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February 25, 2008

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, Rhode Island 02888

Re: Docket No. 3917 – Verizon Proposed Tariff for "Voice Discount for Regional Essentials and Regional Value," filed on January 30, 2008.

Dear Ms. Massaro:

On behalf of Cox Rhode Island Telcom, LLC ("Cox"), and to assist the Commission in its review of a recent proposed tariff filed by Verizon Rhode Island ("Verizon RI"), I am writing to inform the Commissioners of a recent Complaint filed against Verizon, at the Federal Communications Commission ("FCC"). A copy of this FCC Complaint (filed on February 11, 2008) is attached.

This FCC Complaint challenges Verizon's "retention marketing" activities of the type that appear to be embedded into Verizon's proposed tariff before the Rhode Island Commission in this docket.

Verizon's Proposed Tariff. On January 30, 2008, Verizon filed tariff materials (RI PUC No. 15) proposing to introduce discounts for certain voice customers, docketed for review as No. 3917 (copy attached). According to the Executive Summary submitted: "The Voice Discount provides a monthly credit for a term of 12 months to residential customers who are considering disconnecting Verizon service, **have requested the disconnection of Verizon service**, or are disconnecting service with a competitor to establish service with Verizon." (emphasis added).

The proposed tariff language further explains: "The Voice Discount is available to customers who ". . . **(ii) are in the process of disconnecting their dial tone service and agree to retain the service . . .**" (proposed PUC No. 15.13.2(F); PUC 15.14.2)(emphasis added).

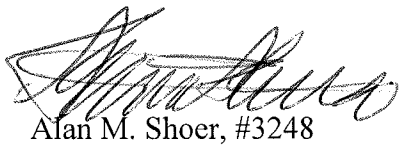
What is not clear from this proposal is whether the discount, and retention marketing efforts, will be instituted by Verizon when Verizon learns of a customer's request to disconnect **through a carrier-to-carrier port request**. If the initial request to disconnect Verizon service (as Cox suggests happens every day) is made by a competitor, on behalf of the customer, through

the ordinary local number portability (LNP) process, and if Verizon takes this information to contact the customer directly to engage in "retention marketing," by offering the "voice discount," then Verizon will be engaging in exactly the practice that is the subject of the FCC Complaint and under review at the FCC.

According to this FCC Complaint, the use by Verizon of proprietary information that it receives from its competitors in a port request to trigger efforts to stop the process and offer customers discounts to induce customers to cancel their orders for competitive services is both anticompetitive and in violation of sections 222 of the Communications Act and FCC Rules. See FCC Complaint, attached.

Cox therefore supplies the Commission with this FCC Complaint so that the Commission can be fully apprised of pending challenges at the FCC that may relate to this tariff filing.

Respectfully submitted,



Alan M. Shoer, #3248
Attorney for Cox Rhode Island Telcom, LLC

Attachment

cc: Alexander Moore, Esquire (with attachment)
Ms. Theresa O'Brien (with attachment)

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#3917

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PUBLIC UTILITIES COMMISSION

Theresa L. O'Brien
Vice President – Regulatory Affairs

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Providence, RI 02903

Phone 401 525-3060
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theresa.obrien@verizon.com

January 30, 2008

Ms. Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Dear Ms. Massaro:

We are filing, herewith, for effect February 29, 2008, tariff material consisting of:

RI PUC No. 15

Part/Section	Revision of Page(s)	Original of Page(s)
A/15	N/A	25.2 and 26.1
M/1	63	N/A

In this filing, Verizon Rhode Island ("Verizon RI") is proposing to introduce the Voice Discount for Regional Essentials and Regional Value. The attached Executive Summary provides details of the service offering.

Verizon certifies that the rates for Regional Essentials and Regional Value with the Voice Discount are not less than the Long-run Incremental Costs of providing the services.

If you have any questions regarding this filing, please contact Frances O'Neill-Cunha of my staff at 401 525-3560.

Enclosed are an original and nine copies of the tariff material. Please return a copy of this letter with your stamp of receipt.

