

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Complaint Against Verizon For The )  
Unlawful Use Of Competitor Proprietary ) Case No. 07-C-\_\_\_\_\_  
Information To Retain Customers And For )  
An Order Directing Verizon To Comply )  
With Applicable Laws, And Imposing )  
Safeguards On Verizon To Prevent Future )  
Misconduct )

**COMPLAINT<sup>1</sup>**

The Cable Telecommunications Association of New York (“CTANY”) and Cablevision Lightpath, Inc. (“Cablevision”) are an association of and providers of competitive voice services to New York customers (“Complainants”). Complainants ask the Public Service Commission (“Commission”) to order Verizon Communications, Inc. (“Verizon”)<sup>2</sup> to stop the practice of taking the proprietary data it gets from its wholesale customers – competing providers like Cablevision and others – and using that information to try to “save” retail customers from changing providers. This complaint is filed pursuant to the Public Service Law,<sup>3</sup> the Commission’s orders, and the orders of the Federal Communications Commission (“FCC”),<sup>4</sup> that prohibit such anticompetitive practices, including the use of port information connected with

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<sup>1</sup> The Commission is authorized to issue the relief Complainants requests within a complaint proceeding. *See infra* Section II of this Complaint. If the Commission decides that it cannot award the requested relief in a complaint proceeding, Cablevision requests that the Commission treat this Complaint as a Petition for Declaratory Ruling.

<sup>2</sup> References to “Verizon” refer to Verizon Communications, Inc., and Verizon New York, Inc.

<sup>3</sup> N.Y. Pub. Serv. Law §§ 24, 25, 91(3), 94(2), 96, and 97(2). (McKinney 2007).

<sup>4</sup> *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, 17 FCC Rcd 9018, 9187 ¶ 303 (2002); *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 17595, 17 FCC Rcd 17595, 17761 ¶ 296 (2002).

carrier change orders to engage in retail “save” marketing.<sup>5</sup> The misuse by Verizon of other wholesale carriers’ proprietary information to advance its own retail business interests (and against those wholesale carriers) undermines competition in the State and frustrates consumer choice.

In deciding whether to change service providers, customers weigh the potential benefits of a new provider against the time and effort of changing companies. If a migration requires not only a call to a new provider but also a call back from the incumbent’s sales force (before the migration) the cost of the move is increased. Further, if such retention calls come from an incumbent, but not from new entrants when a customer wants to return to an incumbent, conditions now favor the incumbent.

As the Commission has recognized, New York will not tolerate such an imbalance. The Commission has noted that competition cannot flourish without pro-competitive rules, which the Commission has defined as “...arrangements among providers of communications services necessary for local competition to be effective.”<sup>6</sup> To establish competitive equality, the Commission implemented the *Migration Guidelines*, which prohibit retention marketing during the customer migration process.<sup>7</sup>

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<sup>5</sup> Verizon is also improperly disclosing CPI to affiliated and unaffiliated data service providers in violation of its duty to safeguard CPI pursuant to § 222(a) of the Act. 47 U.S.C. § 222(a) (2007).

<sup>6</sup> *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings, Case 05-C-0616 at 108, 111 (N.Y.P.S.C. Apr. 11, 2006) (“*Competition III Order*”).

<sup>7</sup> *See Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers*, Case 00-C-0188 (N.Y.P.S.C. Jan. 8, 2001) (“*2001 Migration Order*”) adopting End User Migration Guidelines, CLEC to CLEC, (Nov. 29, 2000) (“Phase I Guidelines”); *see also Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers*, Case 00-C-0188 (N.Y.P.S.C. June 14, 2002) (“*2002 Migration Order*”), adopting End User Migration Guidelines, CLEC to CLEC, Phase II (June 2002) (collectively the “*Migration Orders*” or “*Migration Guidelines*”).

In its recent *Competition III Order*, the Commission cited its *Migration Guidelines* as an example of a step it has taken to “allow all competitors a fair and reasonable opportunity to compete.”<sup>8</sup> The Commission would not have described the *Migration Guidelines* in this way unless they applied to “all” competitors, particularly Verizon – the incumbent competitor in the State. Verizon’s failure to abide by the *Migration Guidelines* and its efforts to keep customers from changing providers undermines the Commission’s work for the past 21 years to not only bring competition to the State but also to prevent competition from backsliding.

