STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

Glasford Telephone Company	)	Docket Nos. 04-0193
Viola Home Telephone Company	)	04-0194
New Windsor Telephone Company	)	04-0195
Montrose Mutual Telephone Company	)	04-0196
Woodhull Community Telephone Company	)	04-0197
Leaf River Telephone Company	)	04-0198
Oneida Network Services, Inc.	)	04-0199
Oneida Telephone Exchange	)	04-0200
	)	
Petition for Suspension or Modification of	)	
Section 251(b)(2) requirements of the Federal	)	
Telecommunications Act pursuant to Section	)	
251(f)(2) of said Act; for entry of Interim Order;	)	
and for other necessary relief.	)	

VERIZON WIRELESS' RESPONSE TO MOTION TO COMPEL

NOW COMES Verizon Wireless, by and through its Counsel, Clark Hill PLC, and respectfully files its response in opposition to the Motion to Compel (the "Motion") filed on May 25, 2003 by Glasford Telephone Company, Viola Home Telephone Company, New Windsor Telephone Company, Montrose Mutual Telephone Company, Woodhull Community Telephone Company, Leaf River Telephone Company, Oneida Network Services, Inc., and Oneida Telephone Exchange (collectively, the "Movants") in the above-captioned proceedings.[1]

[1] A single Motion was filed separately in each of the above-captioned proceedings. Though the original Motion sought to compel responses to Data Requests 1.01 through 1.11 and 1.13 through 1.16, following the submission of Supplemental responses by Verizon Wireless (Attached hereto as Confidential Appendix A), the Movant's attorney indicated, by letter, that the Supplemental Responses to all Data Requests except 1.01, 1.02, 1.04, and 1.07 through 1.09 were "compliant." (Please see May 26, 2004 Correspondence from Mr. Smith, attached hereto as Appendix B). Verizon Wireless thus responds to the Motion to Compel with respect to Data Requests 1.01, 1.02, 1.04, and 1.07 through 1.09.

Verizon Wireless respectfully asks the Commission to deny the Motion. In support thereof, Verizon Wireless states as follows:

I. INTRODUCTION

On May 7, 2004, the Movants submitted 16 Data Requests to Verizon Wireless. Despite the fact that the Movants bear the burden of proof and the burden of persuasion[2] in this proceeding to suspend the Movant's Federal Communications Commission's ("FCC") mandate to provide wireline-to-wireless local number portability, the Movants requested information which is not remotely related to the facts they are statutorily required to provide in support of their Petitions. Rather the Movants sought highly sensitive and confidential information from Verizon Wireless related to Verizon Wireless' business operations, confidential customer information, as well as information related to when Verizon Wireless knew about the Movants' Petitions to Intervene.

This Commission's Rules of Practice provide:

> "[I]t is the policy of the Commission not to permit requests for information, depositions, or other discovery whose primary effect is harassment or which will delay the proceeding in a manner which prejudices any party or the Commission, or which will disrupt the proceeding."[3]

Because this proceeding concerns the *prospective* application of the federal requirement that the Movants provide wireline-to-wireless local number portability, Verizon Wireless believes that the Movants' Data Requests regarding Verizon Wireless business operations are for the sole purpose of harassing Verizon Wireless or delaying these proceedings.

---

[2] 47 C.F.R. § 51.405(d); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report & Order, 11 FCC Rcd. 15499, ¶1262 (1996).

[3] 83 Ill. Adm. Code 200.304.

