

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Investigation on the Commission's own motion into the operations, practices, and conduct of Telseven, LLC, Calling 10 LLC dba California Calling 10, (U-7015-C), and Patrick Hines, and individual, to determine whether Telseven, Calling 10 and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers.

I.10-12-010
(Filed December 16, 2010)

**CONSUMER PROTECTION & SAFTY DIVISION'S OPPOSITION TO
MOTION OF VERIZON CALIFORNIA INC. (U 1002C) FOR LEAVE TO FILE
THE FOLLOWING DATA RESPONSE UNDER SEAL: Data responsive to
Ordering Paragraph 6 of the Order Instituting Investigations**

The Consumer Protection & Safety Division ("CPSD") here files the following opposition to **CONSUMER PROTECTION & SAFTY DIVISION'S OPPOSITION TO MOTION OF VERIZON CALIFORNIA INC. (U 1002C) FOR LEAVE TO FILE THE FOLLOWING DATA RESPONSE UNDER SEAL: Data responsive to Ordering Paragraph 6 of the Order Instituting Investigations**

I. SUMMARY OF OPPOSITION

Verzision's Motion should be denied for the following reasons:

First, Verzision has failed to meet its burden of proving that the information in question should be classified as confidential.

Second, treating the subject information as confidential would be contrary to the Commission's policy of providing transparency in its proceedings. When the unproven

claims of confidentiality are balanced against this Commission's desire for open proceedings, the Commission should deny the instant Motion in its entirety.

II. THE PROVISIONS OF THE OII AT ISSUE IN VERIZON'S MOTION

Verizon is concerned with Ordering Paragraph (O.P.) 6 of the OII which requires as follows:

Billing agents ILD and BSG and billing telephone companies AT&T and Verizon are ordered to file with the Commission's Docket Office and serve on all parties, within forty-five (45) days of service of this OII, a full accounting of their respective transactions with, or on behalf of, Respondents. Such accountings should include, without limitation, a statement on an annual basis of all amounts billed on behalf of Respondents, amounts collected on behalf of Respondents, amounts refunded or credited back to customer accounts, amounts retained by the billing agents and billing telephone companies for their services, amounts paid to public purpose funds (universal service and the like), and any other amounts paid out of Respondents' revenue stream, i.e., out of amounts collected on behalf of Respondents for the DA services described herein. We request, to the extent possible, that the billing agents and telephone companies specify the amounts in each of these categories attributable to DA service, administrative fee, and universal service fees or the like.

As to subparts a) [the amounts billed on behalf of Respondents], b) [the amounts collected on behalf of Respondents], and c) [amounts refunded or credited back to customer accounts], Verizon asserts that this information should be treated as confidential.

III. VERIZON BEARS THE BURDEN OF PROVING THE CLAIMS OF INFORMATION CONFIDENTIALITY

The Commission has a general obligation to conduct its business in public (*See e.g. Order Instituting Rulemaking to implement Senate Bill No. 1488 Relating to Confidentiality of Information, 05-06-040/D.06-06-066, as modified, D.07-05-032.*) As the Commission noted in its *Order Modifying Decision 06-06-066, fn. 1, SB 1488*, passed in September 2004, provides:

The Public Utilities Commission shall initiate a proceeding to examine its practices under [s]ections 454.5 and 583 of the Public Utilities Code and the California Public Records Act (Chapter 3.5 (commencing with [s]ection 6250) of Division 7 of Title 1 of the government Code) to ensure that the [C]ommission's practices under these laws provide for meaningful public participation and open decisionmaking.

In view of the strong policy favoring public disclosure of information, this Commission has stated that “we start with a presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof.” (D.06-06-066, 2006 Cal PUC LEXIS 222, at *8.) The Commission's position on the burden of proof question is consistent with California statutory and case law that places the burden of proof on the party making the claim or defense. (See Evidence Code Section 500: “Except as otherwise provided by law,” a party has the burden of proof as to each fact essential to its claim or defense; *Samuels v. Mix*, 22 Cal.4th 1, 10-11 (1999); *Aguilar v. Atlantic Richfield Co.*, 25 Cal4th 826, 861 (2001); and *Bridgestone/Firestone, Inc. v. Superior Court*, 7 Cal.App.4th 1384, 1393 (1992) [party claiming privilege has burden of proving that information qualifies as a protected trade secret].)

IV. VERZION HAS FAILED TO MEET ITS BURDEN OF PROOF

Verizon has not offered any evidence to support its confidentiality claim. Instead, in its Motion, Verizon states that information responsive to O.P. 6 “should be placed under seal until such time as the Commission has ruled on any claim Respondents may make regarding confidentiality of this data or Respondents withdraw their preliminary claim of confidentiality.” (Motion, pages 1-2.) Verizon cannot meet its burden of proof simply by relying on what another party has claimed or may claim is confidential. As such, Verizon's documents that are responsive to O.P. 6 of the OII should be ordered produced.

V. CONCLUSION

For all the foregoing reasons, Verizon's Motion should be denied in its entirety.

Respectfully submitted,
/s/ ROBERT M. MASON III

Robert M. Mason III
Staff Counsel

Attorney for the Consumer Protection
& Safety Division

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone (415) 703-5360
Fax: (415) 703-2262

February 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**CONSUMER PROTECTION & SAFTY DIVISION’S OPPOSITION TO MOTION OF VERIZON CALIFORNIA INC. (U 1002C) FOR LEAVE TO FILE THE FOLLOWING DATA RESPONSE UNDER SEAL: Data responsive to Ordering Paragraph 6 of the Order Instituting Investigations**” to the official service list in **I.10-12-010** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **February 23, 2011** at San Francisco, California.

/s/ JOANNE LARK

Joanne Lark

SERVICE LIST
I.10-12-010

jim@tobinlaw.us
jesus.g.roman@verizon.com
eb1642@att.com
jclark@goodinmacbride.com
Rmorton@burr.com
jacque.lopez@verizon.com
margo.ormiston@verizon.com
tmacbride@goodinmacbride.com
mmattes@nossaman.com
august@tobinlaw.us
channing@tobiaslaw.us
bill@tobinlaw.us
wit@cpuc.ca.gov
hcv@cpuc.ca.gov
jwh@cpuc.ca.gov
mab@cpuc.ca.gov
nyg@cpuc.ca.gov
rim@cpuc.ca.gov
hey@cpuc.ca.gov