Kathleen H. Burgess
Secretary
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Case 13-C-0197 --Tariff filing by Verizon New York Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area.

Dear Secretary Burgess and Commissioners of the New York State Public Service Commission:

In the Appeal of Verizon New York Inc. from the Determination of the Records Access Officer (on page 9), Verizon argued that its confidentiality request that protecting network cost data, if revealed, would benefit competitor's financial position and falls squarely within the scope of the trade-secret exemption.

If Verizon's cost allocation deserved trade secret protection, why then did Fran Shammo, Verizon Communications Inc. EVP and CFO September 20, 2012 tell equity analysts at the Goldman Sachs Communacopia Conference that:

> **"(T)he fact of the matter is is Wireline capital -- and I won't get the number but it's pretty substantial -- is being spent on the Wireline side of the house to support the Wireless growth. So the IP backbone, the data transmission, fiber to the cell, that is all on the Wireline books but it's all being built for the Wireless Company."**

(See http://www22.verizon.com/idc/groups/public/documents/adacct/goldman_vz_transcript_092012.pdf)

This strategy makes complete sense considering Verizon's Q3 results: Verizon Wireless delivered 49 percent to 50 percent segment EBITDA margin on service revenues for the full year. Through the first three quarters of 2013, segment EBITDA margin on service revenues was 50.4 percent, with Verizon Wireless maintaining margins of 49 percent or higher in five of the past six quarters. (See: http://www.verizonwireless.com/news/article/2013/10/q3-2013-earnings.html)

In contrast, Verizon's wireline segment in Q3 2013 reported an EBITDA margin (non-GAAP) of 22.7 percent, less than half that of Verizon wireless.

Besides raising the issue of cross-subsidization of Verizon's wireless division by its wireline customers, it begs the question: If the costs to do building are not longer being used to upgrade and maintain the plant -- why haven't prices fallen? In fact they have risen – substantially. Since 2004 Verizon has increased local phone rates with the NYS PSC's permission 90% in New York.

Verizon has described its Voice Link product as a wireless product to the NYS PSC, in its May 16, 2013 filing, Verizon New York Inc., Order Conditionally Approving Tariff Amendments In Part, Revising In Part, and Directing Further Comments.

- "Verizon states that the use of a Voice Link, (is) a technology it describes as a wireless service."
- "Verizon also states that Voice Link utilizes the same cellular technology as a conventional mobile phone."

In fact, Verizon's Voice Link employs a near identical technology as does Verizon's wireless offering called Home Phone Connect. The major difference is that Verizon offers Home Phone Connect to customers at nearly half the price of its Voice Link offering.

On November 15, 2013 Verizon confirmed as much in the Declaration of William E. Taylor, where Mr. Taylor offered that Verizon has a virtually identical product– Home Phone Connect – and that Voice Link is nothing more than another version of a commodity product with no special features. In fact, he said, Verizon's competitors have the exact same type of product – and all of these products are now on sale.

> "These considerations are not merely theoretical. Home wireless services are a rapidly growing alternative to wireline plain old telephone service for many customers throughout New York State. In competition with Verizon's Voice Link service, AT&T offers a Wireless Home Phone and Internet service with unlimited nationwide voice service at $20 per month with broadband internet service at higher prices, wherever its 4G LTE network is available. Cellular. Sprint offers a competing wireless home service at $20 per month, Wal-Mart sells its comparable Straight Talk prepaid wireless home voice service for $15 a month together with additional optional prepaid broadband internet access service. These offerings are similar to Verizon Wireless Home Phone Connect service, some features from Verizon New York's Voice Link service but compete directly with both services. Thus, one immediate and real competitive effect of the public release ovation's as does U.S. and differ in wireline and Voice Link cost data would be to enable these four competitors (and others) to assess Verizon's price floor for wireline voice service as an element in pricing their wireless home network services and calculating the profitability of expanding their wireless networks to provide wireless home phone service on Fire Island and elsewhere."

