

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest)
 Communications Company, LLC, Against)
 MCImetro Transmission Services LLC (d/b/a)
 Verizon Access Transmission Services); XO)
 Communications Services, Inc.; tw telecom)
 of florida, l.p.; Granite Telecommunications,)
 LLC; Cox Florida Telcom, L.P.; Broadwing)
 Communications, LLC; Access Point, Inc.;)
 Birch Communications, Inc.; Budget Prepay,)
 Inc.; Bullseye Telecom, Inc.; Deltacom, Inc.;)
 Ernest Communications, Inc.; Flatel, Inc.;)
 Lightyear Network Solutions, LLC; Navigator)
 Telecommunications, LLC; Paetec)
 Communications, Inc.; STS Telecom, LLC;)
 US LEC of Florida, LLC; Windstream Nuvox,)
 Inc.; and John Does 1 through 50, For)
 unlawful discrimination)

Docket No. 090538-TP

Filed: August 9, 2012

claim of confidentiality
 notice of intent
 request for confidentiality
 filed by OPC

For DN 05434-12, which is in locked storage. You must be authorized to view this DN.-CLK

VERIZON ACCESS TRANSMISSION SERVICES' REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER

Pursuant to Commission Rule 25-22.006, F.A.C., Verizon Access Transmission Services ("Verizon") seeks confidential classification and a protective order for certain information contained in the Rebuttal Testimony of Peter H. Reynolds, and in Exhibits PHR-26, PHR-28, PHR-32, and PHR-35 attached thereto, which are being filed on behalf of Verizon in this proceeding on August 9, 2012.

All of the information for which Verizon seeks confidential treatment falls within Florida Statutes section 364.183(3), which defines "proprietary confidential business information" as:

COM _____
 AFD _____
 APA _____
 ECO _____
 ENG _____
 GCL 12
 IDM _____
 TEL 2
 CLK 1

[i]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative

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body, or private agreement that provides that the information will not be released to the public.

Florida Statutes section 364.183(3)(a) expressly provides that "trade secrets" fall within the definition of "proprietary confidential business information." Florida Statutes section 364.183(3)(e) provides further that "proprietary confidential business information" includes "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information."

One of the exhibits identified above, Exhibit PHR-26, contains a switched access service agreement between Verizon's predecessor ("MCI") and AT&T that was attached to a settlement agreement that contains confidentiality provisions that preclude its disclosure to third parties, and was accorded confidential treatment by the United States Bankruptcy Court that approved the settlement. The Court's order approving the settlement agreement necessarily encompassed the confidentiality provisions contained therein. The bankruptcy court has not issued any subsequent order modifying those provisions. The information in Exhibit PHR-26 was also produced pursuant to a protective order in a proceeding in another state. The agreement contains the rate, terms and conditions of the parties' switched access services agreement. For those reasons, Verizon has never publicly disclosed its agreement.

Exhibit PHR-28 contains detailed information exchanged during settlement negotiations between MCI and AT&T, in particular a detailed proposal that set forth MCI's proposals regarding all of the terms and conditions that would govern the companies' anticipated business arrangement. This information is highly confidential and trade secret, and has been limited only to those individuals that had a need to know the specifics. In a competitive business, any knowledge obtained about a competitor,

including its thought processes and the manner in which it operates its business, can be used to the detriment of the entity to which it pertains, often in ways that cannot be fully anticipated. This unfair advantage would skew the operation of the market, to the ultimate detriment of the telecommunications consumer. In addition, information exchanged during confidential settlement negotiations must be allowed to remain confidential; otherwise, parties will be reluctant to engage in settlement discussions and share information that could lead to an efficient and timely resolution of disputes. Accordingly, Verizon respectfully requests that the Commission classify the information in Exhibit PHR-28 as confidential.

