

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of

VERIZON NEW YORK INC., MCIMETRO ACCESS
TRANSMISSION SERVICES LLC, MCI
COMMUNICATIONS SERVICES LLC,
METROPOLITAN FIBER SYSTEMS OF NEW
YORK, INC., and XO COMMUNICATIONS
SERVICES LLC,

Petitioners,

For an Order Pursuant to Article 78 of the Civil Practice
Law and Rules

- against -

NEW YORK STATE PUBLIC SERVICE
COMMISSION (“the Commission”), MICHELLE L.
PHILLIPS, as Secretary to the Commission, NEW
YORK STATE DEPARTMENT OF PUBLIC
SERVICE (“the Department”) and MOLLY
MAGNIS, as Records Access Officer for the
Department,

Respondents.

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VERIFIED PETITION

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Petitioners Verizon New York Inc., MCImetro Access Transmission Services LLC, MCI Communications Services LLC, Metropolitan Fiber Systems of New York, Inc., and XO Communications Services, LLC (collectively “Verizon”), by and through their attorneys, McGuireWoods LLP, for their Verified Petition under Article 78 of the Civil Practice Law and Rules (“CPLR”), allege as follows:

PRELIMINARY STATEMENT

1. This is a special proceeding brought by Verizon under CPLR § 7803(3) and the State’s Freedom of Information Law, New York Public Officers Law, Article 6 (“FOIL”), against the respondents: the New York State Public Service Commission (“the Commission”), Michelle L. Phillips, as Secretary (“Secretary”) to the Commission, the New York State Department of Public Service (“the Department”), and Molly Magnis, as Records Access Officer (“RAO”) for the Department (collectively, “Respondents”).

2. By this proceeding, Verizon seeks to:

- a. overturn a final determination by the Secretary (the “Determination”) that declined to recognize the status as trade secrets and confidential commercial information of portions of certain records (the “Records”) that Verizon submitted to Respondents in a regulatory proceeding; and
- b. prevent Respondents from publicly disclosing Verizon’s trade secrets and confidential commercial information in response to a FOIL request made by a third party, and thus violating their statutory obligations.

As shown in greater detail below, the Records contain trade secrets and confidential commercial information related to the nature of Verizon’s copper cable network that has been very costly for

Verizon to develop and compile and that is strictly controlled within Verizon. If disclosed, this information could be misused by competitors to Verizon's detriment.

3. Verizon produced the Records in response to an information request made by the Department in a regulatory proceeding relating to the presence of lead-sheathed cable in the communications networks in New York State. Verizon submitted documents responsive to the request on August 21, 2023, September 8, 2023, and October 26, 2023. At the time of each submission, Verizon acted in accordance with the law to protect its trade secrets, critical infrastructure information, and confidential commercial information, by formally requesting confidential treatment for the Records under N.Y. Pub. Off. Law §§ 87(2)(d), (f), and (i); *id.* § 89(5), and the Department's regulations implementing FOIL, 16 N.Y.C.R.R. § 6-1.3.

4. On information and belief, shortly after Verizon's August 21, 2023 document production, Respondents received a FOIL request from Ms. Shalini Ramachandran, a journalist with the *Wall Street Journal*, seeking the disclosure of the Records included in that production. The actual text of Ms. Ramachandran's request has not been disclosed to Petitioners. However, the RAO advised Verizon that such a request had been received and asked Verizon to submit a Statement of Necessity under N.Y. Pub. Off. Law § 89(5).

5. In response, Verizon submitted a memorandum of law supported by evidence — in the form of three detailed declarations attested to under penalties of perjury — establishing that the Records contained trade secrets, confidential commercial information, and critical infrastructure information that would otherwise be unavailable to Verizon's competitors or to the public in general. Verizon showed that the databases from which the Records had been derived had been created, and were maintained and used by Verizon, at great expense for important business purposes related to the maintenance and advancement of its competitive position, and that

Verizon strictly limited access to the information. Finally, Verizon showed that public disclosure of the Records would result in substantial competitive injury to Verizon.

