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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

O1 Communications, Inc. (U6065C),

Complainant,

vs.

Verizon California, Inc. (U1002C),

Defendant.

Case 08-02-013
(Filed February 15, 2008)

And Related Matter.

Case 09-06-025

**ADMINISTRATIVE LAW JUDGE'S RULING
ON EXHIBIT IDENTIFICATION AND RECEIPT**

Summary

Exhibits are identified and received as described herein. Some exhibits previously identified as confidential are now unsealed in part or whole. An updated Exhibit List is attached.

Background

Exhibits were received at hearing, subject to clarification or further consideration. (Reporter's Transcript (RT) at 35-37, 237-239.) The receipt of Exhibit 1, for example, was taken under submission, subject to additional briefing by parties. (RT at 238-239.) Receipt of Exhibit 1 is addressed in the discussion section below.

Counsel for Verizon California, Inc. (Verizon) expressed concern at the first day of hearings about the amount of material designated by O1 Communications, Inc. (O1) as confidential. (RT at 36.) Administrative Law Judge McKenzie stated that counsel should confer and seek to reduce the confidential information to that which is truly confidential. (RT at 35-37.) Pending further developments, the hearing continued. Exhibits were marked for identification with the exhibit number and the identifier “- C” to indicate confidential status.

The issue arose again on the second day of hearing. Verizon stated that all of the proposed direct and reply testimonies of William Munsell (Munsell) (Exhibits 13 and 14) were designated as confidential. Even though Verizon questioned whether this treatment was necessary for all the information, Verizon explained that it sought confidential status because O1 had conveyed material used in Munsell’s testimonies on the basis of it being confidential. (RT at 155.) O1’s counsel stated that, after conclusion of the hearing, O1 would re-examine the confidential nature of the proposed exhibits, and release from confidential status as much as possible. (RT at 156.) The hearing continued with the full text of several exhibits marked confidential.

On March 16, 2010, O1 served two sets of revised exhibits on Judge McKenzie. The revised exhibits reflect a reduction in the confidential information. This includes, but is not limited to, confidential and non-confidential (public) versions of the opening and reply testimonies of two O1 witnesses (Mitchell and Beausoleil). Except for the designation of some elements of the exhibits as non-confidential, O1 did not identify any changes in the revised exhibits from the exhibits introduced at hearing.

On May 30, 2012, I held a conference call with parties to discuss receipt of exhibits, including those to be sealed in whole or part. On June 1, 2012, I served a preliminary ruling on the service list by e-mail regarding receipt of exhibits, with comments requested by June 5, 2012. Several e-mails were exchanged thereafter. On June 13, 2012, O1 withdrew its request that further materials be maintained as confidential. By e-mail dated June 14, 2012, I proposed that additional items be made public with comments, if any, by June 18. No additional comments were received.

Discussion

For the reasons stated below, the proceeding's Exhibit List is updated. A copy of the updated Exhibit List is attached. Each exhibit in the updated Exhibit List retains the exhibit number assigned at hearing.

Receipt of Exhibit 1 was taken under submission at the conclusion of evidentiary hearings. In its briefs, Verizon argues that Exhibit 1 "should be disregarded in its entirety..." (Opening Brief at 22, footnote 36), and the testimony has been "thoroughly discredited" (Reply Brief at 17). This largely goes to weight rather than admissibility. The reasons to exclude Exhibit 1 do not outweigh O1's assertion of its relevance, and the objective of ensuring the Commission has a complete record. Exhibit 1 should be received as evidence and, based on the entirety of the evidence and argument, the Commission will give Exhibit 1 the appropriate weight.

With the revisions served on March 16, 2010, O1 has released portions of several exhibits from confidential treatment. The confidential portions will be filed under seal.

The Commission has also examined the opening and reply testimonies of Verizon witness Munsell. These were marked at hearing as Exhibit 13-C and

Exhibit 14-C, respectively. It now appears that most, but not all, should be public.