Aside from the anti-competitive effects of Verizon’s actions, its conduct confuses customers seeking to migrate between service providers. As shown below, Verizon almost immediately contacts migrating customers with marketing materials urging customers to stay with Verizon to avoid the “hassle of switching companies.”<sup>9</sup> These migrating customers, however, have exercised their right to receive voice service from Verizon’s competitors – the very right promoted by the Commission and a choice that Verizon refers to as a “hassle.” While some of these customers may choose to stay with Verizon, others have expressed frustration and annoyance at the additional efforts required to either switch carriers.<sup>10</sup> This is contrary to the Commission’s longstanding efforts to ensure that competition results in providing consumers the ability to seamlessly and easily switch voice providers.

Complainants respectfully request that the Commission issue an order (1) directing Verizon immediately to stop using wholesale carrier information to launch “save” marketing directed to customers for whom carrier change requests have been submitted, consistent with the

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<sup>8</sup> *Id.*

<sup>9</sup> Affidavit of Philip Segal, Customer, dated October 15, 2007 (“Segal Affidavit”) (Exhibit B).

<sup>10</sup> *See infra* n.19.

Commission's *Migration Guidelines*, and other orders,<sup>11</sup> § 222(b) of the Communications Act of 1934 (the "Act"),<sup>12</sup> and FCC rules,<sup>13</sup> and (2) imposing certain safeguards to prevent the recurrence of Verizon misconduct in handling and use of proprietary carrier data received from its wholesale customers.

## **I. FACTS**

Verizon is using carrier change requests, including port requests, to trigger retention marketing. Most customers switching service from Verizon to a competitive service provider want to keep their telephone number. When a Verizon customer switching to a new provider asks to keep his number, the new service provider must submit an order to Verizon (the executing carrier) that notifies Verizon that the customer is changing providers and directs Verizon to port the customer's telephone number to the new provider. As the executing carrier, Verizon is responsible for making the actual physical change to the customer's service by porting the number to the new provider.<sup>14</sup>

Upon receipt of a carrier change order such as a port request from another carrier – which information is intended *solely* to facilitate Verizon's provision of porting and carrier change services to the wholesale carrier – Verizon has been using such information to trigger its own customer retention marketing to dissuade the switching customer from changing providers. Typically, when Verizon receives a carrier change in the form of a port request, it issues a Firm Order Commitment ("FOC") that sets a date certain for the port to occur.<sup>15</sup> A placement of a

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<sup>11</sup> See *2001 Migration Order* at 7; *2002 Migration Order* at.

<sup>12</sup> 47 U.S.C. § 222(b) (2007).

<sup>13</sup> See discussion in section III.B of this Complaint.

<sup>14</sup> Complainants also routinely act as executing carriers when Verizon wins a customer and submits a request to port a telephone number to Verizon.

<sup>15</sup> See Affidavit of Chris Gambino, Director Access Management and Interconnection for Cablevision Lightpath, Inc., dated October 15, 2007 ("Gambino Affidavit") (Exhibit A).

FOC jeopardy or cancellation notice on a port order halts the porting process.<sup>16</sup> Over the past several months, Cablevision and members of CTANY have experienced a dramatic increase in the number of Verizon-issued FOC jeopardy and cancellation notices being placed on the orders they submit to Verizon based on “customer cancellations.”<sup>17</sup> Cablevision’s investigation into these Verizon-issued FOC jeopardy and cancellation notices has revealed that Verizon has been contacting soon-to-be Cablevision subscribers to convince them to cancel their pending carrier change order and to retain Verizon as their service provider.<sup>18</sup>

Verizon has called and sent mail to a number of customers who have elected to switch to Cablevision. Verizon urges them to contact Verizon about their “pending” disconnection of Verizon service and to stay with Verizon.<sup>19</sup> Several of these subscribers have informed Cablevision that they had *never* contacted Verizon about their decision to switch providers.<sup>20</sup> Thus, Verizon’s sales division had no way of knowing that these new Cablevision subscribers were disconnecting their Verizon service *but for* the orders submitted to Verizon’s wholesale division by Cablevision.

