

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS CORPORATION,)	
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)	
Complainant,)	
)	
vs.)	Docket No. 07-0428
)	
VERIZON NORTH INC. and VERIZON SOUTH, INC.,)	
)	
)	
Respondents.)	
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VERIZON’S RESPONSE TO
NCC’S MOTION TO COMPEL AND FOR *IN CAMERA* REVIEW

Verizon North Inc. and Verizon South Inc. (collectively, “Verizon”), by and through their attorneys, hereby respectfully submit their Response to North County Communications Corporation’s Motion to Compel Responses to Data Requests and Request for *In Camera* Review” (“NCC Motion”) pursuant to 83 Ill. Admin. Code § 200.190(e). The ALJ should deny NCC’s groundless motion to compel.

Introduction

The massive fishing expedition NCC has launched through its 181 data requests thus far¹ would put Melville’s Captain Ahab to shame. NCC has issued this vast amount of discovery despite assuring counsel for both Verizon and Staff during their August 7, 2007 attorneys’ conference that the fourteen-day discovery turnaround schedule set forth

¹ True and correct copies of NCC’s First, Second and Third Sets of Data Requests to Verizon are attached hereto as **Group Exhibit 1**. Although NCC’s Third Set of Data Requests ends with DR NCC-176, both NCC’s Second and Third Sets of Data Requests contained requests numbered NCC-111 through NCC-115, making the total number of requests 181, not 176.

in 220 ILCS 5/13-514(d)(3) was sufficient because the issues in this case are narrow and would not require much discovery.

It is evident from the duplicative, harassing and wholly irrelevant nature of the majority of the 181 data requests NCC has served to date that NCC is not using discovery appropriately. Instead, NCC seems to be engaging in improper discovery as a means to abuse and harass Verizon, to increase Verizon's costs, burden Verizon's employees and counsel, and otherwise needlessly consume Verizon's internal resources. In short, this case has the characteristics of a "shakedown" – if Verizon does not accede to NCC's unreasonable demands (as here), NCC will take actions to disrupt Verizon's business and impose on Verizon significantly more expense in legal time and other personnel costs to defend the baseless action. This is not the proper use of discovery, nor is it a proper reason for bringing an action before this Commission.

Despite NCC's abuse of the discovery process, Verizon has responded timely,² appropriately and in good faith to all 181 requests. Yet, NCC now hurls accusations of "stonewalling," and has filed a baseless motion to compel and for *in camera* review of the attorney-client privileged and attorney work product communications delineated in Verizon's privilege log. As explained below, NCC blatantly misrepresents the facts in an effort to compel the production of information and documents to which it is not entitled. NCC's baseless motion to compel should be denied.

² NCC states that it served its first set of discovery requests on Verizon on August 10, 2007. *See* NCC Motion at ¶ 1. This is a half-truth. NCC served its first set of discovery requests to Verizon by e-mail at 7:34 p.m. on August 10th (a Friday evening), not during the business day. Verizon notified NCC that because those requests were served well after the close of business on August 10th, Verizon would consider them to have been served on the next business day, which was August 13th. NCC did not dispute this.

Discussion

The NCC Motion is predicated upon several inaccurate representations regarding Verizon’s discovery responses. In order to correct the record, Verizon addresses those misrepresentations first before discussing pertinent legal authorities and responding to NCC’s specific arguments on a data request-by-data request basis.

A. NCC’s Misrepresentations Regarding Verizon’s Discovery Responses

1. Privilege Log

NCC demands that Verizon “should be required to produce a privilege log to support its asserted objections and identify the withheld documents.” NCC Motion at ¶ 14. Yet, NCC acknowledges earlier in its motion that Verizon has already produced a privilege log. *Id.* at ¶ 8 (“In its September 7, 2007 supplemental response, Verizon provided a seven-page attorney privilege log, citing attorney-client privilege for 85 communications or documents ...”). NCC even includes Verizon’s privilege log as part of Attachment C to the confidential version of the NCC Motion, attempting to bootstrap that log into a claim for *in camera* review of every communication listed thereon. *Id.* at ¶ 15, page 3.³ There can be no question that Verizon has provided the requested privilege log, even though it is virtually unheard of for a party in administrative proceedings before this Commission to insist upon one or be forced to provide one. An *in camera* review, if not wholly unprecedented, is similarly rare.

2. Verizon’s First and Second Sets of Supplemental Responses

NCC claims that the supplemental responses Verizon served on September 7, 2007 following the September 4, 2007 “meet and confer” between counsel “were as

³ Paragraph 15 of the NCC Motion spans 6 ½ pages, so Verizon provides page references in addition to paragraph citations.

lacking in actual responses and information as the initial responses submitted by Verizon.” *See* NCC Motion at ¶ 7. NCC further asserts that for data requests NCC-14 and NCC-15, “Verizon provided a supplemental response *merely referencing Verizon’s original objections.*” *Id.* (emphasis added). Both assertions are false.

First, although NCC claims to have included Verizon’s responses and supplemental responses to data requests NCC-4, NCC-5, NCC-6, NCC-8, NCC-12, NCC-13, NCC-14 and NCC-15 in Attachment C to the confidential version of its motion (*see* NCC Motion at ¶ 12), *NCC purposefully omitted from Attachment C all documents that Verizon produced as part of those responses* – specifically, NCC omitted the 203 pages of e-mails, contracts and other documents, both public and confidential, that Verizon produced in 22 separate PDF files served as part of its responses and supplemental responses to these eight data requests. True and correct copies of the omitted documents are attached hereto as **Confidential Group Exhibit 2**. The portions of Verizon’s responses that NCC did see fit to include in Attachment C expressly recite the file names for each PDF file produced in conjunction with each response.