Respectfully submitted,

Theresa L. O'Brien

Theresa L. O'Brien

Attachments

Verizon Rhode Island
Voice Discount
January 2008

Executive Summary

Description of Filing

In this filing, Verizon Rhode Island ("Verizon RI") introduces a new pricing option known as the *Voice Discount.* The Voice Discount provides a monthly credit for a term of 12 months to residential customers who are considering disconnecting Verizon service, have requested the disconnection of Verizon service, or are disconnecting service with a competitor to establish service with Verizon. In order to be eligible for the credit, the customer must meet the above requirements and agree to retain or establish Verizon service and subscribe to one of the following options:

- An additional line *with* Regional Essentials.
- Regional Essentials *with* a qualifying long distance calling plan.
- Regional Value.
- Regional Value *with* a qualifying long distance plan.

Regional Essentials provides customers unlimited local, unlimited regional toll and three of the most popular calling features (Call Waiting, Caller ID and Home Voice Mail). Regional Value provides customers unlimited local and regional toll calling. These services are marketed under the Verizon Freedom family of services.

The amount of the Voice Discount is as follows:

Service	Verizon Voice Discount
Regional Essentials with an additional line	$17.05
Regional Essentials bundled with a long distance calling plan	$10.00
Regional Value	$17.05
Regional Value bundled with a long distance calling plan	$15.00

Following the 12-month discount period, regular rates will apply. Customers will not automatically be enrolled in this offering. Instead, the Voice Discount will be provided to qualifying customers upon customer request or upon the customer's acceptance of a suggestion, recommendation, or offer of the discount made by Verizon.

The *Voice Discount*, provided to Regional Essentials and Regional Value customers, is designed to meet the needs of customers who continue to look for value in their telecommunications service and enables Verizon RI to respond to increased competition in the marketplace. Verizon and its competitors continue to bundle services in response to customer needs and competitive pressures.

Verizon certifies that the rates for Regional Essentials and Regional Value with the Voice Discount are not less than the Long-run Incremental Costs of providing the services.

15. Service Packages

15.13 Regional Essentials

15.13.2 Application of Rates and Charges

F. **Voice Discount** provides a discount to a residential customer who agrees to subscribe to Regional Essentials and a qualifying unlimited long distance calling plan as described below, for a 12-month term. Also, a customer agreeing to subscribe to an additional line with Regional Essentials for a 12-month term is eligible for the Voice Discount. (N)

The Voice Discount is available to customers (i) who call Verizon Rhode Island to disconnect their Verizon dial tone service and agree to retain the service; or (ii) are in the process of disconnecting their dial tone service and agree to retain the service; or (iii) establish dial tone service with Verizon Rhode Island after disconnecting their dial tone service from another provider; or (iv) agree to add an additional line(s).

Customers will not automatically be enrolled in this offering. The Voice Discount will be provided to qualifying customers only upon customer request or upon customer acceptance of a suggestion, recommendation, or offer of the discount made by Verizon.

1. The Voice Discount, as specified in Part M of this Tariff, will apply from the date it is implemented on a customer's account through the entire 12-month term of the customer's commitment. If, prior to the end of the 12-month term, the eligible customer removes Regional Essentials or the qualifying unlimited long distance calling plan associated with Regional Essentials, the customer will lose the Regional Essentials Voice Discount.
2. Qualifying unlimited long distance calling plans must be consistent with the Plan O Service - Unlimited as found in the Bell Atlantic Communications, Inc d/b/a Verizon Long Distance Posted Rates, Terms and Conditions.
3. Each product must be purchased through or billed by Verizon Rhode Island.
4. There is no charge for eligible customers to enroll in the Voice Discount offering. (N)