As a matter of technology, the only difference between Verizon's wireless product offering, Home Phone Connect, and its Verizon Wireline product, Voice Link, is that the former is portable and does not have a fixed Emergency 911 setting. The second difference is that customer billing for Home Phone Connect is done through Verizon Wireless and for Voice Link billing is done through Verizon wireline. Otherwise, the products are identical.

As the Certification of Manuel J. Sam Pedro, Region President for the South/East region of Verizon New York Inc. ("Verizon"), explained in a May 3.2013 filing with the NYS PSC To introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area: .

> Verizon Wireless is a joint venture partly owned by Verizon's parent corporation, Verizon Communications Inc. Voice Link service will be provided over Verizon Wireless' network. However, a customer using Voice Link service on Fire Island will remain a customer of Verizon, rather than of Verizon Wireless. (In providing Voice Link, Verizon will act as a reseller of Verizon Wireless' service.)

The same technology that Verizon is offering through Voice Link is the same as AT&T's wireless product (The AT&T Wireless Home Phone), and it is worth pointing out that ATT literature includes the following customer disclaimer.

> "*The AT&T Wireless Home Phone device is designed to provide service that is consistent with other AT&T wireless devices, but AT&T does not represent that the Wireless Home Phone service will be equivalent to landline phone service."*

The AT&T press release, dated March 20, 2013, announcing its new product (http://www.att.com/gen/press-room?pid=23932&cdvn=news&newsarticleid=36185)

> "The AT&T Wireless Home Phone device is designed to provide service that is consistent with other AT&T wireless devices, but **AT&T does not represent that the Wireless Home Phone service will be equivalent to landline phone service**."

Verizon, unlike AT&T, is unwilling to admit this fact to the NYS PSC as regards Voice Link service. Instead Verizon is trying to sell Voice Link as an equivalent to a landline—which it is not. (See also: User Guide - *AT&T Wireless Home Phone* Base and *AT&T* Introduces No-Contract *Wireless Home Phone* | *AT&T*)

The reason that Verizon Wireless was able to deliver at 49 percent to 50 percent segment EBITDA margin on service revenues for the full 2013 year is because of its lower operating costs when compared to its wireline operations. If Verizon of New York is able to satisfy its regulatory requirements in New York State by calling Voice Link a wireline product, which uses only wireless technologies with significantly lower operating costs, then why are the cost savings not passed along to Verizon's wireline customers, through service pricing reductions?

Is Verizon really arguing that the pricing spread can be justified by the fact that Voice Link is a residential and not portable product which offers a fixed Emergency 911 setting, and that Voice Link customer billing is done through Verizon Wireline, whereas Home Phone Connect billing is done through Verizon Wireless?

In fact, when it comes to costs passed along to Verizon wireline customers in recent years, Verizon has been able to convince the NYS PSC that it deserves wireline business rate increases.

In June, 2009 the State of New York Department of Public Service allowed Verizon to raise local utility phone rates, claiming that Verizon needed more money to pay for Verizon's fiber optic upgrades, which are being deployed for Verizon's FiOS.

Verizon, described itself as a company "in need of financial relief" in its April 14, 2009 request to the NYS PSC to Increase the monthly charge for residence local exchange access lines (1MR and 1FR) by $1.95 per month .

"The rate increases will generate much needed additional short-term revenues as the company faces the dual financial pressures created by competitive access line losses and the significant capital it is committing to its New York network," said NYS PSC Commission Chairman Garry Brown on June 18, 2009 in a press release announcing Verizon's approved tariff rate increase. (Verizon Granted Residential Rate Increase, CASE 09-C-0327 – Minor Rate Filing of Verizon New York Inc. to Increase the Monthly Charges for Residence Local Exchange Access Lines (1MR and 1FR) by $1.95 per month.)

> "We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress," continued Commission Chairman Brown. "Nevertheless, there are certain increases in Verizon's costs that have to be recognized. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue."