6. The RAO's determination granted Verizon's request for confidential treatment of certain information in the Records related to the location of its copper cables. That portion of the RAO's determination is not at issue here. However, the RAO also declined to grant confidential treatment of the remaining portions of the Records, which disclose the amount of copper cable in various environments (buried, in-building, submarine) that are present in Verizon's network, and the lead status of such cable (known to contain lead, known not to contain lead, lead status still being investigated). The RAO's determination was upheld on administrative appeal by the Commission's Secretary. The Secretary's Determination was a final agency ruling on the confidential status of the non-location-related information that Verizon seeks in this proceeding to protect from public disclosure.

7. The portions of the Records for which the Secretary declined to grant confidential treatment are exempt from disclosure under § 87(2)(d) of FOIL, the Department's implementing regulations, and a substantial body of controlling case law and Commission precedent.

8. Under N.Y. Pub. Off. Law § 89(5)(a)(3), confidential information submitted to an agency "shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction." *See also* 16 N.Y.C.R.R. § 6-1.3(c)(5) (exempting from disclosure confidential information "until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction"). Unless the Secretary's Determination is stayed, the portions of the Records at issue here could be disclosed as soon as November 16, 2023, which would undermine

the purpose of this proceeding and make the Court's review of the FOIL issues in this proceeding meaningless. Verizon, therefore, seeks a stay of the Determination, *pendente lite*. The Court is specifically authorized to grant such a stay by CPLR § 7805. Verizon also seeks a permanent injunction to enjoin Respondents from engaging in such unlawful conduct. Verizon sought the Respondents' consent to a § 7805 stay, but the Respondents rejected Verizon's request.

THE PARTIES

9. Petitioner Verizon New York Inc. is a corporation organized under the laws of the State of New York with its principal office at 140 West Street, New York, New York 10007.

10. Petitioner MCImetro Access Transmission Services LLC is a limited liability company organized under the laws of Delaware with its principal office at One Verizon Way, Basking Ridge, New Jersey 07920.

11. Petitioner MCI Communications Services LLC is a limited liability company organized under the laws of Delaware with its principal office at One Verizon Way, Basking Ridge, New Jersey 07920.

12. Petitioner Metropolitan Fiber Systems of New York, Inc. is a corporation organized under the laws of Delaware with its principal office at One Verizon Way, Basking Ridge, New Jersey 07920.

13. Petitioner XO Communications Services, LLC is a limited liability company organized under the laws of Delaware with its principal office at One Verizon Way, Basking Ridge, New Jersey 07920.

14. Respondent New York State Department of Public Service is an "agency" of New York State within the meaning of FOIL. N.Y. Publ. Serv. Law § 3; N.Y. Publ. Off. Law § 86(3).

15. Respondent New York State Public Service Commission is a regulatory body

within the Department that regulates telephone corporations and certain other public utility companies. The Commission is an “agency” within the meaning of FOIL. N.Y. Publ. Serv. Law § 4; N.Y. Pub. Off. Law § 86(3). Verizon, unlike many of its competitors, is subject to regulation by the Commission.

16. Respondent Molly Magnis is named in her official capacity as the Department’s Records Access Officer (“RAO”). *See* 16 N.Y.C.R.R. § 6-1.3(c).

17. Respondent Michelle L. Phillips is named in her official capacity as Secretary to the Commission (the “Secretary”). Her responsibilities include hearing appeals from determinations by the RAO concerning the confidential status of Commission or Department records. *See* 16 N.Y.C.R.R. § 6-1.3(g).

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to CPLR §§ 7801, 7803, and 7804 because Respondents’ actions constituted a final determination made in violation of lawful procedure, were affected by errors of law, are arbitrary and capricious, and constitute an abuse of discretion.