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<sup>16</sup> *Id.*

<sup>17</sup> For example, the number of port exceptions that Cablevision has received from Verizon between August 29, 2007 and October 4, 2007 has spiked from virtually zero to 395. *See* Gambino Affidavit (Ex. A).

<sup>18</sup> *Id.*; *see also*, Segal Affidavit (Ex. B); *see also*, Affidavit of Regina Day, Coordinator LNP Voice for CSC Holdings, Inc., dated October 12, 2007 (“Day Affidavit”) (Exhibit C); *see also*, Affidavit of Keri McKenzie, Employee and Principal of the James Mintz Group, dated October 15, 2007 (“McKenzie Affidavit”) (Exhibit D). Notably, such letters were sent by overnight or express delivery before the FOC date. *See* Attachments to Day Affidavit (Ex. C) (Customer information has been redacted from the Attachments).

<sup>19</sup> *See* Segal Affidavit (Ex. B); *see also*, Day Affidavit (Ex. C); McKenzie Affidavit (Ex. D). Notably, such letters were sent by overnight or express delivery before the FOC date. *See* Attachments to Day Affidavit (Ex. C) (Customer information has been redacted from the Attachments).

<sup>20</sup> Of the 73 subscribers interviewed about the jeopardy notice that Verizon placed on their port requests, 46 (60%) confirmed that Verizon contacted them after Cablevision submitted a port request and that they did not contact Verizon before Verizon contacted them with retention marketing. *See* McKenzie Affidavit (Ex. D); *see also*, Day Affidavit (Ex. C). Several subscribers complained of Verizon’s activities and expressed confusion and frustration at the additional efforts required to switch service providers. *See* Customer Electronic Correspondence (redacted) (Ex. 1) to Day Affidavit.

Cablevision has asked Verizon to stop misusing Cablevision's CPI, notified Verizon that its practices violate the law, and advised of its intent to seek appropriate remedies to protect its proprietary data and to enforce the competition laws.<sup>21</sup> Verizon responded to Cablevision by conceding that it was using Cablevision customer change (port) requests to advance its retail marketing efforts, but denied that this practice constituted any wrongdoing.<sup>22</sup> Other members of CTANY have also asked Verizon to stop its unlawful use of competitors' CPI and received similarly evasive replies.<sup>23</sup>

Cablevision managers also met with Verizon representatives on September 6, 2007 to discuss operational issues. At that meeting, Verizon admitted that it uses information it gets from Cablevision's customer change and related port orders to assist Verizon's retail sales division to target these "disconnecting" customers with an aggressive retention or "save" campaign.<sup>24</sup>

Verizon appears to believe, incorrectly, that it may generate a list of pending disconnect notices (which reflects information obtained from orders received from its wholesale customers) and use that list to trigger retention marketing. This retention marketing practice is prohibited by New York and federal law, and allowing Verizon to continue it would undermines the proper

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<sup>21</sup> Letter from Kathleen Greenan Ramsey, Sonnenschein Nath & Rosenthal LLP, on behalf of Cablevision, to Donna M. Epps, Vice President Federal Regulatory for Verizon, dated July 27, 2007 ("Cablevision Letter") (Exhibit E).

<sup>22</sup> Letter from Joshua E. Swift, Assistant General Counsel to Verizon, to Kathleen Greenan Ramsey, Sonnenschein Nath & Rosenthal LLP, dated August 10, 2007 ("Verizon Letter") ("Verizon also seeks to retain customers who submit disconnect orders..." adding that "[d]isconnect orders are submitted for a number of reasons, such as moving to another location, deciding to use wireless service exclusively, or *porting to another provider.*") (emphasis added) (Exhibit F).

<sup>23</sup> Letter from Matthew A. Brill, Latham & Watkins LLP, on behalf of Time Warner Cable Inc., to Lisa Griffin, Deputy Chief, Market Disputes Resolution Division, Federal Communications Commission, dated October 5, 2007 (Exhibit G).