Exhibits PHR-32 and PHR-35 include internal documents that reflect MCI's internal deliberations and evaluation of a proposed comprehensive settlement agreement of numerous issues, disputes and claims in the WorldCom bankruptcy, as well as its management's recommendations regarding the proposed settlement. Some of this information is also included in the text of Mr. Reynolds' Rebuttal Testimony on pages 31 and 40. The documents include financial analyses and projections, and statements about the company's business plans. This information is highly confidential and trade secret, and has been limited only to those individuals that had a need to know the specifics. Knowledge of MCI's proposed settlement terms and the internal decision-making process that preceded the company's entering into a major settlement agreement would provide competitors with detailed information and insights about MCI's business and business planning that they could not obtain through other means. Disclosure of this information would be to MCI's detriment.

Page 26 of Mr. Reynolds' Rebuttal Testimony includes information that the complainant, Qwest Communications Company LLC ("QCC"), provided in direct testimony. QCC alleged that the information contained in its testimony is "confidential," and labeled it as such. Pages 37 and 38 of the testimony include information that QCC produced in response to discovery requests in this proceeding. QCC alleged that the information contained in its responses is "confidential," and produced the information and documents pursuant to the protective order entered in this case. It is Verizon's understanding that the documents contained in Exhibit PHR-11 that are referenced on page 38 of the testimony were filed by QCC on a "confidential" basis with the Commission, and that QCC subsequently marked them as "confidential" when it produced them in this case.

Pages 38 and 39 of Mr. Reynolds' Rebuttal Testimony include customer line counts for Verizon. Such information is confidential and trade secret, and is not made publicly available. Knowledge about the company's customers and access lines would provide competitors with information regarding the success (or lack of success) of its sales and marketing efforts, trends in its business over time, and insights into its investment in and deployment of facilities needed to serve its customer base. This would enable its competitors to develop business plans and marketing strategies specifically targeted at Verizon. Thus, disclosure of such information would cause Verizon competitive harm.

For the reasons stated above, and based on QCC's characterization of information and documents provided by it as confidential, Verizon requests that the

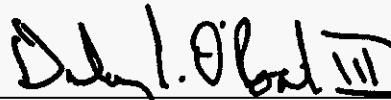
Commission classify the information in the four exhibits and the passages of rebuttal testimony listed above as confidential, and enter an appropriate protective order.

While a ruling on this request is pending, Verizon understands that the information at issue is exempt from Florida Statutes section 119.07(1) and Staff will accord it the stringent protection from disclosure required by Rule 25-22.006(3)(d).

A highlighted copy of the confidential information is attached as Exhibit A. Two redacted copies of the confidential information are attached as Exhibit B. A detailed justification of the confidentiality of the information at issue is attached as Exhibit C.

Respectfully submitted on August 9, 2012.

By:



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Transmission Services

REDACTED

DOCKET NO. 090538-TP

EXHIBIT PHR-26

PAGES 4 OF 11 THRU 10 OF 11

SWITCHED ACCESS SERVICE

AGREEMENT BETWEEN

MCI AND AT&T

ENTIRE DOCUMENT IS

CONFIDENTIAL

COM _____
 AFD _____
 APA _____
 ECO _____
 ENG _____
 GCD 1
 IDM _____
 TEL _____
 CLK _____

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EXHIBIT PHR-28

PAGES 2 OF 8 THRU 8 OF 8

MCI/AT&T SWITCHED ACCESS

RECIPROCAL CONTRACT

TERMS: OVERVIEW OF KEY

BUSINESS TERMS

ENTIRE DOCUMENT IS

LAWYERS ONLY CONFIDENTIAL

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EXHIBIT PHR-32

PAGES 1 OF 2 AND 2 OF 2

**ENTIRE DOCUMENT IS
LAWYERS ONLY CONFIDENTIAL**

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EXHIBIT PHR-35

PAGES 1 OF 3 THRU 3 OF 3

**ENTIRE DOCUMENT IS
LAWYERS ONLY CONFIDENTIAL**

DOCKET NO. 090538-TP

EXHIBIT PHR-36

PAGES 1 OF 5 THRU 5 OF 5

**ENTIRE DOCUMENT IS
LAWYERS ONLY CONFIDENTIAL**

1 2004 *Contracts* to be “a credible basis” for finding that unreasonable
2 discrimination did not occur (Weisman Direct at 20:3-7), the New York
3 Commission obviously concluded otherwise.¹⁴