19. This Court has personal jurisdiction over all Respondents pursuant to CPLR § 302(a)(1).

20. Venue lies in Albany County pursuant to CPLR §§ 506(b) and 7804(b) because it is where material events occurred giving rise to the determinations that are at issue in this matter.

STATEMENT OF FACTS

I. Verizon’s Submission of Confidential Records and Request for Confidential Treatment

21. On July 20, 2023, the Department initiated proceedings relating to the presence of lead-sheathed cable in the communications networks in New York State (“Matter No. 23-01547”), and at least two other State agencies indicated their interest in the issue.

22. On August 21, 2023, in response to an information request issued by the Department, Verizon submitted detailed inventories to the Department and to the State's Department of Environmental Conservation related to the presence of lead-sheathed copper cable in its network ("Exhibit A" and "Exhibit B", respectively). Exhibit A, the only one of the two Exhibits that is at issue in this special proceeding, contains specific inventory information related to Verizon New York's copper cable network, including a breakdown of the mileage of such cable by location and by: (1) the cable environment involved (aerial, underground [in conduit], buried [not in conduit], submarine, and within buildings); (2) whether the cable in question was or was not lead-sheathed or remained under investigation; and (3) the total mileage and percent of mileage within each wire center containing lead-sheathed cables.

23. It is important to emphasize that the data included in Exhibit A does not, in any sense, represent a sample of Verizon New York's copper cable. Rather, it includes *all* of the copper cable in the company's network in New York State. *See* Lasky Decl., **Exhibit F**, ¶ 3. Thus, even without the location data that the Department agreed would not be subject to public disclosure, the remaining data would enable competitors and others to assess the amount and percentage of copper cable remaining in each environment (aerial, underground, etc.) covered by the Exhibit — or, to put it another way, the extent to which Verizon New York has or has not replaced its copper cable with fiber-optic cable in each environment. Moreover, the Exhibit also indicates the amount and percentage of copper cable in each environment that is known to be, that is known not to be, and that may be lead-sheathed. Such operational parameters would provide

competitors and others with important information relevant to Verizon's competitive position in a specific geographic market — the State of New York.

24. It does not, in this respect, matter that Verizon is reviewing and refining the Exhibit A data on an ongoing basis. Even when Exhibit A is superseded by more refined data, it would still provide, at a minimum, a starting point for the assessments described above.

25. The data in Exhibit A was derived from systems that were created and maintained in the ordinary course of Verizon's business, and that stored information on the location, routing, interconnection, and nature of Verizon's outside plant facilities. Redacted versions of the exhibits were filed publicly. This information was submitted to the Department's RAO, and to the RAO of the Department of Environmental Conservation, under formal requests that they be treated as trade secrets, confidential commercial information, and/or critical infrastructure information, pursuant to FOIL, *see* N.Y. Pub. Off. Law §§ 87(2)(d), (f), and (i); *id.* § 89(5)(a)(1); and the implementing regulations of the two agencies, *see* 16 N.Y.C.R.R. § 6-1.3 and 6 N.Y.C.R.R. Part 616. *See* Letter from Joseph A Post to Records Access Officers, dated August 21, 2023, included in **Exhibit B**.¹

26. Upon information and belief, on August 25, 2023, a journalist, Ms. Shalini Ramachandran of the *Wall Street Journal*, submitted to the Respondents a request for the disclosure under FOIL of unredacted versions of the two Exhibits submitted by Verizon on August 21, 2023.

¹ All exhibits cited herein refer to and accompany the Affirmation of Joseph A. Post in Support of the Verified Petition, dated November 14, 2023.

27. By letter dated September 14, 2023, to Verizon, copied to Ms. Ramachandran, the RAO:

- a. indicated the request would be resolved in accordance with N.Y. Pub. Off. Law § 89(5); and
- b. directed Verizon, if it wished to preserve the confidentiality of the Records, to submit a Statement of Necessity providing a legal basis to support any redactions.² **Exhibit C**, at 1.