NCC simply ignores the additional information and documents provided in Verizon’s supplemental responses, and instead disingenuously claims that Verizon offered nothing more in supplementation. This is a patently false statement, as even a cursory review of Verizon’s supplemental responses reveals. *See* Attachment C to the confidential version of the NCC Motion; *see also* Confidential Group Exhibit 2.

NCC’s assertions regarding Verizon’s supplemental responses to DRs NCC-14 and NCC-15 are even more egregious. NCC claims that for these two data requests, “Verizon provided a supplemental response *merely referencing Verizon’s original*

objections.” NCC Motion at ¶ 7 (emphasis added). Once again, NCC blatantly misrepresents the facts. While Verizon’s September 7, 2007 supplemental responses to DRs NCC-14 and NCC-15 did reference Verizon’s original objections (as is typical in any supplemental response), Verizon’s supplemental responses additionally stated as follows: “Please see Verizon’s Supplemental Response to DR NCC-6.” This is because Verizon’s supplemental response to data request NCC-6 produced five (5) PDF files containing the requested contracts from those carriers that had authorized Verizon to release copies of those contracts,⁴ and Verizon thus incorporated those documents as part of its supplemental responses to DRs NCC-14 and NCC-15. *See* Confidential Group Exhibit 2. The next business day, when another of Verizon’s contracting partners authorized the disclosure of its agreement with Verizon subject to the protective order, Verizon produced another fifteen (15) PDF files as part of its *second* supplementation of its response to data request NCC-6. *Id.*; *see also* Verizon’s First and Second Supplemental Responses to DR NCC-6, included as part of Exhibit C to the confidential version of the NCC Motion. That NCC feels the need to blatantly misrepresent the record and claim that Verizon failed to supplement only underscores the invalidity of NCC Motion.

B. Pertinent Legal Authorities

Several administrative rules support denying the NCC Motion. Although 83 Ill. Admin. Code § 200.340 states that it is the Commission’s policy to “obtain full disclosure of *all relevant and material* facts,” it also confirms that it is the Commission’s policy

⁴ Those contracts contain provisions requiring Verizon to keep them confidential unless the contracting partner authorizes their disclosure. Although there is a protective order in this proceeding protecting confidential information of Verizon and NCC, it does not cover parties other than Verizon and NCC, and does not offer protection of the confidential and trade secret data of third parties that have agreements with Verizon that are confidential and trade secrets to those carriers.

“not to permit requests for information, depositions, or other discovery whose primary effect is harassment ...” (emphasis added). This is such a case.

Even a cursory review of NCC’s 181 data requests to date (Group Exhibit 1 hereto) will give the ALJ a flavor of the duplication, overreaching, and burdensome and harassing nature of the requests NCC has demanded that Verizon answer. Although the issues in this case are narrow and relate solely to Verizon’s decision not to enter into a direct agreement with NCC to purchase the CNAM/LIDB data of NCC’s customers, NCC has issued rambling and duplicative requests involving every conceivable aspect of Verizon’s Caller ID service, sought copies of every legal filing Verizon and its affiliates have made nationwide, in any context, that mentioned CNAM or LIDB, and demanded every contract Verizon has with any other party that in any manner touches upon CNAM/LIDB services, even though such contracts have absolutely nothing to do with the claims alleged in the July 26, 2007 Verified Complaint (“Complaint”).

Where and how Verizon stores or sells its own customers’ CNAM/LIDB information, and how and from where Verizon purchases the CNAM/LIDB data of carriers other than NCC is irrelevant, because Verizon has confirmed in discovery that it has *no direct agreement with any carrier* to purchase that carrier’s CNAM/LIDB data. See Verizon’s Response to data request NCC-129 of NCC’s Third Set of Data Requests to Verizon, a true and correct copy of which is attached as **Confidential Exhibit 3**. This guts the crux of NCC’s case, because it completely refutes NCC’s unsupported assertions that Verizon has somehow treated NCC differently than other carriers.

Facing the reality that its Complaint is groundless, NCC has launched a “fishing expedition” seemingly designed to impose huge costs on Verizon – typical “shakedown”

tactics. The appropriate action when faced with the fact that a claim has no merit is to dismiss it voluntarily. However, NCC appears determined to forge ahead despite the baseless nature of its claims. It may well be that NCC, emboldened by the resolution of ICC Docket 02-0147, views complaints brought under 220 ILCS 5/13-514 as “cash cows.” The relief requested by NCC certainly so indicates – although NCC decries Verizon’s decision not to enter into a contract to purchase NCC’s CNAM/LIDB data directly from NCC, NCC does not seek an order compelling Verizon to enter into such an agreement. Instead, NCC’s prayer for relief seeks cash in many forms, including damages, costs, attorneys’ fees, penalties, and other reimbursements. *See Complaint at ¶ 37 et seq.*

Fortunately, subsections (b) and (c) of 83 Ill. Admin. Code § 200.370 (entitled “Supervision of Discovery”) provide ample authority for denial of the NCC Motion.

