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BY E-MAIL

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Re: Case 13-C-0197 (Objections to Discovery Requests)

Dear Mr. Brodsky:

The October 23, 2013 discovery requests submitted to Verizon New York Inc. ("Verizon") by you and Communications Workers of America District 1 (the "Requests") have no bearing on any of the issues remaining in this proceeding. Instead, they are designed solely to advance CWA's self-serving efforts to prevent Verizon from offering its Voice Link product, even on an optional basis, and to investigate the relationship between Verizon and Verizon Wireless — matters that are beyond the scope of this or any other pending Commission proceeding. The purpose of the discovery rules is to facilitate the review of issues that *the Commission* has chosen to include in a formal proceeding, not to enable CWA to conduct its own free-floating investigations. Accordingly, Verizon objects to each of the Requests on the grounds that they: (a) do not seek information that is "relevant and material to a proceeding" or that is "likely to lead to such information" (Rule 5.1(d)); (b) are not "tailored to the particular

proceeding and commensurate with the importance of the issues to which they relate" (Rule 5.8); and (c) are "unduly broad" (*id.*) and burdensome.[1]

A. Background of the Proceeding

There currently are only a few remaining issues in this proceeding, none of which are related to the scope of the Requests.

On May 3, 2013, Verizon filed tariff amendments that added a new section, § 1.C.3, to the company's Tariff PSC No. 1. The new section authorized Verizon to use Verizon Voice Link, a wireless service, as its sole service offering in western Fire Island, where the company's facilities had been substantially destroyed by Superstorm Sandy. The section also set forth a process by which Verizon could seek approval to use wireless service as a replacement for conventional service in other areas and under other circumstances, and identified requirements that any such replacement service would have to meet. These new tariff provisions were *not* applicable to wireless services offered on an optional basis in areas where conventional service was also available.

In an order issued in this proceeding on May 16, 2013,[2] the Commission suspended the "other circumstances" language, required modifications to certain other provisions of the May 3 filing, and permitted the remainder of the new tariff language to go into effect on an interim basis

[1] Further, under Rule 5.1 the Commission's discovery rules apply only to "formal proceedings." In its order adopting these rules, the Commission made it clear that a "formal proceeding" is a proceeding involving an evidentiary hearing. Case 91-M-1080, "Opinion and Resolution Adopting Revised General Rules of Procedure" (Op. No. 92-90) (issued and effective July 17, 1992), at 59. Although in some cases Administrative Law Judges have allowed discovery in non-evidentiary proceedings, we are not aware of any decision by the Commission that would alter the clear definition of "formal proceeding" it adopted in its original rulemaking. In any event, the discovery requests at issue here are objectionable, for the reasons set forth in this letter, whether or not this case qualifies at this time as a "formal proceeding."

[2] Case 13-C-0197, "Order Conditionally Approving Tariff Amendments in Part, Revising in Part, and Directing Further Comments" (issued and effective May 16, 2013) (the "*May Order*").

while the Commission and Staff investigated the suitability of Voice Link as a replacement for conventional, tariffed local exchange service.

However, on September 11, 2013, Verizon announced that it had decided to build out a fiber-to-the-premises ("FTTP") network on western Fire Island, and targeted Memorial Day 2014 for the completion of construction and the general availability of services over the new network. Consistent with this decision, Verizon filed tariff amendments that withdrew the suspended "other circumstances" language from the tariff, and added new language explicitly stating that the remainder of § 1.C.3 would no longer be effective after Verizon's new wireline network was completed and the company was able to offer service over that network throughout western Fire Island. The Commission allowed those revisions to go into effect on October 11, 2013, as filed.

Following the completion of Verizon's FTTP network in western Fire Island, Voice Link will no longer be the company's sole service offering there (or, indeed, anywhere else in the State). The company will continue to offer Voice Link in New York, but only as an optional, untariffed wireless service.

The Commission has recognized that "Verizon's decision to build a FTTP network on Fire Island and remove language from its May tariff filing regarding the expansion of Voice Link as a stand-alone service has rendered many concerns on this particular matter moot."[3] Beyond monitoring Verizon's progress and ensuring that the company follows through on its commitment to have an FTTP network available for the residents of western Fire Island by Memorial Day, Staff and the Commission identified only one issue that in their view warrants

[3] Case 13-C-0197, "Order Canceling Report" (issued and effective October 24, 2013) (the "*October Order*"), at 2.

continuing investigation — whether the use of Voice Link as an optional service, or as an interim remedy pending the completion of cable repairs, is associated with unduly long repair times or repair-time commitments for wireline service.[4] And Staff has recommended that that issue be reviewed in the context of the pending service quality proceeding (Case 10-C-0202) rather than this proceeding.