<sup>24</sup> Gambino Affidavit (Ex. A).

functioning of carrier-to-carrier wholesale relationships and interfere with customer choice and the ability to change carriers in both directions.

## **II. THE COMMISSION HAS THE AUTHORITY TO STOP VERIZON'S UNLAWFUL MARKETING ACTIVITIES AND TO INSTITUTE SAFEGUARDS TO PREVENT FUTURE MISCONDUCT.**

The Commission has broad authority to remedy unlawful anti-competitive practices of telephone companies such as Verizon.<sup>25</sup> This includes the power to address unjust and unreasonable practices,<sup>26</sup> to conduct investigations,<sup>27</sup> and to supervise the activities and operations of carriers to ensure compliance with the law.<sup>28</sup> The Commission has exercised this authority to proscribe unjust and discriminatory conduct by telephone corporations that undermined competition.<sup>29</sup>

The general authority of the Commission to require or prohibit conduct in furtherance of the public interest and pro-competitive policy is well established. As Justice A. Franklin Mahoney noted in *Capital Telephone v Alfred Kahn*,<sup>30</sup> “it can be argued that the purpose and function of the [Commission] is to increase, rather than decrease, the competitiveness and efficiency of its regulated utilities in order that they might better serve the public.” Hence, there is no question that the Commission has authority to investigate and enjoin a carrier’s

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<sup>25</sup> See N.Y. Pub. Serv. Law §§ 25, 91(3), 94(2), 96, 97(2) (McKinney 2007). Section 94(2), for example, grants the Commission “general supervision of all telephone corporations . . . and . . . power . . . with respect to their compliance with all provisions of law.”

<sup>26</sup> N.Y. Pub. Serv. Law § 97(2).

<sup>27</sup> N.Y. Pub. Serv. Law § 96.

<sup>28</sup> N.Y. Pub. Serv. Law § 94(2).

<sup>29</sup> See e.g., *Complaint of AT&T Communications of New York, Inc., against Bell Atlantic-New York Concerning Bell Atlantic-New York's Management of the Primary Interexchange Carrier (PIC Program)*, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carrier, Cases 00-C-0897 & 00-C-0188, 2001 N.Y. PUC LEXIS 812 (N.Y.P.S.C. Oct. 30, 2001) (ordering Verizon to “end the practice” of discriminating between carriers to the benefit of Verizon’s affiliates and in violation of § 91).

<sup>30</sup> *Capital Telephone v Alfred Kahn*, 81 Misc 2d 444 (1976), *aff'd* 52 AD2d 650, *leave denied*, 39 NY2d 610 (1976).

unreasonable practices, regardless of whether those practices are specifically prohibited by prior rule or order.

The PSC can also directly enforce certain federal requirements. The FCC has found that states can address violations of § 222 of the Act related to unlawful disclosure and use of CPI.<sup>31</sup>

Finally, the PSC can enforce interconnection agreements that also prohibit the conduct at issue here by Verizon.<sup>32</sup> The Commission has ample authority to grant the relief sought herein on the basis of this Complaint.<sup>33</sup>

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<sup>31</sup> *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, 17 FCC Rcd 9018, 9187 ¶ 303 (2002) (“We find that, in the absence of a formal complaint to us that BellSouth has failed to comply with section 222(b), the winback issue in this case has been appropriately handled at the state level, and that the actions undertaken by the state commissions and BellSouth should be sufficient to ensure it does not recur.”); *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 17595, 17 FCC Rcd 17595, 17761 ¶ 296 (2002) (“[I]n the absence of a formal complaint to the Commission that BellSouth has failed to comply with the provisions of section 222(b), these allegations should be referred to the appropriate state commission for disposition.”).