15. Service Packages

15.14 Regional Value

15.14.2 Application of Rates and Charges		
E.	**Voice Discount** provides a discount to a residential customer who agrees to subscribe to Regional Value for a 12-month term or Regional Value combined with a qualifying unlimited long distance calling plan as described below, for a 12-month term. The Voice Discount is available to customers (i) who call Verizon Rhode Island to disconnect their Verizon dial tone service and agree to retain the service; or (ii) are in the process of disconnecting their dial tone service and agree to retain the service; or (iii) establish dial tone service with Verizon Rhode Island after disconnecting their dial tone service from another provider. Customers will not automatically be enrolled in this offering. The Voice Discount will be provided to qualifying customers only upon customer request or upon customer acceptance of a suggestion, recommendation, or offer of the discount made by Verizon.	(N)
1.	The Voice Discount, as specified in Part M of this Tariff, will apply form the date it is implemented on a customer's account through the entire 12-month term of the customer's commitment. If, prior to the end of the 12-month term, the eligible customer removes Regional Value, the customer will lose the Regional Value Voice Discount.	
2.	Qualifying unlimited long distance calling plans must be consistent with the Plan O Service - Unlimited as found in the Bell Atlantic Communications, Inc d/b/a Verizon Long Distance Posted Rates, Terms and Conditions.	
3.	Each product must be purchased through or billed by Verizon Rhode Island.	
4.	There is no charge for eligible customers to enroll in the Voice Discount offering.	(N)

1. Exchange and Network Services
1.15 Service Packages

1.15.14 Regional Essentials

ID	Service Category	Rate Element	Rate	USOC	
	Regional Essentials	Monthly – FiOS Bundle Discount – 12-month commitment – FiOS Internet (packages of less than 50M download speed)	10.01		
		Monthly – FiOS Bundle Discount – 12-month commitment – FiOS TV Premier	13.01		
		Monthly – FiOS Bundle Discount – 12-month commitment – FiOS Internet (packages of less than 50M download speed) and FiOS TV Premier	17.00		
		Monthly – FiOS Bundle Discount – 24-month commitment – FiOS Internet (packages of less than 50M download speed)	15.01		
		Monthly – FiOS Bundle Discount – 24-month commitment – FiOS TV Premier	17.01		
		Monthly – FiOS Bundle Discount – 24-month commitment – FiOS Internet (packages of less than 50M download speed) and FiOS TV Premier	17.00		
		Monthly – Voice Discount – additional line	17.05		(N)
		Monthly – Voice Discount – combined with a qualifying unlimited long distance calling plan	10.00		(N)

1.15.15 Regional Value

ID	Service Category	Rate Element	Rate	USOC	
	Regional Value	Monthly – Per line equipped	27.04		
		Monthly – Wireless Bundle Discount – ONE-BILL® with Verizon Wireless 200 Minute Plan (excludes free nights and weekends)	5.00		
		Monthly – Voice Discount	17.05		(N)
		Monthly – Voice Discount – combined with a qualifying unlimited long distance calling plan	15.00		(N)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ACCELERATED DOCKET PROCEEDING:
ANSWER DUE WITHIN TEN DAYS OF SERVICE DATE

In the Matter of	)	
	)	
Bright House Networks, LLC,	)	File No. _____
Comcast Corporation, and	)	
Time Warner Cable Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Verizon California Inc.,	)	
Verizon Delaware LLC,	)	
Verizon Florida LLC,	)	
Contel of the South, Inc.,	)	
Verizon South Inc.,	)	
Verizon New England Inc.,	)	
Verizon Maryland Inc.,	)	
Verizon New Jersey Inc.,	)	
Verizon New York Inc.,	)	
Verizon Northwest Inc.,	)	
Verizon North Inc.,	)	
Verizon Pennsylvania Inc.,	)	
GTE Southwest Incorporated	)	
d/b/a Verizon Southwest,	)	
Verizon Virginia Inc., and	)	
Verizon Washington, D.C., Inc.,	)	
	)	
Defendants.	)	

COMPLAINT

SUMMARY

Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc. (collectively, "Complainants"), directly and on behalf of certain of their operating subsidiaries and affiliates, bring this Accelerated Docket Complaint against various Verizon operating companies identified below (collectively, "Verizon").