Those subsections provide as follows:

(b) The Hearing Examiner may at any time on his or her own initiative, or on motion of any party or Staff, *issue such rulings as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, disadvantage or oppression.*

(c) The Hearing Examiner, upon his or her own initiative, or upon the motion of any party or Staff, *may supervise all or any part of any discovery procedure.* (Emphasis added.)

Moreover, as transparent as NCC’s motives may seem, the standard set forth in 83 Ill. Admin. Code § 200.340 focuses on the primary *effect* of the discovery process, not merely the seeming intent to use discovery as a means to harass, or to create unreasonable annoyance, expense, disadvantage or oppression. The Illinois Administrative Code supports denial of the NCC Motion in order to preclude further harassment of Verizon via NCC’s improper discovery

C. NCC’s Specific Demands to Compel Further Responses

1. Data Request NCC-4

NCC’s data request NCC-4 and Verizon’s response and supplemental response thereto are as follows:

DATA REQUEST NO. NCC-4:

Please produce all documents and identify all communications related to Verizon's proposed "direct CNAM/LIDB storage agreement" to which Verizon refers in its Answer at page 8.

RESPONSE:

Please see Verizon’s objections and response to DR NCC-3, as well as the e-mail correspondence attached hereto (NCCDR#4.pdf).

SUPPLEMENTAL RESPONSE:

Verizon objects to this request to the extent that it seeks proprietary, confidential, and trade secret information. Verizon further objects to this request to the extent that it seeks communications protected by the attorney-client and/or attorney work product privileges. Without waiving these objections, and subject to them, as well as subject to 220 ILCS 5/5-108 and the agreed Protective Order adopted by the Administrative Law Judge on August 8, 2007, Verizon has provided the attached privilege log (07-0428Privilege Log 9.7.07.pdf). In addition, Randy Vogelzang of Verizon had several telephone conversations with Todd Lesser of NCC and/or NCC’s counsel, Joseph Dicks.⁵

As noted above, Verizon *did* produce correspondence in response to this request, despite the fact that NCC omitted it from Attachment C to the confidential version of the NCC Motion. *See* Confidential Group Exhibit 2. Verizon also produced a privilege log, which is included in Attachment C to the confidential version of the NCC Motion.

Verizon has produced all responsive documents that are not protected by the attorney-client communication and attorney work product privileges. NCC does not dispute this. As a result of the parties’ September 4, 2007 “meet and confer,” Verizon additionally provided a privilege log specifically identifying the privileged

⁵ *See* Verizon’s Response and Supplemental Response to DR NCC-4, partially included (sans certain attachments) in Attachment C to the confidential version of the NCC Motion.

communications and the attorney(s) associated with them. Verizon did so even though it is virtually unheard of for parties to administrative proceedings before this Commission to demand or be forced to provide one.

NCC now demands, without basis, that the ALJ disregard these sacrosanct privileges by conducting an *in camera* review of all documents listed in the privilege log on the sole basis that “[i]t is not unusual in a company Verizon’s size for one of the scores of in-house counsel to receive or be carbon-copied on e-mails, documents and other communications.” *See* NCC Motion at ¶ 15, page 4. If the mere fact of being a larger corporation with a number of in-house counsel were enough to warrant violating privilege, the attorney client communication and attorney work product privileges would have little practical effect. NCC does not dispute the attorney communication. It does not claim that “scores of attorneys” are listed in the privilege log. It seeks to destroy the privilege simply because Verizon employs a number of attorneys.

NCC conveniently ignores the fact that it has a history of bringing a complaint against Verizon in Illinois under 220 ILCS 5/13-514 (as well as of bringing complaints against Verizon in other states). *See generally*, ICC Docket 02-0147, with which the instant ALJ is familiar. Given this history, and given that NCC’s counsel had been threatening to file a complaint against Verizon since March 21, 2007,⁶ it is completely reasonable that Verizon employees would thereafter seek advice of counsel regarding NCC’s demands and proposals, including any proposed contracts that Verizon contemplated offering to NCC, and that NCC proposed to Verizon. Moreover, “scores of attorneys” were not involved in this matter; only four. Involving four attorneys when two

⁶ *See* March 21, 2007 e-mail from Joseph Dicks to Randy Vogelzang, which NCC produced in discovery. A true and correct copy of this e-mail is attached as **Exhibit 4**. The privileged communications listed in the privilege log commence on March 22, 2007.

had been meeting directly with NCC on this matter is not unreasonable in any event.⁷

These attorneys were consulted regularly in the months leading up to this proceeding in light of NCC's repeated threats of litigation, and NCC offers no ostensible basis beyond Verizon's size to ignore these privileges and conduct an *in camera* review of these protected communications. Such actions are strongly disfavored. NCC does not come close to justifying its demand for *in camera* review of the communications listed in Verizon's privilege log should be denied.