II. Verizon Submits a Statement of Necessity

28. On September 28, 2023, pursuant to the RAO's directive and N.Y. Pub. Off. Law § 89(5)(b)(2), Verizon submitted a Statement of Necessity to the RAO, along with three declarations in support of the Statement. Copies of the Statement of Necessity and supporting declarations were also sent to Ms. Ramachandran. The three declarations were made by Mr. David Kass, Verizon's Chief Compliance Officer, Mr. Daniel Maloney, Verizon's Chief Security Officer, and Ms. Danielle Lasky, who is a Director of Program and Project Management in the Network Engineering organization, and the individual at Verizon under whose supervision the Exhibits at issue were compiled from Verizon's databases. As reflected in the declarations, which are part of the administrative record, these individuals have extensive experience and personal knowledge concerning the subject matter of their statements.

² N.Y. Pub. Off. Law § 89(5)(b)(2) permits a person who requested an exception to disclosure "to submit a written statement of the necessity for the granting or continuation of such exception . . ." See also 16 N.Y.C.R.R. § 6-1.3(f)(2) ("The department shall give written notice to the person who originally submitted the confidential records that the record has been requested and that a determination will be made regarding access. The original requester of confidential status shall have 10 business days from receipt of the written notice to submit a statement to justify an exception from public disclosure.").

29. The Statement of Necessity and supporting declarations showed that:
- a. The data compiled in the Records, and redacted from public filing could — if publicly disclosed — be exploited to target attacks on critical communications infrastructure in the State, jeopardizing public service and potentially putting Verizon personnel and others at risk.
 - b. The Records contain trade secrets and confidential commercial information that has been very costly for Verizon to develop and compile, that is used for important business purposes by Verizon, and access to which is strictly controlled within Verizon. Verizon’s creation, maintenance, and use of such information gives it an important advantage over its competitors. If disclosed, this information could be misused by competitors to Verizon’s detriment.

III. The RAO’s Determination

30. On October 10, 2023, the RAO issued a determination pursuant to N.Y. Pub. Off. Law § 89(5), finding that the portions of the Records containing location information for Verizon New York’s copper cables — *i.e.*, “the columns labeled ‘WIRE CENTER,’ ‘LOCATION OF WIRE CENTER,’ and ‘CITY/TOWN/VILLAGE’ on pages 3 through 24 of Exhibit A and the entirety of Exhibit B” — “are entitled to exception from disclosure under FOIL as critical infrastructure information.” However, the RAO also concluded that “with respect to the remaining columns contained in Exhibit A, Verizon failed to satisfy its burden of persuasion . . . that the information contained in these columns — without the location information — constitutes critical infrastructure information, a trade secret, or confidential commercial information.” RAO determination, **Exhibit H**, at 10.

31. Turning first to the critical infrastructure exception, the RAO stated that she was “not persuaded that disclosing such characteristics of the cables, without disclosing a more specific and identifiable geographic location, puts the cables or wire centers at any greater risk of attack.” *Id.* at 8. The RAO found that “with the location information redacted, these remaining columns alone do not contain critical infrastructure information and should not be excepted from disclosure.” *Id.*

32. The RAO also concluded that the remaining columns in Exhibit A also do not constitute protected information under either of the two branches of the test set forth in N.Y. Pub. Off. Law § 87(2)(d). With respect to the first branch, the RAO concluded that the remaining columns did not constitute a trade secret, because Verizon did not “allege that the information was compiled for business purposes or to gain a competitive advantage over its competitors who do not know or use it” and instead “the information was compiled in response to” a regulatory request. *Id.* at 9. Additionally, the RAO found that Verizon “presented no evidence that it used unique or proprietary methods to compile the information, or that it would be disclosing any such methods by disclosing the information,” and identified “no competitive advantage it has over its competitors by compiling and maintaining this information.” *Id.* She therefore determined that the information did not meet the definition of a trade secret under state law. *Id.*