B. The Requests Are Beyond the Current Scope of this Proceeding

The Requests seek information that is well beyond the current scope of this proceeding as defined and limited by the Commission. Indeed, the vast majority of the Requests (*e.g.*, Nos. 1, 2, 3, 4, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21) concern the provisioning of Voice Link, Verizon's use of wholesale service provided by Verizon Wireless, and, more generally, affiliate transactions issues and the relationships between Verizon, Verizon Wireless, and Verizon's end-user customers. Other Requests deal with the characteristics, reliability, and quality of Voice Link service (Nos. 5, 6, 7, 8), Voice Link pricing (No. 9), Voice Link deployment areas and the number of customers utilizing the service (Nos. 10 and 11), and the costs associated with the deployment of Voice Link and other service options (No. 22). None of these Requests bears even remotely on assuring the completion of Verizon's FTTP network in western Fire Island, or on the relationship between Voice Link and wireline repair times (even if the latter issue remained in this particular case).[5]

[4] *See, e.g., October Order* at 2-3.

[5] CWA may claim that the Requests are relevant to issues raised by its September 13 comments in this proceeding, concerning the supposed subsidization of Verizon Wireless by Verizon. However, the Commission has not initiated any new proceeding to address those allegations, and they certainly are not within the current scope (or even the original scope) of *this* proceeding. CWA cannot bootstrap discovery merely by raising issues in comments and then serving information requests related to those issues. To permit such conduct would deprive the Commission of any control over the scope of its proceedings.

Even if there were some tenuous connection between the Requests and the current scope of the proceeding, the Commission's Rules require something more — discovery requests must be "tailored to the particular proceeding and commensurate with the importance of the issues to which they relate." In other words, even *relevant* requests (which these are not) must be reasonable and proportionate in relation to the burden imposed on the responding parties and the significance of the issues raised. *A fortiori,* parties should not be put to the burden of responding to overly broad and facially *irrelevant* requests merely based on some speculative claim that the responses may turn out to have some remote relationship to the case. And the burden of responding to these Requests would indeed be substantial — among other things, they call upon Verizon to provide agreements, individual invoices, and "all analyses, studies, reports, or other documents in which Verizon NY compares the costs (and revenues of providing dial tone service Voice Link service to the costs (and revenues) of providing service using (a) copper plant and/or (b) fiber optic plant and/or (c) a combination of copper and fiber optic plant."[6]

CWA's Requests have nothing to do with moving this proceeding forward, and everything to do with advancing its own institutional objectives vis-à-vis Verizon Wireless and Voice Link. Of course, CWA is free to assert its interests in appropriate forums, but it should

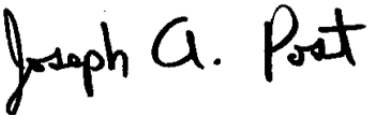
[6] Another aspect of the burden that the Requests would impose on Verizon is that they would require the company to provide highly confidential business information related to provisioning agreements, costs, etc., to a party that could easily misuse them. In this context, it is worth noting that at least one CWA local recently engaged in questionable actions relating precisely to information concerning Voice Link. During July, members of CWA Local 1126 were asked in a recorded message to provide the Union with copies of all trouble tickets or installation orders involving Voice Link, stating: "If you are dispatched on an order or a trouble for any of these [Voice Link] boxes, the union needs a copy of that order or trouble immediately." These trouble tickets and installation orders include information, such as the service plan subscribed to and the technical configuration that will be used to provide service to the customer, that falls within the FCC's definition of CPNI. *See* 47 U.S.C. § 222(h)(1). In addition, CWA requested that this information be provided to the Union without the consent of the customer and for a purpose that does not relate to Verizon's provision of service to that customer. We understand that the message was subsequently removed. It is reasonable to question how effective a Protective Order could be in such a situation.

not be permitted to hijack the Commission's discovery process in order to pursue, for its own purposes, information that has no relevance to any pending Commission proceeding. The purpose of the Commission's procedural rules is to facilitate the conduct of Commission proceedings and thus the resolution of issues identified by the Commission for consideration in those proceedings — not to advance the private interests of parties.

* * *

For the reasons set forth above, Verizon objects to each and every one of the Requests.[7]

Respectfully submitted,



Joseph A. Post

cc: Active Parties
Brian Ossias, Esq.
Secretary's Office

[7] In view of these objections, Verizon has not sought to identify and assemble all documents and other information that could be deemed to be responsive to the Requests, but it seems likely that at least some of those materials would be exempt from disclosure under the attorney-client privilege, the work-product rule, or rules concerning materials prepared for litigation. Verizon reserves its right to object to the production of such materials on those grounds as well.