2. Data Request NCC-5

NCC's data request NCC-5 and Verizon's response and supplemental response thereto are as follows:

DATA REQUEST NO. NCC-5:

Please produce all LIDB and/or CNAM agreements and/or contracts between Verizon North, Inc. and/or Verizon South Inc., on the one hand, and any other telecommunications carrier, including, but not limited to, wireline carriers, wireless carriers, and Verizon affiliates, subsidiaries, and operating companies, on the other hand, under which Verizon North, Inc. and/or Verizon South, Inc. provides their customers' CNAM and/or LIDB information to the other carrier.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential. Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. As stated in ¶ 19 of NCC's August 16, 2007 Opposition to Verizon's Motion to Dismiss, "[t]he contractual obligations

⁷ Bill Carnell is Verizon's in-house counsel for the matters at hand, and NCC has had many discussions directly with Mr. Carnell in that capacity. Randy Vogelzang is the General Counsel for Verizon's Great Lakes Region (which includes Illinois), and serves as one of Verizon's regulatory counsel for Illinois. Micki Chen is a Vice President and Deputy General Counsel in Verizon's domestic telecommunications group, and Cecelia Roudiez is an Assistant General Counsel in that group.

of Verizon to NCC under the existing interconnection agreement and the LIDB/CNAM Contract, which relates only to NCC’s ability to obtain Verizon’s LIDB/CNAM information, have nothing to do with the causes of action set forth in NCC’s Complaint.” Similarly, the agreements and/or contracts under which Verizon provides its customers’ CNAM/LIDB information to other carriers have no bearing on this case, which involves the CNAM/LIDB data of NCC’s customers.

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Notwithstanding these objections, and subject to them, as well as the limiting time frame agreed to by Verizon and NCC, Verizon states that there are nine CNAM/LIDB agreements with other Illinois CLECs that are analogous to the agreement signed by NCC. These agreements contain confidentiality provisions identical to or more stringent than those set forth in Section 6 of the February 8, 2007 “CNAM/LIDB Contract” with NCC (previously produced as part of Verizon’s Response to Staff DR JZ VZ-11), and do not allow for production of those agreements without notification to and permission from the contracting CLEC party. However, Verizon is permitted to disclose the fact that it has entered into such agreements with the following Illinois CLECs: AT&T Corporation, Citizens Telecom Solutions, LLC, Crocker Telecommunications, Inc., New Frontiers Telecommunications Co., Quantum Telecommunications, Inc., Transaction Network Services, Verizon Business Network Services (MCI), and Wantel, Inc. (separate CNAM and LIDB agreements). All of these agreements are generated from the same template as was used for Verizon’s February 8, 2007 “CNAM/LIDB Contract” with NCC, and contain the same rates, terms and conditions.⁸

NCC argues that the information demanded “goes to Verizon’s anticompetitive and discriminatory actions that impede the development of competition and violate 220 ILCS 5/13-514.” *See* NCC Motion at ¶ 15, page 4. However, the actions complained about here are narrow. NCC conveniently forgets its own framing of the alleged conduct that is the subject of the July 26, 2007 Verified Complaint (“Complaint”) in this proceeding:

In summary, NORTH COUNTY seeks declaratory, injunctive, statutory and legal relief against VERIZON for intentional, discriminatory, anticompetitive and unlawful actions in: (1) refusing to enter into a direct

⁸ *See* Verizon’s Response and Supplemental Response to DR NCC-5, included in Attachment C to the confidential version of the NCC Motion.

agreement with NORTH COUNTY to obtain Calling Name (“CNAM”) information and Line Information Database (“LIDB”) of NORTH COUNTY’s end users; (2) insisting that, if NORTH COUNTY desires to have its end users’ LIDB and CNAM information available to VERIZON and VERIZON’s end users, NORTH COUNTY must store its information in the database of a third-party vendor selected by VERIZON; and (3) refusing to allow NORTH COUNTY to store and provide line and CNAM information using NORTH COUNTY’s own resources and facilities. VERIZON’s actions, as described herein, result in a *per se* barrier to the development of competition as prohibited by the Act.⁹

In other words, the Complaint is predicated upon three ostensible claims: first, that Verizon has refused to enter into an agreement to purchase the CNAM/LIDB data of NCC’s customers directly from NCC; second, that Verizon will only purchase the CNAM/LIDB data of NCC’s customers if NCC stores it with a third party vendor of Verizon’s choosing, and third, that Verizon has refused to allow NCC to store and house the CNAM/LIDB information of NCC’s customers using NCC’s own resources and facilities. Significantly, these claims all relate to Verizon’s alleged treatment of the storage and sale of the CNAM/LIDB data of *NCC’s own customers*, not the storage or sale of the CNAM/LIDB data of *Verizon’s customers*, or the storage or sale of the CNAM/LIDB data of *the customers of other telecommunications carriers*. The Complaint is devoid of any allegation that Verizon has discriminated against NCC in the sale of Verizon’s own CNAM/LIDB data. Yet, data request NCC-5 seeks every single contract under which Verizon sells the CNAM/LIDB data of *Verizon’s own customers* to third parties. This is a massive and impermissible expansion of the alleged basis for the Complaint. It is the quintessential “fishing expedition.”

NCC attempts to finesse the fact that this data request is not remotely related to the three “unlawful actions” alleged in the Complaint by asserting that the purported

⁹ See Complaint at ¶ 1.

conduct by Verizon of which NCC complains includes, “*but [is] not limited to,*” Verizon’s refusal to enter into a direct agreement to query NCC’s database for LIDB/CNAM data.” *See* NCC Motion at ¶ 15, page 5 (emphasis in original). If the mere fact of asserting that one’s claims included, “but were not limited to,” the conduct alleged in a Complaint, there would be no limits on discovery because anything would be subject to disclosure as potentially relevant or reasonably calculated to lead to the discovery of admissible evidence relating to issues “not limited to” the Complaint. Nor would such “unalleged” claims meet a notice pleading standard, much less Illinois’ more strict fact pleading standard.