While Verizon wireline was granted rate increases, according to company filings, funds were being diverted for Verizon Wireless' highly profitable business that were as a result unavailable to spend on Verizon's copper wire network or the expansion of FiOS. In 2011, Verizon diverted money to deploying fiber optics to 1,848 Verizon Wireless cell towers in the state. In 2012, Verizon deployed fiber to an extra 867 cell tower sites in New York and Connecticut. This means that the costs for these fiber to the cell tower builds were effectively paid by Verizon's landline and FiOS customers, and not Verizon Wireless customers.

It is clear that Verizon, New York's reported losses were not all from business practices but from the wireline company – and customers – being charged for wireless construction. This also reduces the revenues to the state utility for maintenance and upgrades. Verizon has announced that has stopped the deployment of their fiber optic service, FiOS, outside the current 'footprint' as of 2010. (http://online.wsj.com/article/SB10001424052702303410404575151773432729614.html) Moreover, if the company stopped doing upgrades and all residential customers got rate increases for 'fiber optic upgrades, did customers get billed for wireless network upgrades?

The decision by Verizon to stop the deployment of their fiber optic service, FiOS, outside the current 'footprint' as of 2010 insults and betrays the NYS PSC's 2009 rate increase decision to grant Verizon of New York a rate increase where only months earlier NYS PSC Commission Chairman Brown explained "there are certain increases in Verizon's costs that have to be recognized. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue."

Since 2003, Verizon has been subject to special attention from the New York Public Service Commission because of an excessive number of subscriber complaints about poor service. As early as a decade ago, the PSC found Verizon's workforce reductions and declining investment in its landline network were largely responsible for deteriorating service. Each month since, Verizon must file reports on service failures and its plans to fix them. (See 03-C-0971: Verizon Service Quality Proceeding -- Final Report of the Review of Retail Service Quality Performance of Verizon New York, Inc. (Public Copy).)

In April 2007, in NYS PSC Case 03-C-0971, (Comments of the Attorney General regarding Verizon's Retail Service Quality Processes and Programs. 4/25/07. Dist: M. Corso, G. Pattenaude, J. Coleman, M. Farley.), the New York State Attorney General concluded that:

- Verizon New York Inc.'s ("Verizon") failure to repair its customers' telephone service in a timely manner has been a serious problem for many years. Verizon's monthly performance data, reported to the Public Service Commission ("Commission"), shows that many of the company's 35 repair service bureaus ("RSBs") chronically fail to meet the Commission's service standard for repair of phone lines within 24 hours of a customer repair request. Verizon's response to the Commission's recent order that the company submit a plan to address its performance failures is completely inadequate and should be rejected.
- Verizon has diverted investment and work force from maintaining its copper-wire network, which is still relied upon by most customers for their telephone service, in favor of a strategic focus on deploying new fiber optic technology. As long as Verizon continues to divert repair technicians to perform fiber installation work and refuses to commit sufficient funds, it is unlikely that the company's repair performance will improve. Even if fiber proves more reliable, as Verizon asserts, the company has not committed itself to deploy fiber to all current customers. Many customers across Verizon's New York service territory are unlikely to have the opportunity to choose fiber for years to come, if ever.

The NYS AG's report then addressed the following:

I. Verizon's Deficient Repair Service Is a Continuing Problem
II. Verizon's Proposed Service Improvement Plans Cannot Be Relied Upon To Ensure Adequate Repair Service Performance In The Future
A. Verizon's Deployment of Fiber Networks Will Not Ensure That All Customers Receive Adequate Service
B. Verizon Is Not Deploying Enough Repair Service Employees Enable It to Consistently Meet Performance Standards, And Its Proposal for Future Deployment Is Not Adequate

