



use of discovery depositions by denying the Complainant's request and requiring the Complainant to utilize the Commission's data request process. Feb. 26 Tr. at 8-9.

Shortly thereafter, on April 1, 2002, the Complainant made a second request to take Ms. McKernan's deposition. In large part, the Complainant relied entirely on the same rationale that it used to support its first request, i.e. Ms. McKernan's position as the Complainant's account manager. The Complainant argued that Ms. McKernan's deposition must be taken because her position as the Complainant's account manager is somehow being used as a "shield" by Verizon to "hide" its practices in Illinois. The only new basis advanced by the Complainant to support its request was its simultaneous filing of a Motion to Compel. The ALJ again denied the Complainant's request. Apr. 19 Tr. at 94.

In addition, after extensive legal briefing and oral argument with respect to each and every data request at issue, the ALJ issued rulings with respect to the Complainant's Motion to Compel. The ALJ's rulings constitute the final pronouncements on the scope of information that is legally and appropriately discoverable with respect to each of the Complainant's data requests. Thereafter, in accordance and compliance with the ALJ's specific rulings on the Motion to Compel, Verizon provided the Complainant with supplemental responses to the Complainant's data requests, which are attached hereto in their entirety for the ALJ's independent review. *See*, Exhibit A. While the Complainant apparently dislikes several of Verizon's supplemental responses, the Complainant specifically recognized that Verizon's supplemental answers are responsive and in accordance with the ALJ's rulings. The Complainant's counsel stated during the July 2, 2002, hearing as follows: "I don't think I would prevail on any additional motions to compel." July 2 Tr. at 104.

Despite the lack of a basis for any further motion to compel, the Complainant has again renewed its application to take Ms. McKernan's discovery deposition. The Complainant argues for the third time that it needs to take Ms. McKernan's deposition because of her position as the Complainant's account manager. The only additional argument that the Complainant advances at this time is really more of an implication that Verizon's supplemental answers to the Complainant's data requests, while recognizably responsive and in accordance with the ALJ's rulings on the Complainant's Motion to Compel, are somehow less than truthful and forthcoming, and that Ms. McKernan's deposition must be taken because she is the only one that knows (or will admit) the truth. *See*, Renewed App. at 3-4. The Complainant's request should again be denied, and this time with prejudice.

## **II.** **DISCUSSION**

The Commission's policy on the use of discovery depositions in Commission proceedings is clear: "Formal discovery by means such as depositions and subpoenas is discouraged." 83 Ill. Admin. Code §200.340. The Commission's position is similar to that taken by numerous other administrative tribunals and entirely consistent with due process. *See*, Verizon Response to Motions for Discovery at 7-11 (Apr. 12, 2002)(incorporated herein by reference)(explaining the extensive case law that supports the Commission's position on this issue). Exceptions to the Commission's policy are to be granted only in limited cases, and any party requesting an exception bears the burden of proving that a discovery deposition "is reasonably required to obtain information that cannot reasonably be obtained through requests for information or other discovery." 83 Ill. Admin. Code §200.280(c)(emphasis added). Accordingly, the issue before the ALJ on the Complainant's Renewed Application is simply

whether the Complainant has demonstrated that it cannot reasonably obtain information through the Commission's normal data request process. The Complainant has failed to carry this burden.

**A. The Complainant Has Been Able To Obtain Responsive Answers To All Appropriate Data Requests**

As noted above, when initially responding to the Complainant's data requests, Verizon stated what it believed to be valid objections to several of the Complainant's requests. Following extensive legal briefing and oral argument, the ALJ issued rulings on the appropriate scope and type of information to be provided in response to each and every one of the Complainant's data requests that were at issue between the parties. In part, the ALJ sustained Verizon's objections, and in other part directed Verizon to prepare supplemental responses in the manner and scope determined appropriate by the ALJ. Verizon subsequently prepared and served supplemental answers on the Complainant in accordance with the ALJ's rulings, and the Complainant has admitted that grounds for any further motion to compel do not exist.

Accordingly, the Complainant has been able to obtain all of the information it has requested of Verizon except that information which the ALJ has found to be legally undiscoverable in this proceeding. If there is any information that the Complainant has not obtained via the Commission's normal data request process, the reason is either that the Complainant has not issued data requests seeking the information, or the ALJ has ruled that the desired information is not appropriate for discovery in this proceeding. Neither reason supports the conclusion that the Complainant has been unable to obtain discoverable information through the Commission's data request process and, therefore, neither reason supports the taking of a discovery deposition in this proceeding.

**B. Ms. McKernan Does Not Have Information Relevant To The Complainant's Discovery Requests That Cannot Otherwise Be Obtained**

Despite having obtained responsive answers to its data requests in accordance with the ALJ's rulings, the Complainant continues to seek authority to take Ms. McKernan's deposition. The Complainant continues a common theme that the Complainant used to support its previous requests: Verizon is using Ms. McKernan as a "shield" behind which to deny or "hide" its practices in Illinois, and only by taking Ms. McKernan's deposition will the Complainant finally obtain the truth. The Complainant's argument should be rejected in its entirety.