NCC also attempts to gloss over the fact that it has already conceded that its “ability to obtain Verizon’s LIDB/CNAM information” has “nothing to do with the causes of action set forth in NCC’s Complaint.” *See* NCC Motion at ¶ 15, page 5 (emphasis added); *see also* NCC’s August 16, 2007 Opposition to Verizon’s Motion to Dismiss at ¶ 19. While NCC struggles mightily to avoid the obvious implications of this statement by claiming that it only made the statement to survive Verizon’s motion to dismiss, this is the one instance in which the ALJ should take NCC’s words at face value. The contracts under which Verizon sells *Verizon’s own customers’* CNAM/LIDB data to third parties have absolutely nothing to do with the allegations of the Complaint, which is predicated upon Verizon’s decision not to purchase the CNAM/LIDB data *of NCC’s customers* directly from NCC.

NCC also asserts that it is entitled to demand the requested contracts in order to rebut Verizon’s affirmative defenses 5 and 6. However, those affirmative defenses do not rely in any manner on the content of Verizon’s contracts to sell its own customers’

CNAM/LIDB data to third parties. Those affirmative defenses are predicated solely upon the allegations of the Complaint, and Verizon's two existing contracts with NCC (the NCC/Verizon interconnection agreement and NCC's February 8, 2007 CNAM/LIDB Contract with Verizon, identified at ¶¶ 9 and 11 of the Complaint). *See* Verizon's August 2, 2007 Answer and Affirmative Defenses at pp. 14-15.

Finally, the NCC Motion completely ignores the fact that it is seeking contracts that are not only trade secret and confidential to Verizon, but also trade secret and confidential to third parties that are neither parties to this case, nor to the agreed protective order in this proceeding. NCC disregards this issue even though it was discussed during the September 4, 2007 "meet and confer." As explained then, Verizon is required to obtain approval of the third parties in order to divulge trade secret and confidential information belonging to those third parties given Verizon's contractual obligation to keep those third parties' trade secret and proprietary information confidential, and given that the agreed protective order in this proceeding extends only to Verizon and NCC. The ALJ must not take lightly NCC's demands that Verizon be ordered to disgorge trade secret and confidential information belonging to third parties in violation of Verizon's contracts with those parties, especially given the irrelevance of the information.

Verizon has made a concerted effort to divulge as much of the responsive information relating to such contracts as is reasonable and consistent with Verizon's contractual obligations, including the identity of these contracting parties, the template from which their agreements to purchase Verizon's CNAM/LIDB data were generated, and the purchase volumes and price list used to determine the pricing for that data under

their agreements. NCC dismisses these efforts and effectively accuses Verizon of lying because while Verizon identified a range of per-query CNAM charges in its discovery responses, NCC's CNAM/LIDB Contract contains only a single rate, rather than a range of rates. *See* NCC Motion at ¶ 15, page 6.

Of course NCC's contract has a single rate. The range of rates provided by Verizon in response to data request NCC-22 (Attachment E to the confidential version of the NCC Motion) sets forth the particular rate that will apply given the reasonably anticipated query volume upon which any contract for the purchase of Verizon's CNAM/LIDB data is based. There are five separate volume tiers. Each such contract will fall into only one such volume tier, and will therefore incorporate the one rate associated with that volume tier. As Verizon's response to DR NCC-22 explained, "[a]lthough Verizon negotiates CNAM rates separately with each carrier, some carriers' rates may be the same because their volumes fall into the same brackets." *See* Attachment E to the confidential version of the NCC Motion. Thus, what NCC characterizes as "inaccuracies" given the multiple rates provided in response to DR NCC-22 versus single rate set forth in NCC's CNAM/LIDB Contract, are nothing more than NCC's misinterpretation – perhaps real, perhaps feigned – of Verizon's discovery responses. Simply put, NCC's CNAM/LIDB Contract reflects *the rate associated with its volume tier*.¹⁰ NCC has data on all possible volume tiers and their associated rates, and has been told that all contracts for the purchase of Verizon's CNAM/LIDB data use

¹⁰ NCC's insinuation of discrimination by Verizon against NCC and other low-volume purchasers by charging them more than high-volume purchasers (NCC Motion at ¶ 15, page 6) fails to recognize the common business practice of volume discounts. The expectation that NCC, with its three (3) Illinois customers and 96 access lines, should pay the same query rate as a high-volume customer with a query volume in the hundreds of thousands or millions is ridiculous.

these volume tiers and associated rates. NCC needs no further information, and certainly is not entitled to obtain copies of third parties' agreements.

It bears repeating that Verizon's contracts to sell its own customers' CNAM/LIDB data to third parties have no bearing on the claims in NCC's Complaint, which focuses exclusively on NCC's efforts to force Verizon to purchase the CNAM/LIDB data *of NCC's customers directly from NCC*. Balancing the equities, it is clear that Verizon has provided more than sufficient information in response to NCC's fishing expedition to confirm that NCC has been treated the same as all other carriers that purchase the CNAM/LIDB data of Verizon's customers, which is not even the subject of the Complaint. Verizon should not be compelled to produce the underlying contracts themselves, in violation of its obligations to its contracting partners.