Complainants have lost thousands of customers due to Verizon's unlawful retention marketing practices. In particular, Verizon is using proprietary information that it receives from its competitors as the party that executes carrier change requests to trigger efforts to induce consumers to cancel their orders for Complainants' competitive voice services while their telephone number ports are still pending. This blatantly anticompetitive conduct, which continues as of the filing of this Complaint, violates sections 222 and 201 of the Act, 47 U.S.C. §§ 222(b), 222(a), 201(b). Accordingly, Complainants ask that the Commission enjoin Verizon from continuing its retention marketing based on carrier change information; award damages to Complainants based on Verizon's unlawful inducements to customers to cancel their orders for the Competitive Services, in amounts to be determined in separate proceedings pursuant to section 1.722(d) of the Commission's rules; and award such additional relief as may be just and reasonable.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ACCELERATED DOCKET PROCEEDING:
ANSWER DUE WITHIN TEN DAYS OF SERVICE DATE

In the Matter of	)	
Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc.,	)	File No. _____
Complainants,	)	
v.	)	
Verizon California Inc., Verizon Delaware LLC, Verizon Florida LLC, Contel of the South, Inc., Verizon South Inc., Verizon New England Inc., Verizon Maryland Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Northwest Inc., Verizon North Inc., Verizon Pennsylvania Inc., GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Virginia Inc., and Verizon Washington, D.C., Inc.,	)	
Defendants.	)	

COMPLAINT

To the Commission:

Bright House Networks, LLC ("BHN"), Comcast Corporation ("Comcast"), and Time Warner Cable Inc. ("TWC") (collectively, "Complainants"), pursuant to section 208 of the

Communications Act of 1934, as amended ("Communications Act" or "Act"), 47 U.S.C. § 208, bring this Complaint directly and on behalf of certain of their operating subsidiaries and affiliates against the Verizon operating companies identified below (collectively, "Verizon"). Verizon has engaged in retention marketing practices in violation of sections 222 and 201 of the Act, 47 U.S.C. §§ 222(b), 222(a), 201(b). Specifically, Complainants show that:

Parties

1. Bright House Networks Information Services (Florida), LLC and Bright House Networks, LLC (collectively, "BHN") are both Delaware limited liability companies. Bright House Networks Information Services (Florida), LLC, through a predecessor company, was granted competitive local exchange carrier ("CLEC") authority by the Florida Public Service Commission in 2003. BHN has provided competitive voice service in Florida since the summer of 2004.[1] It currently provides voice service throughout the Tampa and Central Florida areas; it competes with Verizon in the Tampa area, and has been harmed there by Verizon's unlawful retention marketing practices. BHN's corporate headquarters are located at 5000 Campuswood Drive, Syracuse, New York, 13221. BHN's contact person responsible for this Complaint, Cody Harrison, can be reached at (212) 381-7117. BHN's FCC Registration Number ("FRN") is 0007508237.

2. Comcast Corporation ("Comcast") is a leading provider of cable, entertainment, and communications products and services in the United States. Through directly and indirectly wholly owned subsidiaries, Comcast provides retail voice services named Comcast Digital Voice in competition with Verizon in California, Delaware, the District of Columbia, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Oregon, Pennsylvania, South

[1] Affidavit of Timothy M. Frendberg (attached as Exhibit A) ("Frendberg Aff.") (BHN) ¶ 3.

Carolina, Texas, Virginia, and Washington.[2] Specifically, the following Comcast subsidiaries provide voice services in competition with Verizon's local voice services: Comcast IP Phone, LLC (providing service in California, Delaware, the District of Columbia, Florida, Illinois, Indiana, Maryland, Michigan, New Jersey, Pennsylvania, South Carolina, and Virginia); Comcast IP Phone II, LLC (providing service in California, Florida, Illinois, Indiana, Massachusetts, Michigan, Oregon, Pennsylvania, Virginia, and Washington); Comcast IP Phone III, LLC (providing service in Florida); Comcast IP Phone IV, LLC (providing service in Texas); Comcast IP Phone V, LLC (providing service in Texas); Comcast IP Phone VI, LLC (providing service in New Jersey); and Comcast IP Phone VII, LLC (providing service in Illinois and Indiana).[3] In addition, through directly and indirectly wholly owned subsidiaries, Comcast operates the following state-certified CLECs that provide telecommunications services to, *inter alia*, Comcast's voice-over-IP ("VoIP") providers: Comcast Phone of California, LLC; Comcast Phone of Delaware, LLC; Comcast Phone of D.C., LLC; Comcast Phone of Florida, LLC; Comcast Phone of Illinois, LLC; Comcast Phone of Central Indiana; Comcast Phone of Northern Maryland, LLC; Comcast Phone of Massachusetts, Inc.; Comcast Phone of Michigan, LLC; Comcast Business Communications, LLC (New Jersey); Comcast Phone of Oregon, LLC; Comcast Phone of Pennsylvania, LLC; Comcast Phone of South Carolina, LLC; Comcast Phone of Texas; Comcast Phone of Virginia, LLC; Comcast Phone of Northern Virginia, LLC; and Comcast Phone of Washington, LLC.[4] Comcast's corporate headquarters are located at 1500 Market Street, Philadelphia, Pennsylvania, 19102. Comcast's contact person responsible for this Complaint, Brian Rankin, can be reached at (215) 286-7325. Comcast's FRN is 0006329247.