C. Verizon Is Unlikely to Commit Sufficient Investment in Copper Network Facilities to Improve Service Performance
D. Verizon's Proposal to Address Service Quality by Moving a Limited Number Of Customers To Voice-Only Fiber Is Insufficient To Ensure That Most Customers Will Receive Adequate Service
E. Verizon's Proposed Proactive Maintenance and Management Incentives Are Not Meaningfully Different From Past Plans Which Failed To Substantially Improve Repair Service
F. The Commission Should Reject Verizon's Suggestions to Modify How Repair Service Is Measured
G. Verizon Has Offered Empty Promises Rather Than Measurable Standards and Goals

In 2012, the New York State Attorney reiterated his concerns with the NYS PSC over Verizon of New York's poor customer service quality, and the reliability of its network infrastructure. (Petition of Attorney General Eric T. Schneiderman to Modify the Verizon Service Quality Improvement Plan, at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BE46EDB40-99B2-4664-8BE4-A9646D09BBBF%7D)

> In 2010, the Public Service Commission ("PSC" or "Commission") recognized the inadequacy of Verizon's telephone service quality, noting:
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> > Beginning in the summer of 2008, Verizon's timeliness of repair performance fell short of the threshold levels defined in the Commission's service standards. While over time there have been fewer out of service conditions in the aggregate, the percentage of customers who are out of service for more than 24 hours has increased over time.
>
> After directing Verizon to submit a revised Service Quality Improvement Plan ("SQIP"), the PSC adopted a modified Plan that drastically relaxed the service standards applied to the company. Despite receiving this substantial deregulation of its service quality requirements, Verizon nevertheless failed to meet four repair service measurements in 2011, the first year of the plan. Moreover, by limiting the scope of Verizon's performance measurements to the 8% of all New York customers defined as Core, the Commission allowed the company to provide below standard service to 92% of its customers with impunity.
>
> The Attorney General's Office submits that the basis for the Commission's deregulatory decision relieving Verizon of providing adequate service to most of its customers was deeply flawed and has resulted in seriously diminished service quality for Verizon customers. Commission assumptions made about the effect of market competition ignored the fact that, at best, New York's telephone service market is a duopoly, and contrary to theoretical expectations of market controls, the presence of a single competitor has not in fact prevented Verizon from allowing customer service to continue to degrade. Rather than meet its obligations to provide wireline telephone customers with minimally adequate telephone service, Verizon is continuing to drastically reduce its workforce with the result that the company cannot meet its customers' repair needs in a timely manner. Verizon's management has demonstrated that it is unwilling to compete to retain its wireline customer base, and instead is entirely focused on expanding its wireless business affiliate. It is incumbent on the Commission to take appropriate regulatory action to ensure that customers receive reliable telephone service with adequate repair performance. Therefore, the Commission should modify Verizon's service plan to ensure customers receive adequate service quality in the future.

The New York State Attorney General continued to show concern over Verizon of New York's deteriorating wireline copper network (Comments of The State of New York Office of The Attorney General) , and in May 2013 when Verizon of New York introduced the wireless product, Voice Link, to replace its copper wireline network in New York State, under Case 13-C-0197, the AG said "(c)hanging

from wireline to wireless service has great significance to hundreds of thousands of Verizon's New York customers."

> OAG is particularly concerned that Verizon will rely on this provision to abandon its copper landline network in rural areas across New York. Verizon CEO McAdam publicly announced last year that the company wished to replace landline with wireless service wherever it had not built FiOS facilities, which includes most of the company's New York service territory:
>
> > [T]he vision that I have is we are going into the copper plant areas and every place we have FiOS, we are going to kill the copper. We are going to just take it out of service and we are going to move those services onto FiOS. We have got parallel networks in way too many places now, so that is a pot of gold in my view. And then in other areas that are more rural and more sparsely populated, we have got L TE built that will handle all of those services and so we are going to cut the copper off there. We are going to do it over wireless.

(See Thompson Reuters Street Events Edited Transcript of June 21, 2012 1:00 P.M. G. M. T interview of Verizon Chairman and CEO Lowell McAdam at Guggenheim Securities Symposium.)