<sup>32</sup> *See, SW BELL Tel. Co. v Connect Communications Corp*, 225 F3d 942, 947 (8<sup>th</sup> Cir 2000) (finding that state agencies can enforce interconnection agreements). Verizon’s conduct here violates its interconnection agreement with Cablevision. *See* Interconnection Agreement between Verizon New York Inc., and Cablevision Lightpath filed December 17, 2003 § 28.5.2 (“Verizon shall not use any information provided by [Cablevision] regarding [Cablevision’s customers for any marketing purpose or disclose such information to anyone in a marketing capacity except to the extent permitted by Applicable law.”); § 28.5.4 (“In addition to any requirements imposed by Applicable Law, including, but not limited to, 47 U.S.C. §222, the Parties shall maintain in confidence all Confidential Information...); §28.5.7 (“The provisions of this Section shall not be construed to be in derogation of, or to constitute a waiver by a Party of, any right with regard to protection of the confidentiality of information of the Party or its customers provided by Applicable Law, including but not limited to 47 U.S.C. Section 222 and any FCC Regulations issued pursuant thereto.”).

<sup>33</sup> *See* N.Y. Pub. Serv. Law § 96(3) (McKinney 2007) (“Complaints may be made to the [C]ommission . . . by any person . . . aggrieved” by any act of a regulated telephone company that violates the terms or conditions of any Commission order); *see also*, N.Y.A.P.A. Law § 204(1) (McKinney 2007) (authorizing Commission “[o]n petition of any person . . . [to] issue a declaratory ruling with respect to (i) the applicability to any person, property, or state of facts of any rule or statute enforceable by it . . . .”); *Power Auth. of State v. N.Y. State Dep’t of Envtl. Conservation*, 86 A.D.2d 57, 60 (N.Y. App. Div. 1982) (the purpose of the declaratory relief procedure is “to assist the general public by facilitating action by administrative agencies in interpreting statutes and regulations which the different agencies must enforce and determining the applicability of the statutes and regulations to all the various situations which may from time to time be presented”), *rev’d on other grounds*, 58 N.Y.2d 427 (N.Y. 1983); N.Y.A.P.A. Law § 301 (McKinney 2007) (authorizing adjudicatory hearings); *see also Complaint of Phone Management Enterprises, Inc. and Other Pay Telephone Operators Against Verizon New York Inc. for Refunds Relating to Unlawful Underlying Payphone Service Rates*, Order Denying Rehearing and Addressing Comments, No. 03-C-0428, 2007 WL 1584384 (N.Y.P.S.C. 2007) (ruling on complaints in which independent payphone service providers challenged rates Verizon charged for public access line services).

### III. ARGUMENT

#### A. Verizon's Use Of Carrier Change Requests To Trigger Retention Marketing Activities Violates The Commission's Express Prohibition Of Such Conduct.

The Commission has long recognized the potential for anti-competitive behavior when competitors have access to commercially valuable carrier information exchanged during the process of switching a customer's service providers.<sup>34</sup> As the Commission has found: "[w]hile sharing [of Customer Service Requests/Information] is an important element of end user migration, the sharing of CSR/CSI shall not ... create inequitable marketing practices."<sup>35</sup> To prevent such inequitable marketing practices the Commission prohibited local service providers "from approaching an end user to retain or keep that end user as a result of a request for CSR/CSI."<sup>36</sup> The Commission has said that these "guidelines serve as a model for any other migration guidelines that may be developed in the state for specific application to one or more other incumbent LECs."<sup>37</sup> Thus, for Verizon, the *Migration Guidelines* set the standard for reasonable behavior against which to evaluate anti-competitive conduct.

The *Migration Guidelines* should be read to prohibit Verizon from using its *wholesale customers'* data to advance its *retail marketing* efforts to those customers. In fact, the Commission recently described the *Migration Guidelines* as allowing "all competitors a fair and reasonable opportunity to compete." The Commission further confirmed that the *Migration Guidelines* should apply to all carriers, including Verizon, to ensure fair competition between all carriers.<sup>38</sup>

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<sup>34</sup> 2001 *Migration Order* at 7; 2002 *Migration Order* at 9.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> 2001 *Migration Order* at 14; 2002 *Migration Order* at 26.

<sup>38</sup> *Competition III* at 108 n. 197 (emphasis added) (Citing to the *Migration Guidelines* as among the steps that the Commission has undertaken "to provide a framework for incumbent carriers and new entrants that would allow all competitors a fair and reasonable opportunity to compete.").

