

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Petition of
Verizon Communications Inc. and MCI, Inc.
for Approval of Agreement and Plan of Merger

) Docket No. UT-050814
)
) PETITIONERS' RESPONSE TO COVAD'S
) ANSWER TO MOTION TO MODIFY PROTECTIVE
) ORDER NO. 2
)

Verizon Communications, Inc. and MCI, Inc. respond to Covad's answer¹ to Motion to Modify Protective Order No. 2 as follows:

I.

Verizon and MCI have moved to modify Order No. 2 to apply the protections afforded to documents in the Federal Communications Commission ("FCC") investigation regarding the Petitioners' proposed merger to the same documents if produced in the Washington State proceeding. In its answer, Covad asserts that a) such consistent protection as sought by Petitioners would impose unnecessary expense upon Covad because compliance would require the use of outside counsel, and b) Petitioners have failed to explain why the limitations in the current protective order are not adequate.

The heightened protection that has been requested for the FCC documents is warranted in this docket for several reasons. First, the documents contain competitively sensitive information

¹ In reply to Integra's Response and the Reply of Commission Staff, Petitioners assert its arguments in its Motion to Modify Protective Order No. 2 as well as the arguments contained in I. b. of this Reply regarding the Federal Communications Commission's decision regarding the need for additional protections for the highly confidential and sensitive information at issue.

1 that should not be disclosed to competitor intervenors' in-house business and financial personnel.
2 Second, the current protections are simply not adequate to safeguard the FCC documents from
3 disclosure to such parties. Third, permitting disclosure or use of the FCC documents at issue in
4 this proceeding under less restrictive provisions than the FCC has already found necessary in the
5 federal proceeding would prejudice the Petitioners by allowing their most sensitive business and
6 financial information to be placed in the hands of the very competitor-insiders whose access to
7 the information would have devastating consequences for Petitioners' business and competitive
8 plans. Fourth, competitor intervenors like Covad will not be prejudiced by a ruling granting
9 heightened protection for the FCC documents because Covad (and many other parties) have
10 ***already agreed to be bound*** by the requested level of protection in the FCC docket. Finally,
11 refusing to provide parallel confidential treatment for FCC material produced in this proceeding
12 would unnecessarily bring this Commission into conflict with the FCC because the justifications
13 for confidential treatment at the FCC are equally applicable here.
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16 Petitioners address Covad's specific stated concerns below:

- 17 **a) Outside counsel has already been retained by Covad for processing documents**
18 **in the FCC investigation regarding the Merger and therefore Covad's concern**
19 **regarding expense of outside counsel is *de minimis*.**

20 FCC records indicate that Covad has already retained outside counsel for compliance
21 with the protective order in the FCC investigation regarding the Merger. *See* FCC Docket for
22 Proceeding 05-75 and Acknowledgement of Confidentiality documents, attached as Exhibit A.
23 While Covad asserts that Consistent Protection would generate an unnecessary expense, there is
24 no legitimate reason why Covad could not employ the use of its outside counsel involved in the
25 federal proceeding to represent its interests in the Washington State proceeding. Since the same
26 documents are at issue in both proceedings, it would be procedurally efficient and cost effective

1 for the same legal team to review the documents at issue. Because Covad already has a legal
2 team retained for processing the documents at issue, concerns regarding unnecessary expense are
3 *de minimis*.

4 **b) Petitioners have already demonstrated at the FCC that additional protections**
5 **are needed for review of the documents at issue, and the FCC has ruled that the**
6 **Petitioners' request is reasonable, therefore Covad's assertion that Petitioners'**
7 **have failed to show that the additional protections are needed is wrong.**

8 The FCC has ordered additional protections for the documents at issue between the
9 parties. Motion to Modify Protective Order No. 2 ("Motion"), Ex. B. The FCC found
10 compelling the reasons asserted for additional protection provided in a letter from Curtis L.
11 Groves, MCI, Inc. and Karen Zacharia, Verizon Communications Inc. (which was cited in the
12 Motion and is attached to this response as Exhibit B). In addition, as explained in the Motion,
13 Petitioners are concerned that they could lose the protections afforded in the federal proceeding if
14 the identical documents at issue are produced in this proceeding under lesser protections.

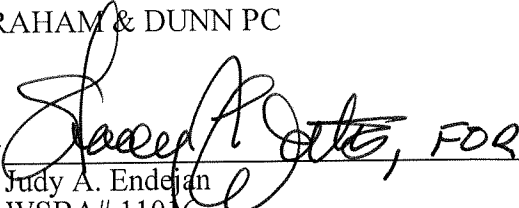
15 Mr. Diamond asserts that outside counsel is not necessary for the protection of the highly
16 confidential documents, because Mr. Diamond has a legal and ethical obligation to comply with
17 protection orders. Covad's Answer at 3-4. Petitioners do not question Mr. Diamond's integrity.
18 However, the FCC has found that it is not prudent to allow highly confidential and sensitive
19 documents to be housed on a competitor's site, and Petitioners simply ask this Commission to
20 concur and ensure that there is no disparate treatment of the documents which would undermine
21 the federal protections already granted. The issue is not one of integrity of the parties or their
22 counsel, but of practicality and risk reduction. The protective order process is available for
23 precisely these high-risk situations, and Petitioners ask the Commission to grant their Motion to

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1 Modify Protective Order No. 2.

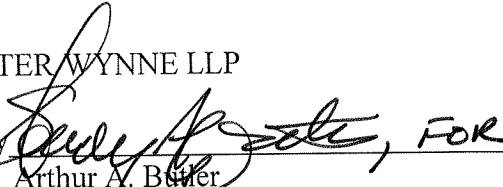
2 DATED this 14th day of July, 2005.

3 GRAHAM & DUNN PC

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