclaiming Jurisdiction or, in the Alternative, Approving the GTE Corporation-Bell Atlantic Corporation Merger, WUTC Docket No. UT-981367, First Supplemental Order; Protective Order (June 7, 1999); In Re Application of U S West, Inc. and Qwest Communications International, Inc. for an Order Disclaiming Jurisdiction, or in the Alternative, Approving the U S West, Inc.-Qwest Communications International, Inc. Merger, WUTC Docket No. 991358, First Supplemental Order; Protective Order (Oct. 5, 1999). No party to the above proceedings suggested that the state commission adopt any “Copying Prohibited” provisions. No such provisions were deemed necessary.*

4           Here, too, the Commission’s protective order is adequate to protect Verizon’s competitively sensitive information. The protective order entered in this case provides, in part:

Parties must scrutinize potentially Highly Confidential material, and strictly limit what they designate as “Highly Confidential Information” to only information that truly might reveal sensitive financial information and/or analysis regarding the merger of Verizon and MCI or information that might provide a benefit to competitors engaged in developing, planning, marketing or selling products or services, determining the costs thereof, or designing prices thereof to be charged to customers. . . .

\* \* \*

The goal is to protect each party’s rights with respect to Highly Confidential Information while allowing all parties the latitude to present the evidence necessary to their respective cases.

Protective Order at ¶¶ 12 and 15.

**B. Verizon Has Cooperated with Commission Staff and Accommodated Staff’s Request for Access to Documents Bearing the Legend “Copying Prohibited”**

5 Perhaps recognizing the impossibility of creating an administrative record in the absence of such documents, the Company has agreed to provide to Staff documents bearing the legend “Copying Prohibited.” The compact discs containing these documents will be returned to Verizon at the conclusion of this proceeding. Staff agreed to notify Verizon of Staff’s intention to copy and make an exhibit of any document stamped “Copying Prohibited” in advance of doing so, “so that the Company might have the opportunity to seek whatever particular protection might be required for use of that document.”

### III. CONCLUSION

6 For the above reasons, the Commission should deny Verizon Northwest's Motion to Modify Protective Order No. 2.

Respectfully submitted this 11<sup>th</sup> day of July, 2005.

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