33. The RAO also disputed Verizon’s contention that the remaining columns in Exhibit A constitute confidential commercial information. The RAO found that “[w]ithout the location information, a competitor would have no means of identifying and targeting Verizon’s service territory or customers,” and that competitors would receive no economic windfall by receiving this information. *Id.* The RAO was also “not persuaded by the hypothetical situations in which a competitor could use the information to attempt to undermine the company’s reputation by

suggesting that Verizon's technology and networks are inferior to theirs are likely to cause substantial injury to the competitive position of the subject enterprise." *Id.* (internal quotation marks omitted). The RAO also found that Verizon had failed to show it would suffer any injuries after a competitor receives the information in the remaining columns. *Id.*

IV. Verizon's Administrative Appeal

34. No appeal was taken by Ms. Ramachandran or the *Wall Street Journal* from the portion of the RAO's determination that found that the location-related information in Exhibits A and B was entitled to confidential treatment as critical infrastructure information.

35. On October 19, 2023, Verizon, pursuant to N.Y. Pub. Off. Law § 89(5)(c) and 16 N.Y.C.R.R. § 6-1.3(g), filed an appeal with the Secretary of the Commission in which it sought reversal of the RAO's determination concerning the detailed, but non-location-specific information in the remaining columns of Exhibit A.³ *See* Letter from Jeffrey J. Chapman to Michelle L. Phillips, dated October 19, 2023, and accompanying memorandum of law, attached as **Exhibit I**.

36. In support of its appeal, Verizon submitted a 12-page memorandum of law, and relied on the declarations it had previously submitted.

³ The Secretary is the official in the Department of Public Service who is authorized to decide appeals from RAO determinations under FOIL. Pursuant to N.Y. Pub. Off. Law § 89(5)(c)(1) and 16 N.Y.C.R.R. § 6-1.3(g), the Secretary of the Commission "shall hear appeals from such negative determinations" and issue a "written final determination . . . which determination specifically states the reason or reasons for such final determination."

V. The Secretary's Determination

37. On November 1, 2023, the Secretary issued a final agency Determination, denying Verizon's appeal of the RAO's determination. *See* Determination of Appeal of Trade Secret Determination ("Determination"), dated November 1, 2023, attached as **Exhibit J**.

38. The Determination concluded that Verizon had failed to carry its burden of proving that the detailed, but non-location-specific information related to Verizon's copper cable network in the remaining columns of Exhibit A was entitled to the exception from public disclosure provided in N.Y. Pub. Off. Law § 87(2)(d). *Id.* at 3-5. The Determination essentially echoed the rationale relied on by the RAO.

39. With respect to the trade secret exception, the Secretary determined that the information in the remaining columns of Exhibit A did not meet the general definition of a trade secret, in that it was not "information which gives Verizon an opportunity to obtain an advantage over competitors who do not know or use it." *Id.* at 3 (internal quotation marks omitted). Specifically, the Secretary contended that Verizon failed to show that the "information, particularly when isolated from specific location information, puts Verizon in a better competitive position over its competitors." *Id.* The Determination concluded that "Verizon failed to show that it will lose a competitive advantage it currently possesses over its competitors by disclosing the number of miles for certain types of cables that either are lead-sheathed, are not lead-sheathed, or are still being reviewed in an unidentified location." *Id.* at 3-4. The Determination did not address any portion of the applicable trade secret test other than satisfaction of the basic definition of a "trade secret."

40. As to the confidential commercial information exception, the Secretary found that the RAO properly applied relevant law in analyzing whether the disclosure of the information

would be likely to cause substantial injury to the competitive position of Verizon and agreed with the RAO's conclusion that the information did not have commercial value to Verizon's competitors. *Id.* at 4.

41. The Secretary also rejected Verizon's argument that the RAO's determination had improperly concluded that Verizon failed to show it suffered actual competitive harm as a result of whispering campaigns. *Id.* Indeed, the Secretary concluded that instead, the RAO was "not persuaded that a competitor's attempt to undermine the Company's reputation by suggesting that Verizon's technology and networks are inferior to their own is likely to cause *substantial* injury or *unfair* economic or competitive damage to the competitive position of Verizon." *Id.* (emphasis in original).