4

5 **Q. MESSRS. CANFIELD AND EASTON ALLEGE THAT THE 2004**
6 **CONTRACTS WERE DELIBERATELY INTENDED TO PROVIDE A**
7 **SUBSTANTIAL “NET DISCOUNT” TO AT&T. IS THIS TRUE?**

8 A. No, this is a complete fallacy.¹⁵ Mr. Easton alleges that MCI “knew *from the*
9 *inception*” that the 2004 switched access agreements would afford AT&T “an
10 effective (net) discount of [BEGIN LAWYERS ONLY CONFIDENTIAL
11 INFORMATION] XXXXXXXXXXXX [END LAWYERS ONLY
12 CONFIDENTIAL INFORMATION] and that this amount had been
13 “project[ed] (calculated and shared within MCI in January 2004)”. Easton
14 Direct at 31-32. Although QCC’s witnesses refer to a few internal MCI
15 documents,¹⁶ neither Mr. Easton nor Mr. Canfield produced a single document
16 that contained the alleged discount figure.

17

18 This is hardly surprising, given Mr. Canfield’s candid admission that it was he -

¹⁴ Dr. Weisman (at 21-22) refers to a decision in 2007 by the Minnesota PUC, but he fails to point out that the Minnesota Commission expressly declined to make any findings or conclusions regarding MCImetro in its order. *See 2007 Minn. PUC LEXIS 146*, at § VI. Ms. Hensley Eckert also refers to an ongoing proceeding in Colorado where no final order has been issued involving QCC’s complaint against MCImetro. Because there are significant differences between the statutes and regulations in Colorado and those in Florida, no meaningful comparisons between the two cases can be made. For example, in preliminary rulings, the Colorado Commission placed substantial weight on a requirement that switched access contracts be filed in Colorado, but no such requirement exists in Florida.

¹⁵ Because I am not an attorney, I will not express an opinion on whether the parties’ alleged “intent” in entering into a given agreement is relevant to the issue of whether the agreement was unreasonably discriminatory. I will leave it to the attorneys to address in briefs whether the Commission’s evaluation should focus on the objective differences between the customers, rather than, as QCC suggests, the contracting parties’ subjective motivations, when deciding if unlawful discrimination took place.

¹⁶ *See* LAWYERS ONLY CONFIDENTIAL Exhibits WRE-28 and DAC-17.

1 **INFORMATION] XXX**
2 **XX**

3 **[END LAWYERS ONLY CONFIDENTIAL INFORMATION].** MCI's
4 negotiating team advised the company's management that the updated analysis
5 "tends to support the proposed settlement vs. financial plans as they are
6 known." *Id.* Success of the company's business plan was obviously of utmost
7 importance as the company was seeking to emerge from bankruptcy.

8 Mr. Easton's myopic reliance on a single factor is also misplaced because he
9 failed to acknowledge the various forms of consideration and other benefits
10 MCI obtained by entering into a comprehensive settlement agreement during
11 the WorldCom bankruptcy proceeding, including resolution of numerous
12 financial disputes and AT&T's dismissal of its federal court lawsuit against the
13 company. Accordingly, the Commission should reject his attempt to discredit
14 the legitimacy of, and MCI's reasons for entering into, a settlement agreement
15 with AT&T.

16
17 **Q. HAS QCC DEMONSTRATED THAT IT WAS SIMILARLY SITUATED**
18 **TO AT&T FOR PURPOSES OF ENTERING INTO A SIMILAR**
19 **RECIPROCAL SWITCHED ACCESS AGREEMENT?**

20 A. No. QCC's position appears to be two-fold. First, Mr. Easton contends that
21 "[a]s IXC customers of tandem-routed CLEC switched access," AT&T and
22 QCC are, essentially by definition, similarly situated. Easton Direct at 12:18-
23 20.²⁰ Second, he asserts that "no reasonable explanation has been given" as to
24 how and why QCC is not similarly situated "in the context of intrastate

²⁰ As a factual matter, at the time the 2004 Contracts were entered into, AT&T had established direct trunks between its network and MCI's in some locations around the country, and MCI had done the same.