3. Data Request NCC-6

NCC's data request NCC-6 and Verizon's response, confidential supplemental response and confidential second supplemental response thereto are as follows:

DATA REQUEST NO. NCC-6:

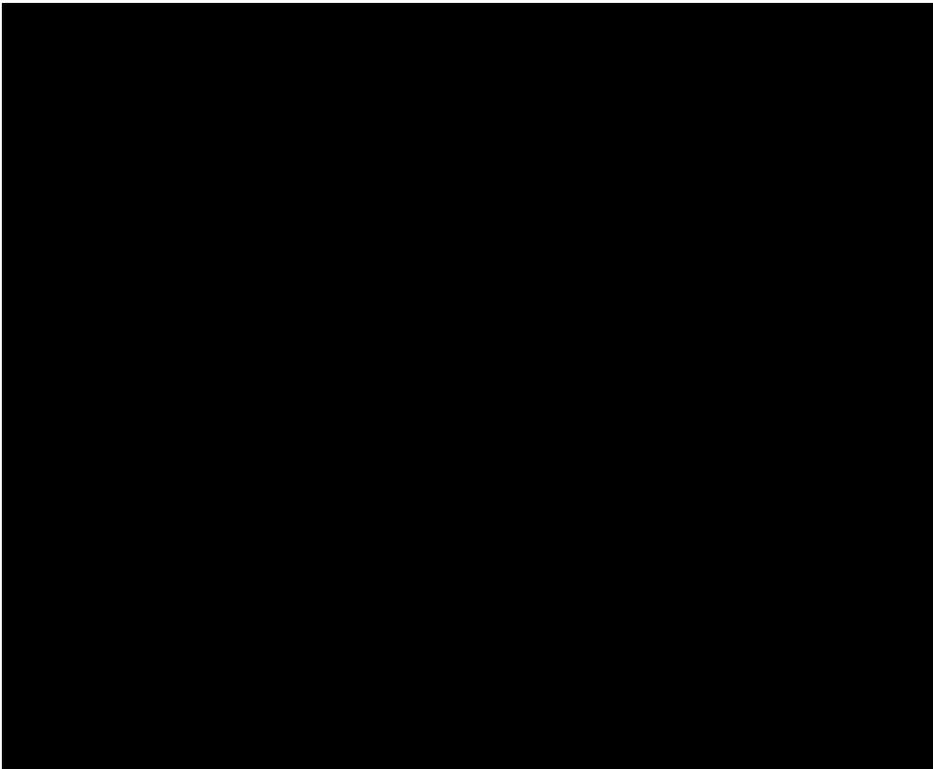
Please produce all LIDB and/or CNAM agreements and/or contracts between Verizon North Inc. and/or Verizon South Inc., on the one hand, and any other telecommunications carrier, including, but not limited to, wireline carriers, wireless carriers, and Verizon affiliates, subsidiaries, and operating companies, on the other hand, under which Verizon North Inc. and/or Verizon South Inc. obtains CNAM and/or LIDB information from the other carrier, either directly from the other carrier's database or indirectly by accessing the carrier's information as stored by a third-party data vendor.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential.

Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. The agreements and/or contracts under which Verizon obtains the CNAM/LIDB information of other carriers' customers have no bearing on this case, which involves the CNAM/LIDB data of NCC's customers.

*****BEGIN CONFIDENTIAL*****



END CONFIDENTIAL

NCC’s arguments regarding data request NCC-6 are the same as its arguments regarding data request NCC-5 – namely, that the request relates to issues “at the heart of the matter in this proceeding.” *See* NCC Motion at ¶ 15, page 7. Once again, NCC seeks to mislead the ALJ. As discussed above with respect to data request NCC-5, NCC’s Complaint is predicated on three allegations: (1) that Verizon has refused to enter into an agreement to purchase the CNAM/LIDB data of *NCC’s customers* directly from NCC; (2) that Verizon will only purchase the CNAM/LIDB data of *NCC’s customers* if NCC stores it with a third party vendor of Verizon’s choosing, and (3) that Verizon has refused to allow NCC to store and house the CNAM/LIDB information of *NCC’s customers* using NCC’s own resources and facilities. *See* Complaint at ¶ 1.

NCC’s three contentions all relate to NCC’s demands that Verizon buy *NCC customers’* CNAM/LIDB data directly from NCC. Yet, data request NCC-6 seeks not only copies of Verizon’s direct contracts with other telecommunications carriers for the purchase their CNAM/LIDB data (of which there are none, much to NCC’s chagrin, given that it posits that Verizon has engaged in anticompetitive conduct by entering into such agreements with others, but not NCC), but also Verizon’s contracts with third party data aggregators to purchase the CNAM/LIDB data of *telecommunications carriers other than NCC* indirectly through those vendors. Such contracts have no bearing on whether Verizon has *direct* agreements with *telecommunications carriers other than NCC* to purchase those other carriers’ customers’ CNAM/LIDB data under rates, terms and

¹¹ *See* Verizon’s Response, Supplemental Response and Second Supplemental Response to DR NCC-6, included in Attachment C to the confidential version of the NCC Motion.

conditions that are more or less favorable than those proposed by NCC. The information for which NCC seeks to compel production falls wholly outside the claims made in the Complaint, and is thus neither relevant to nor reasonably calculated to lead to the discovery of admissible evidence.

Further, there is a second, separate basis to deny NCC's motion to compel as to data request NCC-6. As with data request NCC-5, NCC ignores the fact that the contracts it seeks are trade secret and confidential information belonging to the third party vendors in question. Verizon has no right to waive those third parties' right to prohibit disclosure of those agreements, which it is contractually obligated to maintain as confidential, and those third parties are not parties to the agreed protective order in this proceeding.