While agencies have broad discretion in interpreting their orders, they must do so rationally to advance the agency's purpose.<sup>39</sup> To read the *Migration Guidelines* as prohibiting pre-port retention marketing by competitive local exchange carriers, but not incumbents, would contravene the Commission's own goal of advancing competition with policies that facilitate, not frustrate, customer migrations between all carriers.<sup>40</sup> Indeed, to apply the rule only to migrations between CLECs would remove the vast majority of migrations from the Commission's oversight and overwhelmingly burden competitive entrants. This is manifestly not the Commission's goal:

The Principles continue to embody the goals of enabling an end user to migrate to the provider of his choice smoothly, without delays, service problems or interruptions, or cumbersome procedures. Carriers must work together in good faith to minimize problems and to follow consistent methods for information exchange and other procedures to enable this to happen.<sup>41</sup>

Even if a hyper technical reading of the *Migration Orders* is that Verizon's conduct is not specifically addressed, as stated above, the Commission still has ample authority to halt the conduct.

The Commission need not engage in a formal rulemaking to prohibit prospectively anti-competitive or other utility behavior that is against the public interest.<sup>42</sup> It can do so in an order based on this Complaint. Indeed, if misbehavior could only be addressed by rulemakings, as opposed to complaints or sua sponte Commission investigations, §§ 91(3), 94(2), 96, and 97(2) would serve no purpose.

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<sup>39</sup> *Matter of Harbolic v Berger*, 43 NY2d 102, 109 (1977); *Matter of Campagna v Shaffer*, 73 NY2d 237,242-243 (1989).

<sup>40</sup> *Sabot v Department of Social Services*, 42 NY2d 1068, 1069 (1977) (regulations should not be interpreted in a manner that achieves results that are absurd or at odds with the agency's enabling legislation).

<sup>41</sup> 2002 *Migration Order* at 4.

<sup>42</sup> See *Matter of Public Service Commission v Jamaica Water Supply Company*, 42 N.Y.2d 880 (1978) (upholding a Commission decision prohibiting the payments of dividends to a holding company).

Hence, the Commission certainly can order Verizon to stop using carrier change requests to trigger retention marketing irrespective of the scope of the *Migration Guidelines*. A failure to do so would set an unfavorable precedent for all regulated utilities in the State – namely, that the Commission would tolerate openly anti-competitive behavior by incumbents unless its rules, as read in the most narrow sense, explicitly prohibit such action.

**B. Verizon’s Use Of Port Requests To Trigger Retention Marketing Violates § 222(b) Of The Act And FCC Rules.**

The Commission may and should enforce the federal prohibition against misuse of CPI.

Section 222(b) of the Act limits the use of CPI and states:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing *any telecommunications service* shall use such information only for such purpose, and *shall not use information for its own marketing efforts*.<sup>43</sup>

The FCC has broadly defined “carrier-to-carrier information, such as switch or PIC orders”<sup>44</sup> that one carrier receives from another for the provision of any telecommunications service, including wholesale services, as falling within the definition of CPI,<sup>45</sup> and prohibited carriers from using such information to trigger retention marketing.<sup>46</sup> The FCC has defined “retention” marketing as a carrier’s attempts to “persuade a customer to remain with that carrier before a customer’s

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<sup>43</sup> 47 U.S.C. § 222(b) (West 2007) (emphasis added).

<sup>44</sup> *CPNI Reconsideration Order*, 14 FCC Rcd at 14409 ¶ 77.

<sup>45</sup> *Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, 14 FCC Rcd 1508, 1568 ¶ 99 (1998) (“*Slamming Order*”) (“The information contained in a submitting carrier’s change request is proprietary information because it must submit that information to the executing carrier in order to obtain provisioning of service for a new subscriber. Therefore, pursuant to section 222(b), the executing carrier may only use such information to provide service to the submitting carrier, i.e., changing the subscriber’s carrier.”).

