

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

NORTH COUNTY COMMUNICATIONS CORPORATION,)
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 Complainant,)
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vs.)
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VERIZON NORTH INC. and VERIZON SOUTH, INC.,)
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 Respondents.)
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_____)

Docket No. 07-0428

VERIZON’S MOTION TO DISMISS

Verizon North Inc. and Verizon South Inc. (collectively, “Verizon”), by and through their attorneys, and in accordance with Subsection 13-515(d)(4) of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/13-515(d)(4), and Section 200.190 of the Commission’s Rules of Practice, 83 Ill. Adm. Code § 200.190, hereby respectfully submit their Motion to Dismiss the July 26, 2007 Verified Complaint filed by North County Communications Corporation (“NCC”), and in support thereof, state as follows:

Introduction

1. NCC purports to bring this action under §§ 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act (“the Act”) and 83 Ill. Admin. Code Part 766, claiming that the following three alleged actions of Verizon are *per se* violations of the Act: 1) declining to purchase NCC’s line information database (“LIDB”) and caller name (“CNAM”) information directly from NCC; 2) insisting that NCC store its LIDB and CNAM information with a third party database provider to make it available to Verizon;

and 3) refusing to allow NCC to store and provide LIDB and CNAM information using NCC's resources and facilities. *See Verified Complaint at ¶ 1.* In other words, through the vehicle of the Verified Complaint, NCC seeks to force Verizon to purchase NCC's LIDB and CNAM data directly from NCC, under rates, terms and conditions demanded by NCC, instead of from third-party database providers who consolidate LIDB and CNAM information from many carriers and provide LIDB and CNAM service offerings to purchasers at competitive rates.

2. In effect, NCC asks the Commission – under the guise of requesting relief from alleged anticompetitive conduct on Verizon's part, and based on purely speculative statements about what might occur in the future should NCC directly provide its CNAM and LIDB data exclusively to carriers – to compel Verizon to purchase NCC's CNAM/LIDB data directly and exclusively from NCC, whether Verizon wants to purchase that data or not. Thus, the resolution of the Verified Complaint boils down to this issue: *Can NCC force Verizon to purchase NCC's LIDB and CNAM information at all, and if so, can NCC additionally compel Verizon to purchase that data directly from NCC, instead of from other data vendors?* The answer is “no.” Since this is the fundamental legal issue on which NCC's case hinges, and because NCC cannot force Verizon to purchase NCC's CNAM/LIDB database services, the Complaint must be dismissed.

Discussion

3. There is no legal authority that requires Verizon to purchase any services from NCC that Verizon has not agreed to purchase, including NCC's proposed LIDB and

CNAM services.¹ Notably, the Verified Complaint does not allege that NCC requires Verizon to purchase any of this database information in order for NCC to offer local service to its customers. Indeed, NCC has access to all the customer database information it requires from Verizon (pursuant to NCC's interconnection agreement and CNAM/LIDB Contract with Verizon²) in order for NCC to offer local service to its end-user customers. Moreover, the proposed agreement that NCC would foist upon Verizon for the purchase of NCC's CNAM/LIDB information would not be for the purpose of provisioning services to NCC's customers. Instead, the claim now before the Commission is about LIDB and CNAM information that NCC believes Verizon should purchase in order to provide *Verizon's* local service to *Verizon's* end-users. Not only that, but NCC demands that Verizon purchase this information exclusively from NCC, rather than from third-party LIDB and CNAM providers.

4. Verizon's business decision whether to purchase LIDB and CNAM information from other carriers for use in the provision of Verizon's local service to Verizon's end-user customers, and if so, Verizon's election to purchase that information from the sources Verizon chooses, is not a violation of the Act. Indeed, if there is any violation of the Act in this proceeding, it arises from NCC's insistence that Verizon purchase NCC's CNAM/LIDB information, that Verizon purchase that information exclusively from NCC (rather than from third party CNAM/LIDB providers), and NCC's attempt to tie its own purchase of similar information from Verizon to a reciprocal agreement from Verizon. *See, e.g., Standard Oil Co. of California v. United States*, 337 U.S. 293 (1949). Even if all the facts alleged in the Verified Complaint are true, which

¹ Verizon is not aware that NCC actually provides the customer database services it demands that Verizon purchase.

² *See* Verified Complaint at ¶¶ 9, 11.

they are not, NCC is not entitled to any relief. The Verified Complaint must therefore be dismissed, because it fails to state a claim.