This Commission and the State of Illinois have liberal policies underlying discovery rules, but these are offset by practical limitations placed upon the process. In *Mistler v. Mancini*,[4] the Appellate Court of Illinois stated in pertinent part as follows:

> "The purposes of litigation are best served when each party knows as much about the controversy as is reasonably practicable. The objectives of pretrial discovery are to enhance the truth-seeking process, making good faith compliance with such procedures both desirable and necessary [] to enable attorneys to better prepare and evaluate their cases[]; to eliminate surprises as far as possible[]; so that judgments will rest upon the merits and not upon the skillful maneuvering of counsel[]; and to promote an expeditious and final determination of controveries [*sic*] in accordance with the substantive rights of the parties[]. Discovery is not a tactical game to be used to obstruct or harass the opposing litigant. [] The rules make it clear that discovery procedures were designed to be flexible and adaptable to the infinite variety of cases and circumstances appearing in the trial court. Furthermore, the increasing complexity and volume of litigation involves frequent recourse to discovery procedures. To unduly limit their scope would inhibit pretrial settlements, increase the burden of already crowded court calendars, and thwart the efficient and expeditious administration of justice. …
>
> However, the discovery rules also fix guidelines for a fair and orderly procedure by which discovery may be accomplished and protect against abuses and unfairness. [] Supreme Court Rule 201(c) [] provides that a court may make a protective order regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression. **The right to discovery is also limited to disclosure regarding matters relevant to the subject matter involved in the pending action. [] Discovery should be denied where there is insufficient evidence that the requested discovery is relevant.** …"[5]

Therefore, while the applicable rules and regulations "provide liberal discovery to all parties,"[6] those same rules and regulations limit the scope of discovery to matters "relevant to the

---

[4] 111 Ill. App. 3d 228; 443 N.E.2d 1125 (1982).

[5] 111 Ill. App. 3d at 231-233 (citations omitted)(*emphasis added*).

[6] *Webber v. Armstrong World Industries, Inc.*, 235 Ill. App. 3d 790, 795; 601 N.E.2d 286 (1992)

subject matter involved in the pending action."[7] Thus, in Illinois, discovery "should only be utilized to 'illuminate the actual issues in the case,'"[8], and "is not a game of tactical harassment or obstruction."[9]

II. THE REQUESTS FOR VERIZON WIRELESS' CUSTOMER INFORMATION IS IRRELEVANT AND IMMATERIAL

When incumbent local exchange carriers, such as the Movants, seek waivers or suspensions of federally mandated telecommunication requirements, the Federal Telecommunications Act of 1996[10] (the "Act") and the FCC[11] have placed the burden of "offer[ing] evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry" on the incumbent local exchange carrier, not on those parties seeking to challenge the Petition. Thus, the number and location of existing customers served by Verizon Wireless cannot not possibly be relevant to the Petitions for suspension of the wireline-to-wireless local number portability requirement.

The Data Requests ask for the following information:

> **Data Request 1.01**
> Based upon the most recent information available, state the number of Verizon Wireless customers located by billing address that are served by Verizon in: (a) [various cities and towns in Illinois]

---

[7] *Owen v. Mann*, 105 Ill. 2d 525, 530; 475 N.E.2d 886 (1985).

[8] *Id., quoting Sarver v. Barrett Ace Hardware*, 63 Ill. 2d 454, 460 (1976)

[9] *Central National Bank In Chicago v. Baime*, 112 Ill. App. 3d 664, 668; 445 N.E.2d 1179 (1982).

[10] 47 U.S.C. §251(f)(2).

[11] 47 C.F.R. § 51.405(d), *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15499, ¶1262 (1996)

> **Data Request 1.02**
> The following zip codes are associated with the geographic locations that are within [Movant's] local exchange service area: The [ ] Exchange—[Various Zip Codes].
> Please provide by customer billing address zip code the number of customers presently served by Verizon Wireless in each zip code identified above.
>
> **Data Request 1.04**
> Based upon the most recent information available, state the number of Verizon Wireless customers, by billing address, presently served by Verizon Wireless in the State of Illinois.