1 its CLEC business in Florida to accomplish this.

2

3 In fact, it is highly unlikely that QCC would have done so given the size of its
4 CLEC customer base in Florida during the three years the *2004 Contracts* were
5 in effect. According to QCC, **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXX
6 XXX
7 XXX
8 XXX
9 XXX
10 XXX
11 XXXXXXXXXXXXXXX **[END CONFIDENTIAL]** See Exhibit PHR-10.

12

13 During that same period, QCC reported to the Commission that it **[BEGIN**
14 **CONFIDENTIAL]** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
15 XXX
16 XXX
17 XXX
18 XXX
19 XXX
20 XXX
21 XXXXX **[END CONFIDENTIAL]** See CONFIDENTIAL Exhibit PHR-11
22 (QCC's "2003 CLEC Data Request" at 2, Response to No. 7, QCC POD
23 002134; and Response to No. 12, QCC POD 002135). QCC's representations
24 to the Commission a year later were essentially identical. See
25 CONFIDENTIAL Exhibit PHR-11 (QCC's "2004 CLEC Data Request" at 1,

1 Response to Nos. 2-4, QCC POD 002104). QCC provides no evidence, let
2 alone facts that would be convincing, to show that it would have been willing to
3 make the investments necessary to expand its CLEC business solely so that it
4 could have entered into a reciprocal switched access agreement with MCI.
5 Based on the available data and QCC's own assessment of its CLEC business at
6 the time, it is not reasonable to assume that QCC would have done so.

7
8 **Q. GIVEN THE SCOPE OF QCC'S CLEC BUSINESS DURING THE 2004-**
9 **2007 TIME FRAME, IS IT LIKELY THAT MCIMETRO WOULD**
10 **HAVE ENTERED INTO AN IDENTICAL RECIPROCAL SWITCHED**
11 **ACCESS AGREEMENT WITH QCC?**

12 A. No. As I have just shown, QCC's CLEC customer base would not have been
13 able to generate sufficient switched access traffic to make a reciprocal business
14 arrangement reasonable from MCI's perspective. Even if QCC were to have
15 transformed its business so that it could have provided and billed for switched
16 access on calls to or from its local exchange customers, the amount of access
17 traffic generated by its local service customers would have been too small to
18 have created any material financial benefit for MCI's IXCs. In sharp contrast,
19 when MCImetro entered into the *2004 Contracts*, it had **[BEGIN**
20 **CONFIDENTIAL] XXXXXXXXXXXX [END CONFIDENTIAL]** local
21 exchange lines that were used by its residential and small business customers in
22 Florida. Two years later, the number of local lines provided by MCImetro to its
23 mass market customers in Florida still exceeded **[BEGIN CONFIDENTIAL]**
24 **XXXXX [END CONFIDENTIAL].**²¹ To the extent QCC terminated

²¹ MCImetro also provided local exchange service to a number of enterprise customers, but it is not easy to quantify the number of lines used by those customers in a particular state.

1 agreement. For example, a few days before executing the agreement, MCI
2 projected that, over the next two years [BEGIN LAWYERS ONLY
3 CONFIDENTIAL] XXX
4 XXX
5 XXX [END LAWYERS ONLY
6 CONFIDENTIAL]. See Exhibit PHR-32. This reflected the percentage of
7 “total revenue minutes” to the total number of minutes (“revenue” and “cost”)
8 that MCI projected would be exchanged between the two companies, as shown
9 in LAWYERS ONLY CONFIDENTIAL Exhibit DAC-17.