Purchasers of customer database services may not be forced to purchase such services from a specific supplier.

5. In 2003, the Federal Communications Commission (“FCC”) determined in its Triennial Review Order³ that the market for call-related database services, including those for CNAM and LIDB, was national in scope and fully competitive. *See Triennial Review Order* at ¶¶ 552-54. The FCC found that there are a “substantial number of competitive suppliers of call-related databases,” including CNAM and LIDB. *Id.* at ¶ 551. As a result, “carriers can either self-provision or use alternative providers to obtain CNAM and LIDB database services.” *Id.* at ¶ 554. Thus, there is no legal requirement that a purchaser of CNAM or LIDB information must purchase that information from any particular provider.

6. As a result, for example, Verizon maintains its own CNAM and LIDB databases for its Caller ID and other telecommunications services. Verizon also purchases some CNAM/LIDB information from other suppliers. Verizon does not, however, purchase CNAM/LIDB services from *all* CNAM/LIDB suppliers. Of the hundreds of potential carriers and suppliers of this data, Verizon only purchases this information directly from a small handful. NCC is but one of the many companies with which Verizon has no agreement to purchase CNAM or LIDB data directly.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003); *corrected by* Errata, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) (“*Triennial Review Order*”).

NCC does not need Verizon to purchase NCC's CNAM/LIDB data directly or indirectly in order for NCC to provide adequate local service to its own customers.

7. It is critical that the Commission understand that the database information NCC would force Verizon to purchase is not necessary for NCC to provision its own local service to NCC's end-user customers. As stated above, the LIDB and CNAM database information NCC seeks to force Verizon to purchase would be for *Verizon's* use in the provisioning of *Verizon's* local services to *Verizon's* end-users. For example, Verizon can use the CNAM calling party information obtained from other carriers and third party providers to provision Caller ID service that identifies the calling party to a Verizon customer who has purchased Verizon's Caller ID service. Currently this CNAM/LIDB information can be purchased, *at the option of the purchasing carrier*, from more than one third-party vendor or, in some cases, directly from the supplying carrier. For example, interested purchasers can obtain Verizon's LIDB and CNAM data, at the option of the purchaser, from third-party vendors or directly from Verizon. Given the competitive nature of this data service and the number of vendors who sell it, there may be other methods in the future to obtain the information.

8. At NCC's request, Verizon has entered into an agreement with NCC to provide Verizon's LIDB and CNAM information to NCC. On the other hand, at its option, Verizon purchases NCC's CNAM/LIDB information from third party vendors. Verizon does not desire to purchase this data directly from NCC at the rates, terms and conditions proposed by NCC, nor does Verizon need to. Given that the CNAM/LIDB data from NCC is to be used for Verizon's provision of local service, Verizon, and not NCC, must decide how that service should be provided and what data is necessary for provision of the service. There is no authority authorizing a supplier of CNAM/LIDB

information (like NCC) to force a carrier (like Verizon) to purchase it, and then only from that single supplier.⁴ It is fundamental that agreements cannot be imposed unilaterally. *See, e.g., Hadley v. Morrison*, 39 Ill. 392, 399 (1866); *Quake Construction, Inc. v. American Airlines, Inc. et al*, 141 Ill.2d 281, 287 (1990).

9. NCC itself notes that Verizon has already negotiated an interconnection agreement with NCC.⁵ That agreement, of which the Commission may take administrative notice, does not require Verizon to purchase NCC's CNAM or LIDB data.⁶ NCC's claim that Verizon's direct purchase of NCC's CNAM/LIDB data is necessary for NCC to offer its local service is unfounded. If it were truly something necessary for the provision of NCC's services, it would be required by the FCC and included in the interconnection agreement. However, as stated above, the FCC found that such databases were competitive offerings and not subject to unbundling. Thus, NCC has no right under its interconnection agreement, nor does it claim such a right, to require Verizon to purchase NCC's CNAM/LIDB data for use in the provision of Verizon's local service – much less restrict the sources from which Verizon can purchase that information.⁷ Verizon has no need to purchase NCC's CNAM data directly from NCC in order for Verizon to provide its local service. If Verizon does not need the information directly from NCC, Verizon should not be required to purchase it.

⁴ NCC cites no authority from the FCC or any other state that would require Verizon to purchase NCC's CNAM/LIDB database information.

⁵ *See* Verified Complaint at ¶ 9.