42. Finally, the Secretary found that because the information at issue is in the process of being refined by Verizon, it fails to meet the third factor under 16 N.Y.C.R.R. § 6-1.3(b)(2) "since there is admittedly no worth or value of the information to the public or Verizon's competitors." *Id.* at 5 (internal quotations omitted).

43. Under N.Y. Pub. Off. Law § 89(5)(a)(3), confidential information submitted to an agency "shall be excepted from disclosure and be maintained apart by the agency from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction." *See also* 16 N.Y.C.R.R. § 6-1.3(c)(5) (exempting from disclosure confidential information "until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction").

44. Accordingly, unless a stay of the Secretary's Determination is issued, the Records could be disclosed as soon as November 16, 2023.

FIRST CAUSE OF ACTION**(Disclosure Is Prohibited under N.Y. Pub. Off. Law § 87(2)(d) and § 89(5)(a)(3))**

45. Petitioners repeat and realleges paragraphs 1 through 41 as if fully set forth herein.

46. Contrary to the RAO's and Secretary's Determinations, the detailed, but non-location-specific information in the remaining columns of Exhibit A related to Verizon's copper cable network is exempt from disclosure pursuant to N.Y. Pub. Off. Law § 87(2)(d), which authorizes agencies to deny access to records that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." N.Y. Pub. Off. Law § 87(2)(d).

A. The Confidential Information Regarding the Nature of Verizon's Cables Constitutes Trade Secrets Not Available from Any Other Source

47. The phrase "trade secret," as used in § 87(2)(d), is not statutorily defined. However, the State's courts have defined the phrase as follows, consistent with its definition in Section 757 of the Restatement of Torts: "A *trade secret* may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it." *Verizon New York Inc. v. New York State Pub. Serv. Comm'n*, 991 N.Y.S.2d 841, 854 (Sup. Ct., Albany Cnty. 2014), *aff'd*, 23 N.Y.S.3d 446 (3d Dept. 2016).

48. The Restatement identifies six factors relevant to a determination of trade secret status: "(1) the extent to which information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information;

(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” Restatement (First) of Torts § 757 (Am. L. Inst. 1939).

49. The confidential information regarding the nature of Verizon’s cables constitutes trade secrets, for reasons which are stated below.

50. Verizon is a commercial enterprise that is engaged in actual competition with a number of telecommunications companies in the New York area. Lasky Decl., **Exhibit F**, ¶ 10. Many of those companies are not subject to Commission jurisdiction and thus are rarely, if ever, required to submit documents to the Commission or Department.

51. The engineering data systems from which the Records were derived are vitally important to the creation, maintenance, extension, and augmentation of Verizon’s network. These systems are important to the reliable provision of communications services to Verizon’s customers all over the country, including New York State, and to the Company’s overall competitive position. Lasky Decl., **Exhibit F**, ¶ 5; Maloney Decl., **Exhibit G**, ¶ 3.

52. Verizon incurred significant costs in creating and maintaining these databases and will continue to do so for the foreseeable future. Lasky Decl., **Exhibit F**, ¶ 5.

53. The systems are complex and were created and populated with data over the course of several decades, corresponding to the long history of Verizon’s network operations in the State of New York. Lasky Decl., **Exhibit F**, ¶ 5.

54. Verizon treats the contents of these databases — including the nature of its cables — as highly confidential. Verizon does not make such information public and does not even distribute it internally except to selected employees and consultants with a sound business “need to know.” Lasky Decl., **Exhibit F**, ¶ 6.

55. Verizon offers its services in a robust marketplace in which it competes head-to-head with other providers offering alternative communications services using technologies both similar to, or vastly different from, those used by Verizon. A scenario in which Verizon's competitors have visibility into the nature of Verizon's network in New York, but in which Verizon has no reciprocal visibility into its competitors' networks, will necessarily tilt the balance of competitive success away from Verizon. Lasky Decl., **Exhibit F**, ¶¶ 9-10.