In September 2013 alone, Verizon reported significant failures in service in rural areas upstate, as it does routinely. (See Cases 03-C-0971 and 00-C-1945, Verizon New York Service Inquiry Report, at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DA5C7600-F7F7-4FE3-8DF7-5945E5D957B5}

Verizon's landline trouble reports disproportionately come from rural communities, which are often the result of deteriorating infrastructure that results in outages. Rural communities are also the least-likely to be provided fiber service, exposing customers to a larger percentage of the same copper wiring Verizon is allowing to deteriorate.

For the reasons cited above, Verizon's claim to be given trade secret exemption status to protect network cost data that would benefit their competitor's financial position, is really a ruse to protect its reputation, and not its financial interests.

That the documents may have been furnished in confidentiality does not render them beyond the scope of FOIL disclosure (see, Matter of Washington Post Co. v New York State Ins. Dept., 61 N.Y.2d 557). Merely because some of the documents were marked "confidential" or "private" is not controlling on the NYS PSC's determination whether there is good cause to seal the record (Eusini v Pioneer Elecs. [USA], Inc., 29 AD3d 623, 626 [2006]). In any event, neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to exempt discovery (see Liapakis v Sullivan, 290 AD2d 393, 394 [2002]; Matter of Benkert, 288 AD2d 147 [2001]; Matter of Hofmann, 284 AD2d at 94).

The New York State Legislature unequivocally set forth its policy regarding the purpose of the Freedom of Information Law. The Legislative Declaration (Public Officers Law § 84) states, in part, "The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality." Memorandum of Assemblyman and Governor's Memorandum of Approval to Predecessor Statute [L 1974, ch 578], NY Legis Ann, 1974, pp 130-131, 392).In Governor Wilson's Approval Memorandum to the FOIL bills, he stressed the view that open and accessible government is a hallmark of a free society, engendering public understanding and participation . He further noted, "The bills that I am today approving expressly affirm these principles and the beliefs which I have long held — that government is the people's business and that the people have a right to know the processes by which government decisions are made" (id.; see generally, Note, New York's Freedom of Information Law, Disclosure Under the CPLR, and the Common-Law Privilege for Official

Information: Conflict and Confusion Over "the People's Right to Know", 33 Syracuse L Rev 615 [1982]; Marino, The New York Freedom of Information Law, 43 Fordham L Rev 83 [1974-1975]).

The legislative purpose behind the enactment of New York's Freedom of Information Law is the "people's right to know" (Public Officers Law, § 84; With the amendment of the Freedom of Information Law in 1977 (L 1977, ch 933), the Legislature broadened the reach of the statute by making all records presumptively subject to disclosure, rather than certain enumerated categories (Matter of Sheehan v City of Binghamton, 59 AD2d 808; NY Legis Ann, 1977, pp 330-331). Public disclosure laws are liberally construed to allow maximum access to documents. Statutory exemptions are narrowly construed (Matter of Dunlea v Goldmark, 54 AD2d 446, 449, affd 43 N.Y.2d 754).

In Matter of Capital Newspapers v Whalen (69 N.Y.2d 246), the New York Court of Appeals noted the Legislature's policy that "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government" (id., at 252; Public Officers Law § 84; see also, Matter of Prisoners' Legal Servs. v New York State Dept. of Correctional Servs., 73 N.Y.2d 26; Matter of Washington Post Co. v New York State Ins. Dept., 61 N.Y.2d 557, 564; Matter of Fink v Lefkowitz, 47 N.Y.2d 567, 571). In Whalen, the court held that the personal correspondence of a former Albany Mayor, commingled with official government documents and "kept" or "held" by a governmental entity, constituted "records" under FOIL. That the Mayor's papers concerned matters of a personal nature did not change their public nature and susceptibility to FOIL. The focus of inquiry under FOIL in that case was the underlying principle of granting "maximum access to the records of government" (Matter of Capital Newspapers v Whalen, 69 N.Y.2d 246, 252, supra)