<sup>46</sup> *Id.* 1573 ¶ 106 (“[W]hen an executing carrier receives a carrier change request, section 222(b) prohibits the executing carrier from using that information to market services to that consumer.”) *See also Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket Nos. 96-115 and 96-149, 14 FCC Rcd 14409, 14450 ¶ 77 (1999) (“*CPNI Reconsideration Order*”).

service is switched to another provider.”<sup>47</sup> As an executing carrier, Verizon cannot “exploit[] [the] advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to the customer.”<sup>48</sup>

The source of information that triggers Verizon’s customer retention efforts that are the subject of this Complaint is carrier orders to switch a customer’s service by porting the customer’s telephone number.<sup>49</sup> Customers have confirmed that they did *not* contact Verizon to cancel their service. Thus, Verizon’s retail arm “would have no knowledge” of the disconnection “were it not for [Verizon’s] position as a provider of switched access services.”<sup>50</sup> Accordingly, Verizon’s use of Complainants’ CPI in its save campaign violates the law<sup>51</sup> because Verizon is prohibited from using Complainants’ CPI to attempt to change a subscriber’s decision to switch providers.<sup>52</sup> Vested with authority to enforce this requirement, the Commission can immediately enjoin Verizon’s misconduct.

**C. Complainants Respectfully Request The Commission To Order Verizon To Immediately Stop Its Unlawful Practices And To Impose Safeguards to Ensure That Verizon’s Conduct Does Not Repeat.**

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<sup>47</sup> *CPNI Reconsideration Order*, 14 FCC Rcd at 14450 ¶ 78.

<sup>48</sup> *Id.*

<sup>49</sup> *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Customers’ Long Distance Carriers*, CC Docket No. 94-129, 18 FCC Rcd 5099, 5110 ¶ 28 (2003) (“*Third Reconsideration Order*”) (“Executing carriers may not at any time in the carrier marketing process rely on specific information they obtained from submitting carriers due solely to their position as executing carriers.”).

<sup>50</sup> *Slamming Order*, 14 FCC Rcd at 1573 ¶ 106.

<sup>51</sup> Moreover, after learning of the jeopardy notice from Cablevision at least one subscriber contacted Verizon to learn that Verizon had placed an order to purchase Verizon service without his authorization. *See Day Affidavit* (Ex. C). This unauthorized order for service cancelled the customer’s switch to Cablevision. This subscriber’s experience demonstrates the extent of Verizon’s efforts to retain customers. *See N.Y. Pub. Serv. Law § 92-e* (McKinney 2007).

<sup>52</sup> *Slamming Order*, 14 FCC Rcd at 1567-1574 ¶¶ 99-107; *see also, Third Reconsideration Order* ¶ 28.

Verizon has demonstrated a disregard for the law and has attempted to mask its violations by arguing that it has a generic policy of aggressively pursuing its customers.<sup>53</sup> But Verizon's explanation does not excuse it from complying with the law. Rather it demonstrates that an order requiring Verizon to stop its misconduct would be insufficient to prevent Verizon's unlawful retention practices from repeating.

The FCC has found that "states are uniquely qualified to assess the local competitive landscape and determine whether additional safeguards are necessary" to address improper winback and retention activities.<sup>54</sup> Several states have imposed restrictions on incumbent carriers' ability to market to migrating customers to prevent future anti-competitive conduct.<sup>55</sup> Complainants urge the Commission to impose similar restrictions on Verizon to prevent it from abusing its position as an executing carrier and ensuring that its anti-competitive behavior does not recur.<sup>56</sup> Specifically, Complainants ask the Commission to require Verizon to wait ten

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<sup>53</sup> See Verizon Letter (Ex. F).

<sup>54</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended; 2000 Biennial Regulatory Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket Nos. 96-115, 96-149 and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14918 ¶134 (2002).

<sup>55</sup> *Investigation of BellSouth Telecommunications "Win back" Activities*, Interim Order, Docket No. 14232-U (G.A.P.S.C. 2001) ("BellSouth shall not engage in "win back" activities for a seven-day period after a customer switches its local provider."); *Southeastern Competitive Carriers Association, NewSouth Communications Corporation and TriVergent Communications vs. BellSouth Telecommunications, Inc.*, Order Ruling on Complaint, Docket No. 2000-378-C-Order No. 2001-1036 (S.C.P.S.C. 2001) ("BellSouth shall be prohibited from engaging in any Win Back activities for ten (10) calendar days from the date that service has been provided to a customer by a competitive local exchange carrier."); *Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996*, Notice of Decision, Docket No. P-55, SUB 1022 (N.C.P.U.C. 2002) ("BellSouth shall abstain from any marketing activities directed to a customer for seven days after the customer switches to another local telephone company . . ."); *Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region*, Order No. U-22252 (E) (L.A.P.S.C. 2001) (" . . . prohibit BellSouth from engaging in any win back activities for 7 days once a customer switches to another local telephone service provider . . .").