A preliminary ruling was e-mailed to the service list on June 1, 2012. The preliminary ruling addressed receipt of exhibits, including the sealing and unsealing of portions of Exhibits 13 and 14. In their final comments on the draft ruling, parties generally do not object to the unsealing of portions of Exhibits 13 and 14. O1 withdraws its request for confidential treatment of some data due to the age of the materials involved, but does not waive its right to seek the sealing of similar material under other circumstances. Accordingly, the exhibits are treated as follows:

- Exhibit 13 is not sealed. Exhibit 13 is the direct testimony of Munsell (except for the redaction of the last four digits of customer telephone numbers on pages 30, 32, 33, 34 and 35). Exhibit 13 includes the attachments identified as Exhibits A through W-5, Y (except for the redaction of the last four digits of customer telephone numbers at bottom of page 2 and top of page 3), and Z. Exhibit 13 does not include Exhibits X-1 through X-8.
- Exhibit 13-C is sealed. Exhibit 13-C is the entirety of Exhibit 13, with no material redacted or missing. For example, Exhibit 13-C includes the complete customer telephone numbers that were partially redacted in Exhibit 13, and the attachments identified as Exhibits X-1 through X-8. (Exhibits X-1 through X-8 are on two compact disks.)
- Exhibit 14 is not sealed. Exhibit 14 is the reply testimony of Munsell. Exhibit 14 includes the attachments identified as Exhibits AA, BB (except for the redaction of the last four digits of the customer telephone number at the bottom of page 1), CC-1 through CC-5, DD, EE-1 through EE-5, and W-1 (Revised) through W-5 (Revised).

- Exhibit 14-C is sealed. Exhibit 14-C is the entirety of Exhibit 14, with no material redacted or missing. For example, Exhibit 14-C includes the complete customer telephone number partially redacted in Exhibit 14, and the attachments identified as Exhibits X-5 through X-8. (Exhibits X-5 through X-8 are on one compact disk.)

Verizon should prepare final copies of Exhibits 13 and 14 as provided below. Verizon need not prepare final copies of Exhibits 13-C and 14-C, since the Commission will use documents already provided for the confidential versions of these exhibits.

IT IS RULED that exhibits are identified and received as indicated on the attached Exhibit List. Verizon California Inc. shall prepare complete copies of Exhibits 13 and 14, including redacted material as specified in the body of this ruling. Within seven days of the date this ruling is issued, Verizon shall serve one copy of complete Exhibit 13, and one copy of complete Exhibit 14, on me and one copy of each on O1 Communications, Inc. This ruling is effective two days from today.

Dated June 21, 2012, at San Francisco, California.

/s/ BURTON W. MATTSON
Burton W. Mattson
Administrative Law Judge

EXHIBIT INDEX

EXHIBIT INDEX *

EXH. NO.	SPONSOR/WITNESS	DESCRIPTION	DATE	
			ID	Rec'd
1	O1/Sprague	Reply Testimony of Ethan Sprague	2/16/10	2/17/10
2	O1/Mitchell	Revised Opening Testimony of Sam Mitchell	2/16/10	2/17/10
2-C	O1/Mitchell	CONFIDENTIAL - Revised Opening Testimony of Sam Mitchell	2/16/10	2/17/10
3	O1/Mitchell	Reply Testimony of Sam Mitchell	2/16/10	2/17/10
3-C	O1/Mitchell	CONFIDENTIAL - Reply Testimony of Sam Mitchell	2/16/10	2/17/10
4-C	Verizon/Mitchell	CONFIDENTIAL - Excerpt from Munsell Exhibit X-1	2/16/10	2/17/10
5-C	Verizon/Mitchell	CONFIDENTIAL - 13 calls assembled from Exhibit 4-C (above)	2/16/10	2/17/10
6	O1/Beausoleil	Declaration of James Beausoleil	2/16/10	2/17/10
7-C	O1/Mitchell	CONFIDENTIAL - Page 3,019 from Munsell Exhibit X-1	2/16/10	2/17/10
8	Verizon/Mitchell	Printouts from National Exchange Carrier Association (airline miles between certain switches)	2/16/10	2/17/10
9	O1/Beausoleil	Opening Testimony of Jim Beausoleil	2/16/10	2/17/10
10	O1/Beausoleil	Revised Reply Testimony of James Beausoleil	2/16/10	2/17/10
10-C	O1/Beausoleil	CONFIDENTIAL - Revised Reply Testimony of James Beausoleil	2/16/10	2/17/10