Not only are these requests irrelevant and immaterial, Verizon Wireless does not keep separate records of Verizon Wireless customers within each of the Movants' service territories. As Illinois Courts have held, there is no provision in Rule 201[12] of the Illinois Supreme Court Rules which "require a party to create documents or records for discovery"[13]

The Motion further claims that "Verizon Wireless alleges that it 'may' lose customers if a suspension of LNP is granted to the Petitioners."[14] In order to support its position, the Movants take Verizon Wireless' statement out of context. As Verizon Wireless correctly noted in its Petitions to Intervene,

> "The serving of these BFRs provides Verizon Wireless with a significant interest in the subject matter of this proceeding. Moreover, rural consumers will seek to port their landline numbers to Verizon Wireless on or after May 24, 2004 and Verizon Wireless will want to fulfill such requests. If ports are denied or delayed due to local exchange carriers' waivers, Verizon Wireless may suffer a loss in business, and more importantly, a loss in goodwill with Illinois consumers."

---

[12] Ill. Sup. Ct., R 201 (2004).

[13] *In re R.V.*, 288 Ill. App. 3d 860, 870; 681 N.E.2d 660, 668 (1997)

[14] Motion, ¶4.

Verizon Wireless' statement is intended to be a ***prospective*** look at the industry. The inability of wireline customers to port their telephone numbers to Verizon Wireless will cause a loss of *potential* business. This potential loss has no impact on, relevance to, and is immaterial with respect to any of Verizon Wireless' current customers.

The Movants further claim that the number of Verizon Wireless' existing customers is relevant to this proceeding because it somehow demonstrates "whether Verizon Wireless is providing reliable and adequate service in Petitioners' service areas that could operate as a substitute for landline service and the lack of reliable service which will impact demand for LNP." Once again, the Movants' attempt to introduce a red-herring into these proceedings only highlights the irrelevance and immateriality of their data requests. The FCC has determined that requirement to provide wireline-to-wireless local number portability is predicated on a bona fide request from a wireless carrier licensed to and offering service in local exchange carriers' service area. Verizon Wireless meets those criteria, therefore the reliability of Verizon Wireless' network becomes irrelevant to whether or not the Petitioners are required to offer wireline-to-wireless local number portability. Further, Verizon Wireless contends that the demand for wireline-to-wireless local number portability is also irrelevant to this proceeding. The FCC has previously "rejected the view of some commenters that if consumer demand for [ ] LNP were to develop, market forces alone would be sufficient to ensure its development and implementation. We found that in the absence of a regulatory requirement, carriers who feared losing customers might not have a market-based incentive to develop LNP."[15]

[15] *Cellular Telecommunications Industry Association's Petition for Forbearance*, Order on Reconsideration, 15 FCC Rcd 4727, ¶12 (2000).

This proceeding concerns the *prospective* application of the federal requirement that New the Movants provide wireline-to-wireless local number portability. Because the Act and the FCC have placed the burden of "offer[ing] evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry" on the Movants', and not on those parties seeking to challenge the Petition. Thus, the number of customers served by Verizon Wireless cannot not possibly be relevant or material to these proceedings.

III. THE REQUESTS FOR INFORMATION ABOUT WHEN VERIZON WIRELESS KNEW ABOUT THE PETITIONS IS IRRELEVANT, IMMATERIAL, AND UNTIMELY.

Data Requests 1.07 through 1.09 request information about when, and who at, Verizon Wireless knew about the Movants' Petitions in these proceedings. Such a request is also irrelevant to this proceeding. The Movants' claim that such information is needed to determine "whether Verizon [Wireless] was invited to intervene by staff."[16] Verizon Wireless was granted intervention in these proceedings on April 27, 2004, without opposition from the Movants. [17] Because the Commission's Rules provide that an interlocutory review of Administrative Law Judge's ruling must be taken within 21 days,[18] the Movants' motion to compel, as related to Verizon Wireless' intervention is untimely.[19]

The Movants' asked three questions in this regard:

---

[16] Motion, ¶4.

[17] Tr 151.

[18] 83 Ill. Adm. Code 200.520.

[19] Movants' request that the Administrative Law Judge strike Verizon Wireless' intervention is also untimely and should be denied.