Verizon has even gone the extra mile of requesting consent from the four third party data vendors in question to produce Verizon's agreements with them subject to the agreed protective order in this proceeding. Three of the four have responded affirmatively, and Verizon has produced its agreements with those vendors. *See* Verizon's Supplemental Response and Second Supplemental Response to DR NCC-6, included as part of Attachment C to the confidential version of the NCC Motion (minus their associated attachments). Verizon has been more than responsive to NCC's improper requests for third party data that is wholly irrelevant to the issues being litigated, and the motion to compel further response should be denied.

4. Data Request NCC-8

NCC's data request NCC-8 and Verizon's response and supplemental response thereto were as follows:

DATA REQUEST NO. NCC-8:

Please provide all Verizon communications, including emails, related to Verizon's evaluation of and related response to the LIDB and/or CNAM agreement proposed to Verizon by North County.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome and harassing. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information. Verizon further objects to this request to the extent that it seeks communications protected by the attorney-client and/or attorney work product privileges. Without waiving these objections, and subject to them, please see attached e-mails and correspondence (NCCDR#8.pdf).

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Without waiving these objections, and subject to them, as well as subject to 220 ILCS 5/5-108 and the agreed Protective Order adopted by the Administrative Law Judge on August 8, 2007, Verizon has provided the attached privilege log (07-0428Privilege Log 9.7.07.pdf). Much internal communication occurred via routine phone calls and face-to-face discussions for which there are no written records.¹²

The NCC Motion simply repeats the privilege log discussion from the section on data request NCC-4 as its discussion of NCC-8. Verizon similarly refers to its above-referenced discussion of NCC's unjustified demand that the ALJ violate privilege by reviewing Verizon's attorney-client privileged and attorney work product *in camera*, as addressed in Verizon's discussion of data request NCC-4. The ALJ should reject NCC's unwarranted request that the ALJ invade the privileged nature of these communications simply because Verizon is a large company with multiple in-house attorneys.

5. Data Request NCC-12

NCC's data request NCC-12 and Verizon's response and supplemental response thereto were as follows:

¹² See Verizon's Response and Supplemental Response to DR NCC-8, included in Attachment C to the confidential version of the NCC Motion.

DATA REQUEST NO. NCC-12:

As a follow-up question to Request No. 11 above, please identify all third-party database providers that store Verizon LIDB and/or CNAM information.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, harassing, and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential. Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. The identity of third-party database providers, with which Verizon affiliates store their own customers' CNAM/LIDB information, has no bearing on this case, which involves the CNAM/LIDB data of NCC's customers.

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Notwithstanding these objections, and subject to them, Verizon states that there are no third-party database providers that store CNAM/LIDB information for Verizon North Inc. and Verizon South Inc.¹³

NCC fails to acknowledge Verizon's supplemental response stating that "there are no third-party database providers that store CNAM/LIDB information for Verizon North Inc. and Verizon South Inc.," blindly demanding the compulsion of a "responsive answer" and associated documents (even though the data request does not request documents). Verizon has provided a responsive answer, and cannot be compelled to identify third parties that do not exist, nor to produce non-existent agreements with non-existent third parties. NCC obviously has not bothered to review Verizon's supplemental response, and NCC's motion to compel any further response is without merit.

¹³ See Verizon's Response and Supplemental Response to DR NCC-12, included in Attachment C to the confidential version of the NCC Motion.

6. Data Request NCC-13

NCC's data request NCC-13 and Verizon's response and supplemental response thereto were as follows:

DATA REQUEST NO. NCC-13:

As an additional follow-up question to Request Nos. 11 and 12 above, please provide all agreements and/or contracts between Verizon and any third-party database providers for the storage of Verizon LIDB and/or CNAM information.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome, harassing and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential. Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Verizon affiliates' agreements and/or contracts with third-party database providers with which Verizon affiliates store their CNAM/LIDB information have no bearing on this case, which involves the CNAM/LIDB data of NCC's customers.

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Please see Verizon's Supplemental Response to DR NCC-12.¹⁴

As with data request NCC-12, NCC has simply ignored Verizon's supplemental response and clamored for an order compelling Verizon to produce contracts that do not exist. Verizon has provided a responsive answer stating that there are no such parties or contracts, and cannot be compelled to produce non-existent contracts with non-existent third parties. The ALJ should deny the NCC Motion's request demanding further response.

¹⁴ See Verizon's Response and Supplemental Response to DR NCC-13, included in Attachment C to the confidential version of the NCC Motion.

7. Data Request NCC-14

NCC's data request NCC-14 and Verizon's response and supplemental response thereto were as follows:

DATA REQUEST NO. NCC-14:

Please identify any and all third-party data vendors and/or aggregators from which Verizon obtains CNAM and/or LIDB "look-ups" for the data of other telecommunications carriers.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome, harassing and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential. Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. The identity of third-party data vendors and/or aggregators from which Verizon obtains CNAM/LIDB "look-ups" for data relating other carriers' customers has no bearing on this case, which involves the CNAM/LIDB data of NCC's customers. Without waiving this objection, and subject to it, as well as subject to 220 ILCS 5/5-108 and the agreed Protective Order adopted by the Administrative Law Judge on August 8, 2007, Verizon states that it currently contracts with four major data aggregators, through which Verizon is able to access CNAM/LIDB data for the majority of telecommunications lines in the nation.

*****BEGIN CONFIDENTIAL*****



*****END CONFIDENTIAL*****

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Please see Verizon's Supplemental Response to DR NCC-6.¹⁵

¹⁵ See Verizon's Response and confidential Supplemental Response to DR NCC-14, included in Attachment C to the confidential version of the NCC Motion; *see also* Confidential Group Exhibit 2.