Prior to January 1, 1978 (the effective date of L 1977, ch 933) the FOIL listed certain categories of documents that the public could obtain from government. With the adoption in 1978 of L 1977, ch 933, the philosophy of the law changed so that all "records" (as defined in Public Officers Law, § 86, subd 4) of an "agency" (as defined in Public Officers Law, § 86, subd 3) are available to the public unless specifically exempted by section 87 of the Public Officers Law. In the event an agency denies access, section 89 (subd 4, par [b]) of the Public Officers Law provides that it has the burden of proving that an exemption applies. Commenting on the 1977 amendments the Court of Appeals in Matter of Westchester Rockland Newspapers v Kimball (50 N.Y.2d 575, 580) said:

> "Thus, in contrast to earlier versions of the statute, the burden of demonstrating that the material requested is exempt now falls squarely on the shoulders of the one who asserts it * * * Put another way, in the absence of specific statutory protection for the requested material, the Freedom of Information Law compels disclosure, not concealment."

The NYS PSC's Records Access Officer, in a November 4, 2013 decision, Determination 13-5, referred to Restatement (First) of Torts § 757 cmt. b (1939), which holds that a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Thereafter, the New York State Public Service Commission adopted a virtually identical definition of ―trade secret. According to 16 NYCRR §6-1.3(a): ―A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.

However, 16 N.Y.C.R.R. §6-1.3(b)(2) also provides that in all cases, the person must show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the subject commercial enterprise.

On a Federal level, FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential," under 5 U.S.C. § 552(b)(4). The Federal Freedom of Information Act (US Code, tit 5, § 552) mandates full agency disclosure unless the information sought is exempted under clearly delineated and narrowly construed statutory language National Labor Relations Bd. v Sears, Roebuck & Co., 421 US 132, 136; Mobil Oil Corp. v Federal Trade Comm., 406 F Supp 305,

309, 430 F Supp 849; Aug v National R. R. Passenger Corp., 425 F Supp 946, 951; Mead Data Cent. v United States Dept. of Air Force, 402 F Supp 460, 464, mod 566 F.2d 242).

The NYS PSC's November 4, 2013 decision, Determination 13-5, referred to Restatement (First) of Torts § 757 cmt. b (1939),and its New York State interpretation under 16 NYCRR §6-1.3(a), that a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.

Verizon itself opened the door to public inquiry into the relationship between its wireline and wirless interests when its CFO announced to Wall Street equity analysts:

> **"(T)he fact of the matter is is Wireline capital -- and I won't get the number but it's pretty substantial -- is being spent on the Wireline side of the house to support the Wireless growth. So the IP backbone, the data transmission, fiber to the cell, that is all on the Wireline books but it's all being built for the Wireless Company."**

And it certainly is germane to further regulatory inquiry and public disclosure if, as appears to be the case, the NYS PSC has unwittingly been mislead by Verizon of New York's wireline side to grant it rate increases, when Verizon of New York was using the increased revenue which resulted from the rate increase to subsidize its unregulated and more profitable wireless business – which in turn led to continued copper infrastructure neglect and poor customer service quality.

The opportunity to move funds between the two businesses – to the disadvantage Verizon wireline customers -- is made evident by the fact that Verizon Wireless is a joint venture partly owned by Verizon's parent corporation, Verizon Communications Inc. and that the Voice Link service is provided over Verizon Wireless' network, with customer using the Voice Link service remaining customer of Verizon, rather than of Verizon Wireless, and where in providing Voice Link, Verizon acts as a reseller of Verizon Wireless' service.(See Certification of Manuel J. Sam Pedro, Region President for the South/East region of Verizon New York Inc. ("Verizon"), explained in a May 3.2013 filing with the NYS PSC To introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service as its sole service offering in the area: .).

