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April 25, 2007

Via Hand Delivery

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
Walker Building
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429



Re: **DT 07-011 - Verizon New England Inc., Bell Atlantic Communications, Inc.,
NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint
Communications, Inc.**

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and six copies of Verizon New England Inc., et al.'s Objection to Motion to Compel Answers to Data Requests of Labor Intervenors. An electronic copy of the filing will be provided to the PUC librarian.

Thank you for your assistance with this matter.

Very truly yours,

Steven V. Camerino

SVC/SBK:ksm
Enclosures

cc: Service List (by electronic mail)
Librarian (by electronic mail)
Scott J. Rubin, Esquire (by electronic and regular mail)
Arpiar Saunders, Jr., Esquire (by electronic and regular mail)

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint Communications, Inc.

Docket No. DT 07-011

VERIZON NEW ENGLAND INC. ET AL.'S OBJECTION TO THE LABOR INTERVENORS' MOTION TO COMPEL ANSWERS TO DATA REQUESTS

Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services Inc. ("Verizon") submit this objection to the Labor Intervenors' ("Labor Intervenors") Motion to Compel Responses to Data Requests. In support hereof, Verizon states as follows:

1. On April 20, 2007, the Labor Intervenors filed a Motion to Compel Verizon's response to data request 1-13(h), which seeks "Verizon and/or Spinco Hart-Scott-Rodino filings (Merger Agreement, 7.6(c), p. 85)." Verizon objected on the basis that the request seeks information not relevant to this proceeding, as well as a general objection that the request sought confidential information.

2. By way of background, the Labor Intervenors' request seeks Verizon and/or Spinco's filing with the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a(h) (the "HSR Act"). Under the HSR Act, parties to certain acquisitions must make a pre-merger notification filing with the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice ("DOJ"). The purpose of these pre-merger filings is to provide the FTC and DOJ with the opportunity to determine whether the proposed merger is anti-competitive under federal law.

3. Pre-merger filings under the HSR are confidential and are protected from disclosure under the Freedom of Information Act. 15 U.S.C. § 18a(h) provides that:

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under *section 552 of title 5, United States Code*, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(emphasis in the original). There are steep penalties for violations of 15 U.S.C. § 18a, including civil money penalties of up to \$10,000 per day. *See* 15 U.S.C. § 18a(g).

4. The obligation to maintain the confidentiality of HSR filings has been strictly construed. In *Lieberman et al. v. Federal Trade Commission*, 771 F.2d 32 (2nd Cir. 1985), the Second Circuit considered whether the FTC could release an HSR filing to various state attorney generals authorized by 15 U.S.C. § 26 to bring suit on behalf of those injured by violations of the Sherman Act. The Second Circuit held that the “...limitation on the disclosure of premerger information to the ‘public’ [in 15 U.S.C. § 18a(h)] precludes confidential disclosure to state law enforcement officials.” *Lieberman*, 771 F.2d at 36. The Court noted that the attorneys general had not sought the premerger information “as part of an ‘administrative...action or proceeding,’ namely the FTC’s consent judgment proceeding.” *Id.* at 38, n. 12. The Court reasoned that “Congress did not contemplate the use of premerger information by state officials. That is to say, although a state official can seek a preliminary injunction against an illegal merger under federal antitrust law, the structure and legislative history of section 7A [15 U.S.C. § 18a(h)] show that Congress envisioned that only the Department of Justice and the FTC would use premerger information.” *Id.* at 39.

5. Despite the unequivocal obligation of the federal government to maintain the confidentiality of HSR filings, and the inability of even state law enforcement officials to obtain access to such information to enforce state antitrust laws, the Labor Intervenors claim to be entitled to review Verizon and/or Spinco's HSR filing. The Labor Intervenors fail to cite a single statute or case supporting their claim to entitlement. Instead, they urge the Commission to compel release of the HSR because "[t]he filings made by the Joint Applicants under the HSR Act contain information that is directly relevant to this proceeding." Labor Intervenors' Motion at 2.