**1. Ms. McKernan Does Not Have Unique Information As A Result Of Her Position As The Complainant's Account Manager**

Ms. McKernan's employment as an account manager does not place her in the position that the Complainant assumes. Any number of different, complex issues, both technical and otherwise, can arise when attempting to interconnect telecommunications networks. Verizon's account managers are not individually responsible for resolving such issues. Rather, the account manager's responsibility is to *manage* the resolution of these issues with respect to the assigned accounts, just as the title of the position indicates. The account manager does so by directing issues that arise to the appropriate subject-matter personnel for resolution. Decisions are made by the subject-matter personnel and simply relayed to the Competitive Local Exchange Carriers ("CLECs") through their account managers. In other words, the account manager acts as an intermediary between the CLEC and Verizon's subject-matter personnel.

The information provided on Verizon's web site, which the Complainant attempts to use to bolster its argument that Ms. McKernan is in a unique position, *see*, Renewed App. at 1-2, in fact specifically describes the account manager's role as an intermediary. The statements identified by the Complainant provide as follows:

[The account management team] is ready to help the CLEC carrier do business with Verizon by understanding their requirements and communicating them to internal groups within Verizon. The account team coordinates the delivery of service and works with the CLEC throughout the delivery process.

*Id.* (emphasis added). Clearly, the account manager is a position created for the CLECs' convenience. Account managers enable CLECs to communicate with respect to any number of different, potentially complex issues through a single person without the hassle and disorganization of constant inter-company referrals depending on the nature of each and every issue. Ms. McKernan's employment as an account manager, i.e., an intermediary between the Complainant (and other CLECs assigned to her) and the relevant subject-matter specific groups within Verizon, does not place her in a position to have information relevant to the Complainant's discovery requests that is not otherwise known by and discoverable through data requests to the company.

Ms. McKernan's involvement simply as an intermediary with the Complainant is confirmed by the e-mail communication between the Complainant, Ms. McKernan and the internal Verizon personnel from which this Complaint arose. On December 7 and December 11, 2001, Mr. Lesser sent two e-mails to Ms. McKernan wherein Mr. Lesser inquired whether Verizon would require a "fiber build" or the use of a "wholesale fiber mux" to interconnect the Complainant in Illinois. *See*, Exhibit B (Mr. Lesser's December 7, 2001, e-mail)(emphasis added); Exhibit C (Mr. Lesser's December 12, 2001, e-mail)(emphasis added). Ms. McKernan did not attempt to provide a direct response to or, in fact, even interpret the meaning of Mr. Lesser's request. Instead, Ms. McKernan acted in accordance with the intermediary role of all account managers by simply forwarding Mr. Lesser's e-mail of December 11, 2001 (Exhibit C) to the appropriate subject-matter group for resolution. In particular, Ms. McKernan

forwarded Mr. Lesser's December 11, 2001, e-mail to the Verizon - West Wholesale Services Technical Support Division. *See*, Exhibit D (containing Mr. Lesser's December 11, 2001, e-mail and the trail of internal Verizon e-mails following therefrom).

On December 11, 2001, Ms. McKernan received an initial e-mail response from Mr. Charles Bartholomew, who is employed in the identified Verizon division and responsible for facilitating interconnections in the States of Washington, Oregon, Idaho, Michigan, Illinois, Indiana, Missouri and Wisconsin. Mr. Bartholomew stated that "VZwest does not require a fiber build in order to interconnect." *See*, Exhibit D. Mr. Bartholomew's initial response was made completely independently of and without any involvement by Ms. McKernan. *See*, Exhibit E (McKernan Affidavit).

The only potential effect Ms. McKernan could have had on the interpretation given to Mr. Lesser's December 11, 2001, e-mail would be through her e-mail reply to Mr. Bartholomew on December 12, 2001, wherein Ms. McKernan stated that the Complainant was interested in using an "existing enterprise services mux." *See*, Exhibit D. However, Ms. McKernan did not explain the phrase she used or provide any interpretation of the phrase. *Id.*, *see also*, Exhibit E. Again, the phrase was interpreted and the matter resolved completely independently of any involvement by Ms. McKernan. *Id.* On December 13, 2001, Ms. McKernan received a second e-mail response from Mr. Bartholomew that she, in turn, simply paraphrased and relayed to Mr. Lesser. *See*, Exhibit D. Ms. McKernan's reliance upon Mr. Bartholomew's e-mail response is clear by her inclusion of Mr. Bartholomew's response in her e-mail to Mr. Lesser as well as her reference to Mr. Bartholomew's e-mail response in the message she sent to Mr. Lesser. *Id.* (stating "as you can see in the message below").

Ms. McKernan's employment as an account manager does not, as a general matter, place her in a position to have information with regard to any issue that arises on behalf of any CLEC that is not otherwise resolved by, and therefore known by, Verizon's subject-matter personnel. In this case, Ms. McKernan's involvement was not any different, as Exhibits D and E make clear. Ms. McKernan was not involved in any resolution of the Complainant's inquiry, nor did she assist the personnel who were involved in the resolution with making their resolution or interpreting the relevant terminology in the e-mail communications. She simply relayed the response she obtained from Verizon's subject-matter personnel to Mr. Lesser. Ms. McKernan would only be able to *guess, or speculate*, as to what interpretation Verizon's subject-matter personnel had of the relevant terminology or what Verizon's subject-matter personnel meant by their response. Ms. McKernan could not provide the Complainant with any information relevant to this proceeding that cannot otherwise be obtained through the Commission's normal data request process.