56. Absent disclosure under FOIL, competitors would not have access to the sort of detailed information concerning the nature of Verizon's copper cable network that is available from the Records. Lasky Decl., **Exhibit F**, ¶¶ 5, 8.

57. None of the confidential information regarding the nature of Verizon's cables is available to the public; nor could it be if not disclosed under FOIL. *Id.*

58. A final determination by the State's courts that the Records are subject to disclosure under FOIL would be tantamount to making them available to anyone (including Verizon's competitors), who could submit their own FOIL requests for the Records. Even absent additional requests, the information could, once it is provided to the *Wall Street Journal*, be published as part of that newspaper's extensive coverage of the lead-sheathed cable issue. FOIL disclosure is the sole means by which either the *Wall Street Journal* or any of Verizon's competitors could obtain the confidential information regarding the nature of Verizon's cables.

59. On the other hand, a final ruling that the non-location-specific portions of the Records *are* subject to a FOIL exception under N.Y. Publ. Off. Law § 87(2)(d) would not change the fact that both the Department of Public Service and the Department of Environmental Conservation have possession of the Records in their complete, unredacted form.

B. Disclosure Would Result in a Likelihood of Substantial Competitive Injury

60. Disclosure of the confidential information regarding the nature of Verizon's cables would result in a likelihood of substantial competitive injury to Verizon. Lasky Decl., **Exhibit F**, ¶ 5; Maloney Decl., **Exhibit G**, ¶ 3.

61. Knowledge of the nature of Verizon's copper cable network would enable competitors to exploit the confidential network information by using it to gain an unfair advantage and to undermine the Company's reputation by suggesting that Verizon's networks and technology are inferior to theirs, or by claiming that some danger is associated with Verizon's network. Lasky Decl., **Exhibit F**, ¶ 11.

62. Competitors not only *can* attempt to undermine Verizon's reputation by suggesting that Verizon's technology and networks are inferior to theirs, and inaccurately claim that some danger is associated with Verizon's network, but they have *actually done* so in analogous instances in the past. Lasky Decl., **Exhibit F**, ¶ 11.

63. Attached to Ms. Lasky's declaration is a cease-and-desist letter from Verizon to Cablevision, one of Verizon's competitors, in which a flier utilized by Cablevision claimed falsely that Verizon's fiber-optic network created electrical hazards to customers. In the letter, Verizon noted that it had received reports that Cablevision's business office representatives were making false, outrageous, and harmful statements to customers. For example, one representative, in response to a customer inquiring about the safety issues in the flier and whether she should be concerned, said: "Yes . . . that black box has a lot of recalls on it. People can get hurt as the box can actually blow up . . . and people have gotten hurt." Lasky Decl., **Exhibit F**, Ex. A.

64. False claims such as the example described above have a high likelihood of causing substantial competitive injury. Verizon indeed was so concerned about this competitive threat that

it sent a cease-and-desist letter to Cablevision to stop circulation of these fliers attempting to induce customers to terminate their existing contracts. Lasky Decl., **Exhibit F**, Ex. A.

65. Requiring Verizon to quantify the precise magnitude of the competitive harm that it suffered as a result of the Cablevision incident, or that it would suffer as a result of public disclosure of the information at issue here, would place too high a burden on Verizon, and would undermine the applicable legal standard for confidential commercial information.

66. Moreover, as explained above, the data in Exhibit A would enable competitors and others to assess important and competitively relevant operational parameters concerning Verizon New York's copper network in New York.

67. Accordingly, making any of the information regarding the nature of Verizon's copper cable network available to Verizon's actual and potential competitors would create a likelihood of substantial competitive injury to Verizon. Lasky Decl., **Exhibit F**, ¶ 11.