6. However, the Labor Intervenors offer no explanation of how the HSR filing is relevant to this proceeding such as how the documents relate to the factors the Commission will consider in determining whether the transaction meets the no net harm standard or will be for the public good. Rather, they recite the types of information potentially contained in the filing, such as "basic information about the companies and the transaction," "analyses of the costs and benefits of the proposed transaction," and "issues addressed by the officers, directors, and their advisors when deciding whether to enter into the proposed transaction." *Id.* at 3. In fact, the HSR filing contains highly confidential information on a wide range of subjects, many of which have nothing whatsoever to do with the proposed Verizon-FairPoint transaction.

7. Yet if what the Labor Intervenors say is true – that they seek "basic information about the companies and the transaction" - they already have the means to obtain that information through specific data requests focused on particular aspects of the transaction or facets of the companies' proposed plan. Instead of propounding those data requests, the Labor Intervenors are on nothing more than a fishing expedition, casting the net broadly and hoping to find something of interest in the HSR filing. This is evident from their quest for the HSR filing

because it may contain information considered by Verizon's officers, directors and advisors in deciding whether to enter into the proposed transaction. However, what is relevant in this case is not what led up to the merger agreement between Verizon and FairPoint, but rather what the terms of the transaction are, and whether those terms meet the Commission's standard of review.

8. This Commission has not hesitated to limit discovery of information leading up to the development of a contractual relationship between parties. In *City of Nashua*, Order No. 24,654 (August 7, 2006), *aff'd* by Order No. 24,671 (September 22, 2006), Pennichuck Water Works sought to discover documents relating to a negotiation that preceded the City of Nashua's signing of written contracts with two contractors. Pennichuck requested the information in an effort to gain information about Nashua's understanding of the costs that it would incur under the contracts. Refusing to grant Pennichuck access to the pre-contract documents, the Commission held that:

We do not perceive circumstances in which information about the negotiations that led to the contracts themselves would become part of the record in this proceeding. In arguing to the contrary, PWW notes that information about the negotiations could shed light on how the negotiating parties viewed the likely costs of the matters covered by the contract [sic]. This is true but does not change the outcome. Essentially the same situation arose in connection with Order No. 24,310, where the party seeking the discovery was concerned about the extent to which the utility had been forthcoming about project costs for which it would seek recovery in rates. There, as here, the facts that drive the Commission's ultimate decision relate to the costs themselves, as fixed by the contracts themselves, regardless of how the contracting parties may have regarded them during contract negotiations and regardless of whether the assumptions that drove such negotiations are at variance with public statements.

Order 24,654 at 3-4.

9. What the Labor Intervenors seek in this case is no different. They seek documents leading up to the Merger Agreement, in an effort to determine what the parties to the agreement thought the potential costs and benefits of the transaction were. But as the Commission held in *City of Nashua*, what is relevant are the terms of the contract itself, not

“how the contracting parties may have regarded them during contract negotiations.” *Id.* at 3-4. Thus, to the extent the HSR filing contains information generated by either of the parties and leading up to the Merger Agreement, it is not relevant under the standard set forth in *City of Nashua*. Based on this reasoning alone, the Labor Intervenors have failed to demonstrate that the HSR filing is relevant, or likely to lead to the admission of relevant evidence in this proceeding, and their Motion should be denied.

WHEREFORE, Verizon respectfully requests that the Commission:

- A. Deny the Labor Intervenors’ Motion to Compel; and
- B. Grant such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

VERIZON NEW ENGLAND INC.
BELL ATLANTIC COMMUNICATIONS, INC.
NYNEX LONG DISTANCE COMPANY
VERIZON SELECT SERVICES INC.

By their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: April 25, 2007

By:

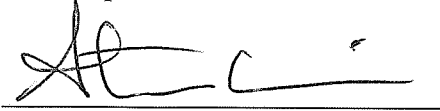


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Certificate of Service

I hereby certify that on April 25, 2007, a copy of this Objection to the Labor Intervenors' Motion to Compel has been forwarded to the parties listed on the Commission's service list in this docket.

A handwritten signature in black ink, appearing to read 'S. Camerino', written over a horizontal line.

Steven V. Camerino