EXH. NO.	SPONSOR/ WITNESS	DESCRIPTION	DATE	
			ID	Rec'd
11-C	Verizon/ Beausoleil	CONFIDENTIAL - November 2009 O1 Bill to Verizon	2/16/10	2/17/10
12	O1/Selwyn	Reply Testimony of Lee L. Selwyn	2/16/10	2/17/10
13	Verizon/Munsell	Direct Testimony of William Munsell (except for the redaction of the last four digits of customer telephone numbers on pages 30, 32, 33, 34, and 35); Exhibit 13 includes attachments identified as Exhibits A through W-5, Y (except for the redaction of the last four digits of customer telephone numbers at bottom of page 2 and top of page 3), and Z	2/17/10	2/17/10
13-C	Verizon/Munsell	CONFIDENTIAL -Entirety of Exhibit 13 including complete customer telephone numbers, and attachments identified as Exhibits X-1 through X-8	2/17/10	2/17/10
14	Verizon/Munsell	Reply Testimony of William Munsell; Exhibit 14 includes attachments identified as Exhibits AA, BB (except for the redaction of the last four digits of the customer telephone number at the bottom of page 1), CC-1 through CC-5, DD, EE-1 through EE-5, and W-1 (Revised) through W-5 (Revised)	2/17/10	2/17/10

EXH. NO.	SPONSOR/WITNESS	DESCRIPTION	DATE	
			ID	Rec'd
14-C	Verizon/Munsell	CONFIDENTIAL - Entirety of Exhibit 14 including complete customer telephone number, and attachments identified as Exhibits X-5 through X-8	2/17/10	2/17/10
15	O1/Munsell	Two Verizon Advice Letters dated April 14, 2006 (AL 11523 and AL 11525)	2/17/10	2/17/10
16	O1/Munsell	January 4, 2008 Verizon letter to O1	2/17/10	2/17/10
17	O1/Munsell	Three Verizon Advice Letters (AL 11854 dated May 11, 2007; AL 11880 dated June 12, 2007; AL 11873 dated June 8, 2007)	2/17/10	2/17/10
18	O1/Munsell	Direct Testimony of William Munsell on behalf of Verizon Massachusetts dated September 10, 2002	2/17/10	2/17/10
19	O1/Munsell	Verizon New England Inc.'s Response to Brief of Amicus Curiae Federal Communications Commission	2/17/10	2/17/10
20	O1/Munsell	Telephone Service Area Maps from CPUC website (with notation: "last modified 6/29/2009")	2/17/10	2/17/10
21	O1/Munsell	GTE California "Local Exchanges and Extended Service Areas" Tariff	2/17/10	2/17/10
22	O1/Munsell	Pacific Bell "Network and Exchange Services A5. Exchange Services" Tariff	2/17/10	2/17/10
23	O1/Munsell	LATA 722 only (examples of certain LERG data)	2/17/10	2/17/10

EXH. NO.	SPONSOR/WITNESS	DESCRIPTION	DATE	
			ID	Rec'd
24	O1/Munsell	Revised SMR8 (Revising Verizon Percentage of Mileage Removing the Duplicate Application of the Verizon Percentage)	2/17/10	2/17/10
25	Verizon	November 19, 2007 Stipulation and Order, United States Bankruptcy Court for District of Delaware	2/17/10	2/17/10

*Exhibit numbers were identified at the hearing on February 16-17, 2010. The updated Exhibit Index uses the same numbers assigned at the hearing. Exhibits were received on February 17, 2010, with receipt of Exhibit 1 taken under submission. (See Reporter's Transcript at 237-239.) The updated Exhibit List reflects the ruling on receipt of Exhibit 1, along with further specification of public and confidential portions of the exhibits. (See Ruling dated June 21, 2012.)