> **Data Request 1.07:**
> State the date Verizon [Wireless] first became aware of the Petition filed by Petitioner herein at the Illinois Commerce Commission.

Verizon Wireless responded to this request by stating that the Legal Department first became aware of the Petition(s) on or about March 29, 2003.

> **Data Request 1.08**
> State in detail how and through what means Verizon [Wireless] first became aware of the Petition filed by Petitioner herein at the Illinois Commerce Commission.

Verizon Wireless responded to this request by stating that the Verizon Wireless "Legal Department first became aware that Petitioners had filed Petitions from other wireless carriers who communicated such to Verizon Wireless' Legal Department."

Because Verizon Wireless fully answered the two above questions, the only question that seems to be at issue in this Motion is:

> **Data Request 1.09:**
> Identify the name of the individual at Verizon Wireless who first became aware of the Petition filed by Petitioner herein.

How Verizon Wireless became aware of these proceedings bears no relationship or relevance to the Movants' Petition to suspend their federal requirement to provide wireline-to-wireless local number portability. Further, because Verizon Wireless responded, in its Supplemental Responses, that "the [Verizon Wireless] Legal Department first became aware that Petitioners had filed Petitions on or about March 29, 2004." from "other wireless carriers who communicated such to Verizon Wireless' Legal Department," any further information about who in the legal department initially received such information, or to whom the legal department communicated this information to, or what decisions were made with that information is subject to attorney-client privilege and may be contained in exempt attorney work papers and work product.

Thus, the Movants' motion to compel Verizon Wireless to respond to Data Requests 1.07 through 1.09 should be denied.

IV. THE MOVANTS SHOULD BE LIMITED TO THE RELIEF REQUESTED AND THE RATIONALE STATED IN THEIR MOTION.

By its own terms, the Motion admits that it fails to plead with specificity the grounds for granting the Motion to Compel. The Movants state that they "will respons (sic) more thoroughly to the objections raised by Verizon [Wireless] at the hearing on this motion." Verizon Wireless objects to any attempt by the Movants to supplement or respond in more specificity to Verizon Wireless' objections. Verizon Wireless provided detailed objections, where it objected, in its Data Responses and the Movants had sufficient time to respond to such in their written Motion to Compel. If the Movants are allowed to now create additional arguments, Verizon Wireless requests sufficient time to respond thereto.

V. CONCLUSION

Wherefore, for the above reasons, Verizon Wireless respectfully requests that the Illinois Commerce Commission deny Glasford Telephone Company, Viola Home Telephone Company, New Windsor Telephone Company, Montrose Mutual Telephone Company, Woodhull Community Telephone Company, Leaf River Telephone Company, Oneida Network Services, Inc., and Oneida Telephone Exchange's Motion to Compel in its entirety.

Respectfully submitted,

CLARK HILL PLC

By:

Roderick S. Coy, Esq.
Haran C. Rashes, Esq.
Brian M. Ziff, Esq. (ARDC No. 6239688)
Lansing, Michigan Office:
2455 Woodlake Circle
Okemos, MI 48864-5941
(517) 381-9193
(517) 381-0268 Fax

E-Mail: rcoy@clarkhill.com
hrashes@clarkhill.com
bziff@clarkhill.com

Attorneys For Verizon Wireless

Date: May 27, 2004

3308002v1
09609/097413

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

.Glasford Telephone Company	)	Docket Nos. 04-0193
Viola Home Telephone Company	)	04-0194
New Windsor Telephone Company	)	04-0195
Montrose Mutual Telephone Company	)	04-0196
Woodhull Community Telephone Company	)	04-0197
Leaf River Telephone Company	)	04-0198
Oneida Network Services, Inc.	)	04-0199
Oneida Telephone Exchange	)	04-0200
	)	
Petition for Suspension or Modification of	)	
Section 251(b)(2) requirements of the Federal	)	
Telecommunications Act pursuant to Section	)	
251(f)(2) of said Act; for entry of Interim Order;	)	
and for other necessary relief.	)	