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[2] *See* Affidavit of Susan Jin Davis (attached as Exhibit B) ("Davis Aff.") (Comcast) ¶ 6.

[3] *Id.*

[4] *Id.* ¶ 8.

3. TWC is a leading provider of cable, entertainment, and communications products and services in the United States. It is the ultimate parent of TWC Digital Phone LLC, which provides Digital Phone — a facilities-based competitive voice service that makes use of voice-over-IP technology — in many states throughout the country.[5] TWC introduced Digital Phone in 2003 and rapidly expanded its geographic footprint to include each of the states in which TWC offers cable television and broadband Internet access services. TWC offers Digital Phone in competition with Verizon's telephone services — and has been harmed by Verizon's unlawful retention marketing — in New York and Pennsylvania, and possibly other states as well.[6] TWC relies on Sprint Communications Company L.P. ("Sprint") to interconnect with Verizon and to provide related wholesale telecommunications services.[7] TWC's corporate headquarters are located at 60 Columbus Circle, New York, NY 10023. TWC's contact person responsible for this Complaint, Julie Laine, can be reached at (203) 328-0671. TWC's FRN is 0007556251.

4. Defendants are telecommunications carriers that operate as incumbent local exchange carriers ("LECs") in the following states: California (Verizon California Inc.), the District of Columbia (Verizon Washington, DC, Inc.), Delaware (Verizon Delaware LLC), Florida (Verizon Florida LLC), Illinois (Verizon North Inc. and Verizon South Inc.), Indiana (Verizon North Inc. and Contel of the South, Inc.), Maryland (Verizon Maryland Inc.), Massachusetts (Verizon New England Inc.), Michigan (Verizon North Inc. and Contel of the South, Inc.), New Jersey (Verizon New Jersey Inc.), New York (Verizon New York Inc.), Oregon (Verizon Northwest Inc.), Pennsylvania (Verizon North Inc. and Verizon Pennsylvania

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[5] *See* Affidavit of Michael K. Hardey (attached as Exhibit C) ("Hardey Aff.") (TWC) ¶ 3.

[6] *Id.* ¶ 5.

[7] *Id.* ¶¶ 4-5; *see also* Affidavit of Timothy K. Johnson (attached as Exhibit D) ("Sprint Aff.") ¶¶ 3-5.

Inc.), South Carolina (Verizon South Inc.), Texas (GTE Southwest Incorporated d/b/a Verizon Southwest), Virginia (Verizon Virginia Inc. and Verizon South Inc.), and Washington (Verizon Northwest Inc.). Defendants are commonly owned and controlled by Verizon Communications, Inc., the second-largest telecommunications company in the United States, and one of the largest in the world. As of June 30, 2007, Verizon LECs served more than 40 million switched access lines.[8]