**2. Verizon Responded To The Complainant's Data Requests Based On Its Available, Relevant Information**

Just as Ms. McKernan's intermediary role did not provide her with any unique knowledge, Verizon would be unable to utilize Ms. McKernan position as a "shield" behind which to claim ignorance. Rather than attempting to plead ignorance, as the Complainant insinuates, Verizon reviewed its available information to provide the Complainant with the most responsive answers possible. In addition, the personnel identified as responsible for Verizon's answers are persons with knowledge, among other things, of Verizon's practices in Illinois, the technical aspects of interconnecting telecommunications carriers' networks and Verizon's efforts to interconnect the Complainant in Illinois. The Verizon personnel identified as responsible for Verizon's responses to the Complainant's data requests are Mr. Don Albert and Mr. Charles

Bartholomew. *See*, Exhibit A (interrogatories 6, 9 and 15 identifying Mr. Albert and interrogatory 21 identifying Mr. Bartholomew).

Mr. Albert is employed by Verizon as Director of Network Engineering. In this position he is directly involved in the negotiation of CLEC interconnection agreements and the engineering practices and approaches for the network implementation of CLEC unbundling and interconnection arrangements in Verizon. In general, Mr. Albert was responsible for providing answers to those requests that sought information on Verizon's practices in Illinois and the technical feasibility of interconnection in certain situations. Mr. Albert based those answers on his knowledge of Verizon's practices and technical feasibilities. To the extent that investigations were necessary in regard to some of the data requests, Mr. Albert was responsible for overseeing such investigations and has direct knowledge of the findings from those investigations.

Mr. Bartholomew, as noted above, is employed in the Verizon - West Wholesale Services Technical Support Division, and is responsible for facilitating interconnection in several Western and Midwestern States, including Illinois. Mr. Bartholomew provided Ms. McKernan the e-mail response to the Complainant's inquiry that formed the basis for Ms. McKernan's December 13, 2001, e-mail response to the Complainant. In addition, Mr. Bartholomew has been directly involved, on a continuous basis, with the Complainant in Verizon's efforts to interconnect the Complainant in Illinois. Mr. Bartholomew was responsible for providing answers to those data requests that sought information specific to Verizon's efforts to interconnect the Complainant in Illinois.

Accordingly, Verizon personnel with knowledge of Verizon's practices in Illinois and the specifics of Verizon's attempts to interconnect the Complainant in Illinois are the personnel who were responsible for Verizon's answers to the Complainant's data requests. Ms. McKernan

would not be able to provide any additional, non-speculative information. The Complainant's claim that it has been unable to obtain responsive information in the absence of taking Ms. McKernan's deposition is without merit and should be wholly rejected.

**C. The Complainant Has No Basis For Its Suggestion That Verizon Has Been Less Than Truthful In Its Discovery Responses**

Given the responsiveness of Verizon's supplemental answers to the Complainant's data requests and the Complainant's unlikelihood of bringing a successful motion to compel further information, the Complainant has resorted to making suggestions of serious misconduct in Verizon's handling of this matter. Complainant implies that Verizon's employees who were responsible for providing the answers to the Complainant's data requests were somehow less than truthful in their responses:

Perhaps Verizon has simply answered as best as it is capable.  
Perhaps it is time to get the straight answer from the person with the answers: Dianne M. McKernan. Perhaps it is time to get the truth.

Renewed App. at 4 (emphasis added). The Complainant further alleges that the employees' responses have been materially distorted by counsel. *Id.* at 3. The Complainant's suggestions are highly unprofessional, *completely unsupported* and should be disregarded in their entirety.

**D. The Complainant's Request Should Be Denied With Prejudice**

The Complainant has presented no valid basis for its assertions that it cannot obtain information through the Commission's normal data request process. The Complainant's multiple requests to take depositions in this proceeding, all of which have been based almost exclusively on Ms. McKernan's position as the Complainant's account manager, has caused Verizon and the Commission to expend significant time and resources repeatedly addressing the same issues.

Accordingly, Verizon requests that the Complainant's third request to take Ms. McKernan's deposition be denied with prejudice.

**III.**  
**CONCLUSION**

WHEREFORE, for each and all of the forgoing reasons, Verizon North, Inc. and Verizon South, Inc. hereby respectfully request that North County Communications, Inc.'s Renewed Application for the Issuance of a Deposition Subpoena be denied with prejudice, and for any and all other appropriate relief.

Dated: July 12, 2002

Respectfully submitted,

VERIZON NORTH INC. AND  
VERIZON SOUTH INC.

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, John E. Rooney, hereby certify that I served a copy of the Response in Opposition to Renewed Application for Issuance of a Deposition Subpoena upon the service list in Docket No. 02-0147 by email on July 12, 2002.

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John E. Rooney