VERIZON WIRELESS' RESPONSE TO MOTION TO COMPEL

APPENDIX A

CONFIDENTIAL

SUPPLEMENTAL DATA RESPONSES

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

Glasford Telephone Company	)	Docket Nos. 04-0193
Viola Home Telephone Company	)	04-0194
New Windsor Telephone Company	)	04-0195
Montrose Mutual Telephone Company	)	04-0196
Woodhull Community Telephone Company	)	04-0197
Leaf River Telephone Company	)	04-0198
Oneida Network Services, Inc.	)	04-0199
Oneida Telephone Exchange	)	04-0200
	)	
Petition for Suspension or Modification of	)	
Section 251(b)(2) requirements of the Federal	)	
Telecommunications Act pursuant to Section	)	
251(f)(2) of said Act; for entry of Interim Order;	)	
and for other necessary relief.	)	

VERIZON WIRELESS' RESPONSE TO MOTION TO COMPEL

APPENDIX B

MAY 26, 2004, CORRESPONDENCE FROM GARY L. SMITH TO HARAN C. RASHES

LOEWENSTEIN, HAGEN & SMITH, P.C.
ATTORNEYS AT LAW
1204 SOUTH FOURTH STREET
SPRINGFIELD, ILLINOIS
62703-2229

RALPH H. LOEWENSTEIN
HENRY C. HAGEN
GARY L. SMITH

TELEPHONE: (217) 525-1199
FACSIMILE: (217) 522-6047

May 26, 2004

Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941

Dear Mr. Rashes:

Re: Supplemental Responses to Data Requests

04-0193-GLASFORD TELEPHONE CO.
04-0194-VIOLA HOME TELEPHONE CO.
04-0195-NEW WINDSOR TELEPHONE CO.
04-0196-MONTROSE MUTUAL TEL. CO.
04-0197- WOODHULL COMMUNITY TELEPHONE CO.
04-0198-LEAF RIVER TELEPHONE CO.
04-0199-ONEIDA NETWORK SERVICES, INC.
04-0200- ONEIDA TELEPHONE EXCHANGE

I am in receipt of the Supplemental Responses to Data Requests, some of which you have claimed as confidential. Supplemental Responses have not been provided for D.R.s 1.01, 1.02 and 1.04. At this point, I find the Supplemental Responses to the remaining Data Requests (other than 1.07-1.09) compliant with the request if a Supplemental Verification is furnished. D.R.s 1.07-1.09 do not identify the person responding or the recipient of the initial information in Verizon Wireless's legal department or the name of the individual who first became aware of the Petitioners' petitions or the source of that knowledge. Please furnish that information.

I am requesting that you provide the information requested in D.R.s 1.01, 1.02 and 1.04, (and the additional data for D.R.s 1.07-1.09) especially since we have signed a Proprietary Agreement agreeing to maintain that information in confidence. If completed as outlined above, I would be able to withdraw the motion to compel. I would appreciate a prompt response.

Very truly yours,

LOEWENSTEIN, HAGEN & SMITH, P.C.

Gary L. Smith

GLS/vls
cc: Eric Madiar
Dennis Muncy
Thomas R. Stanton

Hon. John Albers

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

Glasford Telephone Company	)	Docket Nos.	04-0193
Viola Home Telephone Company	)		04-0194
New Windsor Telephone Company	)		04-0195
Montrose Mutual Telephone Company	)		04-0196
Woodhull Community Telephone Company	)		04-0197
Leaf River Telephone Company	)		04-0198
Oneida Network Services, Inc.	)		04-0199
Oneida Telephone Exchange	)		04-0200
	)		
Petition for Suspension or Modification of	)		
Section 251(b)(2) requirements of the Federal	)		
Telecommunications Act pursuant to Section	)		
251(f)(2) of said Act; for entry of Interim Order;	)		
and for other necessary relief.	)		

NOTICE OF FILING

To: Service List Attached

You are hereby notified that I have, this 27th day of May, 2004, filed with the Chief Clerk of the Illinois Commerce Commission Verizon Wireless' Response to Motion to Compel, in the above-captioned proceeding, via the electronic e-docket system on May 14, 2004.

Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
(517) 381-9193

3308002v1
09609/097413

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

Glasford Telephone Company	)	Docket Nos.	04-0193
Viola Home Telephone Company	)		04-0194
New Windsor Telephone Company	)		04-0195
Montrose Mutual Telephone Company	)		04-0196
Woodhull Community Telephone Company	)		04-0197
Leaf River Telephone Company	)		04-0198
Oneida Network Services, Inc.	)		04-0199
Oneida Telephone Exchange	)		04-0200
	)		
Petition for Suspension or Modification of	)		
Section 251(b)(2) requirements of the Federal	)		
Telecommunications Act pursuant to Section	)		
251(f)(2) of said Act; for entry of Interim Order;	)		
and for other necessary relief.	)		

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verizon Wireless' Response to Motion to Compel, in the above-captioned proceeding, were served upon the parties on the attached service list via Electronic Mail on May 27, 2004.

Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
(517) 381-9193

ADMINISTRATIVE LAW JUDGE

Hon. John D. Albers
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

E-Mail: jalbers@icc.state.il.us

GLASFORD TELEPHONE COMPANY VIOLA HOME TELEPHONE COMPANY, NEW WINDSOR TELEPHONE COMPANY, MONTROSE MUTUAL TELEPHONE COMPANY, WOODHULL COMMUNITY TELEPHONE COMPANY, LEAF RIVER TELEPHONE COMPANY, ONEIDA NETWORK SERVICES, INC., ONEIDA TELEPHONE EXCHANGE

Gary L. Smith
Loewenstein, Hagen & Smith, P.C.
1204 S. Fourth St.
Springfield, IL 62703-2229

E-Mail: lexsmith@lhoslaw.com

ILLINOIS COMMERCE COMMISSION STAFF

Eric M. Madiar
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104

E-Mail: emadiar@icc.state.il.us

Thomas R. Stanton
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601

E-Mail: tstanton@icc.state.il.us

Jeff Hoagg
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

E-Mail: jhoagg@icc.state.il.us

LEAF RIVER TELEPHONE COMPANY

Katherine L. Barney
President
Leaf River Telephone Company
102 W. 2nd St.
Leaf River, IL 61047

MONTROSE MUTUAL TELEPHONE COMPANY

George P. Tays
Manager
Montrose Mutual Telephone Company
PO Box 4
Dieterich, IL 62424

E-Mail: geot@mmtcnet.com

NEW WINDSOR TELEPHONE COMPANY

Richard W. Ristau
Secretary
New Windsor Telephone Company
PO Box 488
New Windsor, IL 61465-0488

E-Mail: wins3@winco.net

WOODHULL COMMUNITY TELEPHONE COMPANY

George Wirt
General Manager
Woodhull Community Telephone Company
246 N. Division St.
Woodhull, IL 61490

E-Mail: w443012@winco.net

VERIZON WIRELESS

Roderick S. Coy
Haran C. Rashes
Brian M. Ziff
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941

E-Mail: rcoy@clarkhill.com
hrashes@clarkhill.com
bziff@clarkhill.com

Anne Hoskins
Lolita Forbes
Verizon Wireless
1300 "Eye" Street N.W.
Suite 400 West
Washington, DC 20005

E-Mail: anne.hoskins@verizonwireless.com
lolita.forbes@verizonwireless.com

VIOLA HOME TELEPHONE COMPANY

Mark A. Appleton
Viola Home Telephone Company
1303 16th Ave.
PO Box 309
Viola, IL 61486

E-Mail: lawoffice129@yahoo.com