68. In sum, disclosure of the confidential information regarding the nature of Verizon's copper cable network would reveal trade secrets, would unfairly and improperly enable competitors to compete with Verizon in ways that they could not without this data, and would result in substantial competitive injury to Verizon.

69. As such, the confidential information regarding the nature of Verizon's copper cable network falls squarely within the statutory exemption for trade secrets and confidential commercial information that is set forth in N.Y. Pub. Off. Law § 87(2)(d).

70. Accordingly, Respondents should be enjoined from disclosing any and all of the confidential information regarding the nature of Verizon's copper cable network to the *Wall Street Journal* or to any other third party.

SECOND CAUSE OF ACTION**(Respondents' Determination Was Arbitrary and Capricious and an Abuse of Discretion)**

71. Petitioners repeat and reallege paragraphs 1 through 70 as if fully set forth herein.

72. The Respondents' determinations nonetheless to disclose the confidential information regarding the nature of Verizon's copper cable network pursuant to FOIL constitute a failure to perform duties enjoined upon them by law, are affected by errors of law, constitute an abuse of discretion, and are arbitrary and capricious. *See* CPLR § 7803(3).

ENTRY OF STAY REQUESTED

73. As set forth above, the Commission intends to make public and disclose the information regarding the nature of Verizon's copper cables in its possession as soon as November 16, 2023, making a stay pending this proceeding necessary.

74. Without a stay, Verizon will suffer irreparable injury. Once disclosure is made, it cannot be undone. To preserve its rights, and to make the review that Verizon seeks from this Court meaningful, Verizon respectfully requests that this Court grant a stay of the below determination, pursuant to CPLR § 7805, pending this proceeding.

75. Though Respondents have not consented to a stay in this proceeding, Respondents have consented to stays pending resolution of similar proceedings in the past. *See, e.g., Verizon New York Inc.*, 991 N.Y.S.2d at 845; *see also Verizon New York, Inc. v. Bradbury*, 803 N.Y.S.2d 409, 412 (Sup. Ct., Westchester Cnty. 2005).

71. No previous application has been made for the relief requested herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioners Verizon New York Inc., MCImetro Access Transmission Services LLC, MCI Communications Services LLC, Metropolitan Fiber Systems of New York,

Inc., and XO Communications Services, LLC respectfully request that an Order and Judgment be entered pursuant to CPLR § 7803(3):

1. Staying the RAO's and Secretary's Determinations, pursuant to CPLR § 7805, pending this proceeding.
2. Permanently enjoining enforcement of, and vacating, Respondents' determinations to disclose the Records and make them available to the public;
3. Permanently enjoining Respondents from disclosing the Records, or otherwise making them available to the public;
4. Declaring that Respondents have acted in an arbitrary and capricious manner;
5. Awarding Verizon attorneys' fees, costs, and disbursements in this proceeding pursuant to CPLR Article 86; and
6. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 14, 2023

MCGUIREWOODS LLP

By: 

Jeffrey J. Chapman
Lauren H. Mann
1251 Avenue of the Americas
20th Floor
New York, New York 10020
Telephone: (212) 548-7060
jchapman@mcguirewoods.com
lmann@mcguirewoods.com

Attorneys for Petitioners

VERIFICATION

Joseph A. Post, being duly sworn, deposes and says:

I am Associate General Counsel for and an officer of Verizon New York Inc., the Petitioner in this proceeding. I have read the foregoing petition, know its contents and am familiar with the facts upon which it is based. The petition is true to my knowledge, except as to those matters alleged on information and belief and, as to those matters, believe them to be true. The basis of this verification is my own personal knowledge, discussions with knowledgeable employees of the Petitioner and its affiliates, and the books and records of the Petitioner.

State: New Jersey
County: Monmouth

Joseph A Post
Joseph A. Post

Sworn to before me this
13th day of November, 2023

Joshua M Harris
Notary Public State of New Jersey

Joshua M Harris

my commission Expires August 13th 2024