⁶ *See* Verizon/NCC Interconnection Agreement, available on-line at the Commission's website by going to <http://www.icc.illinois.gov/e-docket/>, selecting the "Browse a Docket" function, and entering "02-0181" as the case number.

⁷ As NCC concedes (*see* Verified Complaint at ¶ 11), Verizon has voluntarily entered into a customer database agreement with NCC that provides NCC with access Verizon's CNAM/LIDB information so that, for example, NCC's Caller ID service will show the calling information from Verizon customers who call NCC's customers, and NCC customers can make collect or third-party billed calls. Verizon has provided NCC the Verizon customer data NCC requires from Verizon for NCC to provide NCC's local service. Significantly, NCC alleges no breach of either its interconnection agreement or CNAM/LIDB Contract with Verizon.

The Act does not support NCC's claim.

10. The only authority NCC cites to support its claim is Sections 13-514 (1), (2), (5), (6) and (8) of the Act. *See* Verified Complaint at ¶ 33. None of these provisions, however, force Verizon to purchase any service from NCC. Subsection (1) prohibits a person from “unreasonably refusing or delaying interconnection or collocation or providing inferior connections to another telecommunications carrier.” As noted above, NCC concedes that Verizon has entered into both an interconnection agreement and a CNAM/LIDB Contract with NCC that allow NCC to offer local service.⁸ Subsection (1) does not mandate that Verizon purchase services from NCC against Verizon's will. NCC's claim has nothing to do with interconnection or collocation, and this subsection does not support NCC's claim. The requirements for interconnection and collocation are contained in the interconnection agreement between the parties, and NCC does not claim that agreement has been violated.

11. Subsection (2) of Section 13-514 prohibits a person from “unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier.” The database information at issue here is not used for the provision of any NCC services. Whether Verizon obtains the NCC customer data from NCC or a third-party vendor has no impact on NCC's local service. The data NCC would require Verizon to purchase is for use in the provision of *Verizon's* local service, and this section does not require Verizon to purchase NCC's database information. Verizon is entitled to make business decisions about the scope of the local services it offers, not NCC.

⁸ *See* Verified Complaint at ¶¶ 9, 11.

12. Subsection (5) prohibits a person from “unreasonably refusing or delaying access by any person to another telecommunications carrier.” Verizon is not preventing any person from accessing or reaching NCC. Again, there is no requirement in this section that Verizon purchase NCC’s database information, directly from NCC or indirectly from third parties.

13. Subsection (6) prohibits a person from “unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers.” This part of the Act also does not apply. NCC’s service is not adversely affected because Verizon purchases NCC customer data in the marketplace from other parties. Again, the database information NCC would require Verizon to purchase is for use in the provision of *Verizon’s* local service, not for NCC’s local service. Where Verizon purchases NCC’s CNAM/LIDB information has no effect on either Verizon’s or NCC’s local service.

14. Finally, Subsection (8) prohibits a person from “violating the terms of or unreasonably delaying implementation of an interconnection agreement” Again, NCC makes no claim that Verizon has violated either its interconnection agreement or CNAM/LIDB Contract with NCC. Thus, this subsection of the Act does not require Verizon to purchase customer data directly from NCC.

**NCC’s highly speculative and hypothetical claims are not ripe
and must therefore be dismissed.**

15. NCC’s claims are also highly speculative and hypothetical, and thus do not constitute an “actual case or controversy.” Therefore, its claims are not ripe for decision at this time, and must be dismissed. *See, e.g., Shipp v. County of Kankakee*, 345 Ill.App.3d 250, 255 (3rd Dist. 2003); *Weber v. St. Paul Fire & Marine Insur. Co.*, 251

Ill.App.3d 371, 374-75 (3rd Dist. 1993); *Pincham, et al, v. Appellate Court of Illinois*, 285 Ill. App. 3d 780, 783 (1996). NCC claims that *if* it hosts its own CNAM/LIDB database, and *if* Verizon does not purchase the CNAM/LIDB data directly from NCC, and *if* NCC ceases providing that data to third party providers, Verizon's Caller ID service would not display the names of NCC's customers and Verizon's local service customers would not be able to make collect calls or third-party billed calls for NCC customers using Verizon's service. *See* Verified Complaint at ¶¶ 29-31. This is a red herring and disingenuous. The fact is that NCC does *not* host its own LIDB or CNAM data, and there is no indication that it ever will. NCC has not ceased providing its data to data vendors. What would happen if NCC later opted to host its own data is pure speculation. Where and from whom Verizon would obtain the customer data for its local service if NCC hosted its own database is also purely speculative. NCC does not even state a date when it would host its own database, or allege that it has any specific plans to do so. It is axiomatic that cases based only on hypothetical beliefs or circumstances are not ripe for Commission review. *See Shipp, Weber, Pincham, supra.*