10
11 The general accuracy of those projections was subsequently borne out by the
12 parties’ actual experience in exchanging traffic under the contracts. In the
13 second year of the agreement, MCI conducted an analysis using actual invoice
14 data for five months in mid-2005. That study showed that MCI and AT&T
15 were exchanging [BEGIN LAWYERS ONLY CONFIDENTIAL] XXXXXX
16 XXX
17 XXX
18 XXX [END LAWYERS ONLY
19 CONFIDENTIAL]. See LAWYERS ONLY CONFIDENTIAL Exhibit WRE-
20 29B, page 7 of 9 (Bates No. 000426). Given the enormous traffic volumes
21 involved, MCI’s original projections about the relative balance of traffic proved
22 to be reasonably accurate, particularly when normal fluctuations in demand and
23 market conditions are taken into account. This shows that the level and balance
24 of traffic was a reasonable assumption on which MCImetro could base a
25 business decision to enter into the 2004 Contracts as part of its Settlement

EXHIBIT C

CONFIDENTIAL INFORMATION	LINE(S)/COLUMN(S)	REASON
Direct Testimony of Peter Reynolds: Page 26, line 11	All highlighted text	QCC claimed in its direct testimony that this information is confidential.
Page 31, lines 1-2	All highlighted text	This information is derived from Exhibit PHR-35; see discussion below regarding that exhibit.
Page 37, lines 5-11	All highlighted text	QCC claimed that information about its customers and subscriber lines is confidential when responding to data requests.
Page 37, lines 14-21	All highlighted text	QCC claimed confidentiality with respect to its responses to annual Competitive Local Exchange Carrier Data Requests issued by the Florida Public Service Commission; those reports were the source of the information shown.
Page 38, line 20	All highlighted text	Information about Verizon's customer base is confidential and would provide competitors information about its relative success in the market.
Page 38, line 24	All highlighted text	Information about Verizon's customer base is confidential and would provide competitors information about its relative success in the market.
Page 40, lines 3-5	All highlighted text	This information is derived from Exhibit PHR-32; see discussion below regarding that exhibit.

<p>Page 40, lines 15-18</p>	<p>All highlighted text</p>	<p>This information is derived from internal documents that contain financial and business projections used to evaluate the benefits of a potential settlement agreement. See comments below regarding Exhibits PHR-32 and PHR-35.</p>
<p>Exhibit PHR-26 – pages 4 of 11 through 10 of 11</p>	<p>Entire document</p>	<p>The switched access agreement includes confidentiality provisions that preclude public disclosure. The agreement, including its confidentiality provisions, was approved by the U.S. Bankruptcy Court, and there has been no subsequent order negating those terms. The agreement contains the rate, terms and conditions of the parties' agreement. Disclosure would harm Verizon's business and unfairly benefit its competitors. It was obtained by QCC pursuant to a protective order in a separate proceeding.</p>
<p>Exhibit PHR-28 – pages 2 of 8 thru 8 of 8</p>	<p>Entire document</p>	<p>The document was exchanged during confidential settlement negotiations and contains a detailed set of proposed terms and conditions that would apply to the proposed business arrangement. Disclosure of MCI's thought processes and the manner in which it operates its business would provide enormous benefits to its competitors and cause Verizon competitive harm. Disclosure of confidential settlement negotiations would also inhibit the free exchange of information and make companies reluctant</p>

<p>Exhibit PHR-32 – pages 1 of 2 thru 2 of 2</p>	<p>Entire document</p>	<p>to resolve issues through informal settlement discussions.</p> <p>Internal document reflects MCI's internal deliberations during settlement negotiations and evaluation of a proposed comprehensive settlement agreement of numerous issues, disputes and claims, as well as its management's recommendations regarding the proposed settlement. The document includes financial analyses and projections and statements about the company's business plans. Disclosure would provide competitors with detailed information and insights into the company's business and business planning that they could not obtain through other means.</p>
<p>Exhibit PHR-35 – pages 1 of 3 thru 3 of 3</p>	<p>Entire document</p>	<p>Internal document reflects MCI's internal deliberations during settlement negotiations and evaluation of a proposed comprehensive settlement agreement of numerous issues, disputes and claims, as well as its management recommendations regarding the proposed settlement. The document includes financial analyses and projections and statements about the company's business plans. Disclosure would provide competitors with detailed information and insights into the company's business and business planning that they could not obtain through other means.</p>