<sup>56</sup> The Commission has imposed safeguards to protect against anti-competitive behavior by incumbents in the past. See e.g., *Petition of URAC Corp. for a Declaratory Ruling that Gas East Corporation d/b/a KeySpan Energy*

calendar days following completion of a carrier change (including a port) before undertaking any marketing efforts to the customer associated with a particular port or other carrier change request.

#### **IV. CONCLUSION**

Based on the foregoing, Complainants respectfully request that the Commission issue the following relief: (1) declare that Verizon's conduct violates applicable state and federal law limiting the use of competitors' CPI; (2) require Verizon to immediately comply with applicable laws and to cease all marketing and other customer retention activities based in any way on other carriers' CPI, including port requests; (3) require Verizon to wait 10 calendar days after a completed carrier change before engaging in any marketing to the associated customer. In addition, due to the significant competitive harms to Complainants resulting from Verizon's continuing actions, Complainants respectfully request expedited treatment of this Complaint.

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*Delivery Long Island Be Directed to Provide Materials Related to Customer Accounts*, Declaratory Ruling, 2003 WL 1560612 (N.Y.P.S.C. Mar. 18, 2003) (requiring utility prospectively to disclose customer billing data as part of billing complaint procedures); *Energy Ass'n of N.Y. State v. Pub. Serv. Comm'n of N.Y.*, 653 N.Y.S.2d 502, 514 (N.Y. Super. Ct. 1996) (recognizing Commission's authority to take "preventive, corrective or remedial action"); *Tele/Resources, Inc. v. Pub. Serv. Comm'n*, 396 N.Y.S.2d 906, 909-10 (N.Y. App. Div. 1977) (noting Commission's "continuing regulatory authority" to monitor anti-competitive behavior among regulated utilities and to take corrective action if anti-competitive practices develop); *PSC v. Jamaica Water Supply Co.*, 386 N.Y.S.2d 230, 232 (N.Y. App. Div. 1976) (recognizing Commission's power to enjoin companies it is authorized to regulate) aff'd 42 N.Y.2d 880 (1977).

**CABLE TELECOMMUNICATIONS  
ASSOCIATION OF NEW YORK**

*/s/ Elise Hiller*

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Respectfully submitted,

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**CABLEVISION LIGHTPATH, INC.**

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October 26, 2007

## **EXHIBIT LIST**

- Exhibit A: Affidavit of Chris Gambino, Director Access Management and Interconnection for Cablevision Lightpath, Inc., dated October 15, 2007.
- Exhibit B: Affidavit of Philip Segal, Customer, dated October 15, 2007.
- Exhibit C: Affidavit of Regina Day, Coordinator LNP Voice for CSC Holdings, Inc., dated October 12, 2007.
- Exhibit D: Affidavit of Keri McKenzie, Employee and Principal of the James Mintz Group, dated October 15, 2007.
- Exhibit E: Letter from Kathleen Greenan Ramsey, Sonnenschein Nath & Rosenthal LLP, on behalf of Cablevision, to Donna M. Epps, Vice President Federal Regulatory for Verizon, dated July 27, 2007.
- Exhibit F: Letter from Joshua E. Swift, Assistant General Counsel to Verizon, to Kathleen Greenan Ramsey, Sonnenschein Nath & Rosenthal LLP, dated August 10, 2007.
- Exhibit G: Letter from Matthew A. Brill, Latham & Watkins LLP, on behalf of Time Warner Cable Inc., to Lisa Griffin, Deputy Chief, Market Disputes Resolution Division, Federal Communications Commission, dated October 5, 2007.