While trade secret protection has been recognized for product manufacturing and design information, it has been denied for general information concerning a product's physical or performance characteristics or a product formula when release would not reveal the actual formula itself. (See Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 244 F.3d 144, 151 (D.C.Cir.2001.) (airbag characteristics relating "only to the end product -- what features an airbag has and how it performs -- rather than to the production process") (reiterating the Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C.Cir. 1983). definition and emphasizing that it "narrowly cabins trade secrets to information relating to the 'productive process' itself"; Freeman v. Bureau of Land Management, 526 F. Supp. 2d 1178 - Dist. Court, D. Oregon, 2007 (quantity and quality of ore reserve); Northwest Coalition for Alternatives to Pesticides v. Browner, 941 F.Supp. 197, 201-02 (D.D.C. 1996) ("common names and Chemical Abstract System . . . numbers of the inert ingredients" contained in pesticide formulas).

And in the District Court for the Southern District of New York, the Federal District court held that documents submitted by the General Electric Company (GE) to the EPA supporting GE's alternative Hudson River dredging plan -- which would have been less costly to GE than the plan scheduled to be imposed on it by the EPA -- were not "commercial" under FOIA.(New York Public Interest Research Group v. U.S. E.P.A., 249 F.Supp.2d 327, 332-34 (S.D.N.Y.2003)) (describing the documents as containing GE's "analyses of the costs, benefits, and environmental impact associated with the EPA's proposed remedy and GE's alternative remedy"). Despite the fact that GE "had a financial stake" in the matter and provided the documents in an effort "to convince the EPA to adopt its less expensive remedy," the court nonetheless held that the EPA had "failed to establish that the information [had] any intrinsic

commercial value." New York Public Interest Research Group v. U.S. E.P.A., 249 F.Supp.2d 327, at 334 (S.D.N.Y.2003))(finding also that EPA had not shown "that disclosure would jeopardize GE's commercial interests or reveal information about GE's ongoing operations, or that GE generated the information for a purpose other than advocating a policy to a governmental agency")

New York's FOIL largely follows Federal law. As stated in Matter of Encore Coll. Bookstores v Auxiliary Serv. Corp. of State Univ. of N.Y. at Farmingdale, 87 NY2d 410, 421 [1995]: "To be sure, New York's Freedom of Information Law is patterned after the Federal Freedom of Information Act (FOIA), which requires production of "agency records" (see, 5 USC § 552.").

Under New York law, in order to establish substantial competitive harm, the resisting party must make a showing of "actual competition and the likelihood of substantial competitive injury." (Matter of Encore Coll. Bookstores v Auxiliary Serv. Corp. of State Univ. of N.Y. at Farmingdale, 87 NY2d 410, 421 [1995].) In making this determination, the court must consider the commercial value to competitors and the resulting damage to the submitting party. (Id. at 420), as cited in Matter of Markowitz v Serio, 11 NY3d at 51.

As the parties seeking the exemption, the New York State Department of Public Service is charged with the burden of proving their entitlement to it (see Public Officers Law § 89 [4] [b]; [5] [e]), meaning that they must demonstrate that the reports "`fall[ ] squarely within a FOIL exemption by articulating a particularized and specific justification for denying access'" (Matter of Data Tree, LLC v Romaine, 9 NY3d 454, 462-463 [2007], quoting Matter of Capital Newspapers Div. of Hearst Corp. v Burns, 67 NY2d 562, 566 [1986]). Because the overall purpose of FOIL is to ensure that the public is afforded greater access to governmental records, FOIL exemptions are interpreted narrowly (see Matter of Washington Post Co. v New York State Ins. Dept., 61 NY2d 557, 564 [1984]). To meet its burden, the party seeking exemption must present specific, persuasive evidence that disclosure will cause it to suffer a competitive injury; it cannot merely rest on a speculative conclusion that disclosure might potentially cause harm.

Verizon has not satisfied this burden of proof, and its trade secret exemption claim, as stated in Appeal of Verizon New York Inc. from the Determination of the Records Access Officer, should therefore be denied.

Sincerely,

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