As with data requests NCC-12 and NCC-13, NCC simply ignores the response provided and moves baselessly for an answer that, while completely irrelevant, has already been provided to the extent Verizon has received third party authorization to release the requested information. As mentioned above, although NCC claimed that Verizon's supplemental response to this data request "merely referenc[ed] Verizon's original objections," that is false. As reflected above, Verizon's supplemental response to data request NCC-14 explicitly incorporated Verizon's supplemental response to data request NCC-6. Verizon also served a second supplemental response to NCC-6. Via the incorporation of these supplemental responses, which produced the contracts for which Verizon has obtained the third party data aggregators' permission to disclose, Verizon has responded to this data request seeking the identity of those parties. Further, had NCC reviewed the three agreements that were provided, it would have identified the fourth, and final aggregator. Since Verizon has stated that it currently accesses NCC's CNAM/LIDB data through a third party aggregator, NCC effectively knows the identity of all four aggregators. There is nothing further to compel for this overbroad request. The ALJ should deny NCC's baseless motion to compel.

8. Data Request NCC-15

NCC's data request NCC-15 and Verizon's response and supplemental response thereto were as follows:

DATA REQUEST NO. NCC-15:

Please produce any and all agreements and/or contracts between Verizon and any third party data vendor and/or aggregator from which Verizon obtains CNAM and/or LIDB "lookups" for the data of other telecommunications carriers.

RESPONSE:

Verizon objects to this request on the grounds that it is overbroad, unduly burdensome, harassing and not reasonably limited in geographic scope. Verizon further objects to this request to the extent that it seeks proprietary, confidential, and trade secret information, as well as proprietary, confidential and trade secret information belonging to third parties which Verizon has a contractual obligation to keep confidential. Verizon further objects to this request to the extent that it seeks information that is neither relevant nor material to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. The agreements and/or contracts between Verizon and any third-party data vendors and/or aggregators from which Verizon obtains CNAM/LIDB “look-ups” for data relating other carriers’ customers has no bearing on this case, which involves the CNAM/LIDB data of NCC’s customers.

SUPPLEMENTAL RESPONSE:

Verizon repeats the above stated objections. Please see Verizon’s Supplemental Response to DR NCC-6.¹⁶

As with data requests NCC-12, NCC-13, and NCC-14, NCC again disregards the response provided and moves to compel an answer that, while completely irrelevant, has already been provided to the extent Verizon has received third party authorization to release the requested information. The discussion above regarding Verizon’s response to data request NCC-14 is applicable here as well. As shown above, Verizon’s supplemental response to data request NCC-15 incorporated Verizon’s supplemental response to data request NCC-6. Verizon also served a second supplemental response to NCC-6. Via the incorporation of these supplemental responses, which produced the contracts for which Verizon obtained the third party data aggregators’ permission to disclose, Verizon has responded to this duplicative data request seeking those contracts. NCC’s motion to compel is unjustified and should be denied.

¹⁶ See Verizon’s Response and Supplemental Response to DR NCC-15, included in Attachment C to the confidential version of the NCC Motion.

Conclusion

The baseless NCC Motion underscores the carelessness with which NCC has issued its 181 data requests and reviewed Verizon's responses thereto. In many instances, NCC already has the answers that it purportedly seeks. In others, NCC has demanded information that far exceeds the narrow scope of this proceeding. Moreover, NCC relies upon patent mischaracterizations of the record in an effort to compel the production of material that either does not exist, or to which NCC is not entitled. Verizon has responded fully and in good faith despite NCC's overreaching, but the ALJ should put an end to NCC's abuse of the discovery process. Verizon thus urges the ALJ to deny NCC's Motion to Compel, as well as award Verizon any and all other relief deemed appropriate.

Dated: September 26, 2007

**Verizon North Inc. and Verizon South
Inc.**

By: 

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

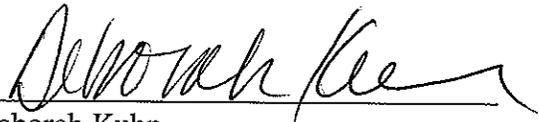
NORTH COUNTY COMMUNICATIONS)
CORPORATION,)
)
)
Complainant,)
)
vs.)
)
VERIZON NORTH INC. and VERIZON)
SOUTH, INC.,)
)
Respondents.)
_____)

Docket No. 07-0428

STATE OF ILLINOIS)
)
COUNTY OF COOK)

VERIFICATION

Deborah Kuhn, being duly sworn, states on oath that she is Verizon’s Assistant General Counsel – Verizon Great Lakes Region, and that the factual statements made in the foregoing “Verizon’s Response to NCC’s Motion to Compel and for *In Camera* Review” are complete and accurate to the best of her knowledge, information and belief.



Deborah Kuhn

Subscribed and sworn to before me this 25th day of September, 2007.





STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

Docket No. 07-0428

NOTICE OF FILING

Please take notice that on September 26, 2007, I caused the foregoing "Verizon's Response NCC's Motion to Compel and for *In Camera Review*" 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 Response NCC's Motion to Compel and for *In Camera Review*" together with a Notice of Filing, to be served upon all parties on the attached service list on this 26th day of September, 2007, by electronic mail or by U.S. Mail, as noted.


Deborah Kuhn

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ICC Docket No. 07-0428

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