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Ms. Donna Giliberto
Records Access Officer
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

***Re: Case 14-C-0205 – Request for Confidential Treatment – Verizon New York Inc.
Master Lease Agreement with Verizon Wireless***

Dear Ms. Giliberto:

Enclosed is a lease schedule entered into between Verizon New York Inc. (“Verizon”) and Cellco Partnership d/b/a Verizon Wireless (“Lease Schedule”), the redacted version of which has been filed with the Commission today in compliance with Ordering Paragraph No. 3 of the *Order Approving a Master Lease Agreement*, issued and effective October 3, 2014. The Lease Schedule contains competitively-sensitive location, engineering, technical, and cost information related to a location where Verizon Wireless has agreed to lease space from Verizon to house wireless network equipment. Verizon and Verizon Wireless request that the enclosed un-redacted Lease Schedule be protected from public disclosure, pursuant to the Freedom of Information Law (“FOIL”) and the Commission’s Rules promulgated thereunder, on the ground that the document contains competitively-sensitive trade secrets and confidential commercial information, the public disclosure of which would place Verizon Wireless at an unfair

competitive disadvantage.¹ In addition, information on the location of the building housing the leased space, as well as the diagram showing how the network equipment will be deployed at the leased space, constitute critical infrastructure information, the public disclosure of which will place the security of Verizon Wireless's network at risk.

DISCUSSION

The Lease Schedule contains detailed information on: (1) the Verizon central office where Verizon Wireless intends to lease space to house telecommunications equipment; (2) the type of network equipment to be deployed and how that equipment will be deployed in the leased space; and (3) the costs to be paid by Verizon Wireless, including Verizon Wireless's projected demand for power and space to support its equipment.

Section 87(2)(d) of the New York Public Officers Law authorizes agencies to deny access to records that "are trade secrets" or "are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

Additionally, Public Officers Law § 87(2)(i) creates an exemption from disclosure for information that "if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures." *Id.*

§ 89(5)(a)(1-a) establishes a procedure by which a person submitting records to a State agency can "identify those records or portions thereof that may contain critical infrastructure

¹ The protection of trade secrets and confidential commercial information is explicitly provided for in FOIL and in the Commission's Rules. *See* N.Y. PUB. OFF. LAW § 87(2)(d); 16 N.Y.C.R.R. § 6-1.3.

information, and request that the agency that maintains such records except such information from disclosure under [Publ. Off. L. § 87(2).]” Finally, Commission Rule 6-1.3 specifically provides for the protection of “critical infrastructure information.”

The enclosed Lease Schedule meets the standards set forth in the statute and rules. *First*, information on the location of the leased space and where in the Verizon building equipment will be placed in the building provides information that can be used by vandals and others in support of attempts to harm Verizon Wireless’s network or to impair Verizon Wireless’s services. Such information is clearly subject to the provisions of the Public Officers Law and the Commission’s regulations related to the protection of Verizon’s and Verizon Wireless’s critical infrastructure information.

Second, the remaining categories of data meet the standards for protection of competitively sensitive information. With the information included in the Lease Schedule, competing carriers can determine, among other things, where Verizon Wireless is upgrading the capacity of its network, and how Verizon Wireless intends to deploy new facilities to meet increased demand for its services, as well as the costs that Verizon Wireless is incurring to do so. If competitors were to obtain this information, they could determine specific areas where Verizon Wireless may be experiencing capacity issues relating to competitively-provided wireless services and, in turn, target customers for those services in those areas. Therefore, allowing a competitor to have access to the information would clearly put Verizon Wireless at a competitive disadvantage. Further, information on Verizon Wireless’s costs and network equipment provides a competitive roadmap to companies whose service offerings compete or

may in the future compete with Verizon Wireless's. Such information shows a competitor the cost it has to meet or beat to succeed competitively.

The information in the Lease Schedule is "not known by others," and Verizon and Verizon Wireless would not make it available to them. Competitors should not be permitted to gain access to such competitively sensitive information by virtue of Verizon's compliance with the Commission's Order in this proceeding.

The importance of limiting competitor access to such information has been recognized in Commission proceedings. Former Administrative Law Judge Joel A. Linsider observed that "[p]ublic disclosure of information by government agencies is an extremely important policy; but we would frustrate our own efforts to promote competition if those very efforts, which require us to obtain competitively sensitive information, led to the release of that information to competitors of the firm providing it and, in consequence, to market distortions." A similar point was made by the State Court of Appeals in a case involving the application of the provisions of the Public Officers Law relating to confidential commercial information. In the *Encore College Bookstores* case, the Court found that those provisions of Public Officers Law § 87(2) should be interpreted in a manner consistent with the standards applied under the federal Freedom of Information Act ("FOIA"). In discussing the federal FOIA standard, which it adopted for purposes of applying New York's § 87(2), the Court stated in part that:

Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government. . . .

The reasoning underlying these considerations is consistent with the policy behind subdivision [Public Officers Law § 87](2)(d) — to protect businesses from the deleterious consequences of disclosing confidential commercial information, so as to further the State’s economic development efforts and attract business to New York²

For all of the foregoing reasons, Verizon’s compliance filing in this proceeding should be protected from public disclosure as trade secret information, confidential commercial information, and critical infrastructure information under the Public Officers Law and the Commission’s Rules.

If you have any questions, or require further information, please contact me at 212-519-4716.

Respectfully submitted,



Keefe B. Clemons

cc: Graham Jesmer, Esq. (w/o attachment)

² *Id.*, 87 N.Y.2d at 420, 663 N.E.2d at 307, 639 N.Y.S.2d at 995, quoting *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).