16. However, even if NCC hosted its own data and blocked third-party vendors from access to it, or if NCC attempted to "corner the market" for its data and Verizon could not access that data, it is irrelevant. At bottom, the access that Verizon has to NCC's customer data affects the local service Verizon provides to Verizon's own customers, not NCC's local service to NCC's end users. If Verizon requires data directly from NCC and cannot get it, that is Verizon's claim, not NCC's claim. Currently, Verizon has access to the NCC CNAM/LIDB data that Verizon requires for its local service offerings and does not need to purchase such information directly from NCC.

Again, there is no authority that requires Verizon to purchase NCC's CNAM/LIDB database service directly from NCC if Verizon does not so desire.

17. The cornerstone of the Verified Complaint rests on NCC's demand that Verizon must purchase the CNAM/LIDB data directly from NCC and no one else. The other two alleged improper actions in paragraph 1 of the Verified Complaint – NCC using third party vendors and not its own resources and facilities – are merely hypothetical derivatives of the first claim. In other words, NCC proposes that if it cannot force Verizon to buy NCC's its database services directly, NCC would then need to provide its data to third-party vendors, and would not be able to use NCC's own resources and facilities to provide the service. Not only are these "harms" totally speculative, since Verizon may purchase the CNAM/LIDB data from any party it desires, its claims for relief from the other two allegedly improper actions must fail because they are premised wholly upon the validity of NCC's first claim, which is legally invalid.⁹

Conclusion

18. In order for NCC to state a claim under Section 13-514 of the Act, there must be a legal obligation for Verizon to involuntarily purchase NCC's CNAM/LIDB data. There is none. The fatal flaw in the Verified Complaint is its failure to distinguish the refusal of a provider like Verizon to *sell or otherwise provide* a service to a CLEC (or provide access to Verizon's unbundled network elements) where there are some legal obligations to so (and where service to NCC's customers requires it) and the claim made

⁹ For purposes of argument, even if Verizon had "insisted" that NCC store NCC's customer data with a third-party vendor and not use NCC's own resources, NCC has no legal obligation to comply with Verizon's alleged demand. Further, if Verizon has no obligation to purchase NCC's CNAM/LIDB database services, an obligation to purchase does not arise simply because NCC must store its data with a third-party vendor rather than use its own resources. Finally, even if Verizon is forced to purchase NCC's data directly from NCC, that does not mean that all other carriers requiring access to NCC data will similarly agree to purchase NCC's data directly from NCC, and that NCC would still not have to store its data with third party providers.

by NCC here that the Commission should force Verizon to *purchase* services that NCC offers, exclusively from NCC, when Verizon does not wish to purchase them and does not need them. There is no authority that requires any carrier to purchase services it does not desire, and, of course, Complainant does not cite any.

19. Moreover, NCC's claim is based upon pure speculation and its own beliefs regarding future events. Those future events have not occurred and will probably never occur. The Commission should not render opinions based on speculation and uncertain beliefs of future events. NCC's claim is not ripe and should be dismissed on that ground alone.

20. The provision of CNAM/LIDB data is a fully competitive service, and neither the Act nor the FCC's rules and orders require Verizon to purchase the CNAM/LIDB data Verizon uses for its local service from any particular vendor. As a result, Verizon has not violated the Act and the Complaint must be dismissed.

WHEREFORE, Verizon requests that the Commission dismiss the Complaint with prejudice and order Complainant to pay the costs of this proceeding and grant Verizon all other appropriate relief.

Dated: August 2, 2007

**Verizon North Inc. and Verizon South
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Docket No. 07-0428

NOTICE OF FILING

Please take notice that on August 2, 2007, I caused the foregoing "Verizon's Motion to Dismiss" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.



Deborah Kuhn

CERTIFICATE OF SERVICE

I, Deborah Kuhn, certify that I caused the foregoing "Verizon's Motion to Dismiss," together with a Notice of Filing, to be served upon all parties on the attached service list on this 2nd day of August, 2007, by electronic mail or by U.S. Mail, as noted.



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