5. To the best of Complainants' knowledge, the name, address, and telephone number of each Verizon Defendant whose conduct is addressed by this Complaint are as follows:

a. Verizon California Inc., 112 Lake View Canyon Rd., Thousand Oaks, CA 91362; (805) 372-6000;

b. Verizon Delaware LLC, 901 N. Tatnall St., 2nd Floor, Wilmington, DE 19801; (302) 571-1571;

c. Verizon Florida LLC , 201 N. Franklin Street, Tampa, FL 33602; (813) 620-2518;

d. Contel of the South, Inc., 124 W. Allegan Street, Suite 1100, Lansing, MI 48933; (517) 484-3666;

e. Verizon South Inc., 600 Hidden Rdg, Irving, TX 75038; (972) 718-5600;

f. Verizon New England Inc., 185 Franklin Street, Boston, MA 02110; (617) 743-9800;

g. Verizon Maryland Inc., 1 East Pratt Street, Baltimore, MD 21202; (410) 539-9900;

h. Verizon New Jersey Inc., 540 Broad Street, Newark, NJ 07101; (973) 649-9900;

i. Verizon New York Inc., 140 West Street, New York, NY 10007; (212) 395-1000;

j. Verizon Northwest Inc., 600 Hidden Rdg, Irving, TX 75038; (972) 718-5600;

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[8] Verizon Communications Fact Sheet, *available at* http://newscenter.verizon.com/kit/vcorp/factsheet.html.

k. Verizon North Inc., 140 West Street, New York, NY 10007; (212) 395-1000;

l. Verizon Pennsylvania Inc., 1717 Arch Street, 22nd Floor, Philadelphia, PA 19103; (215) 466-9900;

m. GTE Southwest Incorporated d/b/a Verizon Southwest, 600 Hidden Rdg, Irving, TX 75038; (972) 718-5600;

n. Verizon Virginia Inc., 600 East Main Street, Richmond, VA 23219; (703) 937-0075; and

o. Verizon Washington, D.C., Inc., 2055 L Street, NW, Washington, DC 20006; (202) 392-3887.

In addition, the address and phone number of Defendants' ultimate parent company, Verizon Communications, Inc., is 140 West Street, New York, NY 10007; (212) 395-1000.

6. Joinder of Complainants' causes of action is appropriate pursuant to section 1.723(a) of the Commission's rules, because Complainants all allege that Verizon is engaging in materially identical retention marketing practices in violation of sections 222 and 201 of the Act, and each Complainant relies on processes for submitting the carrier-to-carrier information on which Verizon's retention marketing improperly relies that are essentially identical in all respects material to this Complaint.[9] In addition, Verizon's arguments in defense of its retention marketing do not vary based on the identity of any Complainant or any of the specific means by which any Complainant submits carrier-to-carrier information to Verizon.

Facts Common to All Counts

A. Number Porting Process

7. Because incumbent LECs still serve a large majority of landline subscribers, as new entrants in the voice services marketplace Complainants must build their respective

[9] *See* 47 C.F.R. § 1.723(a).

subscriber bases, in large part, by persuading existing customers of incumbent LECs to switch providers and subscribe to Complainants' competitive offerings.

8. Each Complainant provides facilities-based voice services to retail customers (collectively, the "Competitive Services") by relying on a wholesale CLEC — either an affiliate (in the cases of BHN and Comcast) or a commercial partner (in the case of TWC) (collectively, the "Competitive Carriers") — to interconnect with incumbent LECs and to provide transmission services, local number portability ("LNP") functions, and other functionalities.[10] While each Complainant uses a different Competitive Carrier to provide telecommunications services necessary to serve end users, the processes by which the Competitive Carriers initiate a telephone number port request and by which Verizon addresses the request are industry standard and thus substantially similar for each Complainant for purposes of this Complaint.[11] Any

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[10] Frendberg Aff. ¶¶ 2, 4; Affidavit of Marva B. Johnson (attached as Exhibit E) ("Johnson Aff.") (BHN) ¶¶ 2-5, 7; Affidavit of William Solis (attached as Exhibit F) ("Solis Aff.") (Comcast) ¶¶ 6-8; Hardey Aff. ¶¶ 4-5; Sprint Aff. ¶¶ 3-5. The Commission has "expressly contemplated that VoIP providers would obtain access to and interconnection with the PSTN through competitive carriers" and has lauded that model as pro-competitive. *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3519 ¶ 13 (WCB 2007) ("*Time Warner Cable Declaratory Ruling*"); *see also Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36 & CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188, at ¶ 20 (rel. Nov. 8, 2007) ("*VoIP LNP Order*") (acknowledging this arrangement in imposing porting obligations on the VoIP provider as well as its numbering partner).

[11] *See, e.g.*, Johnson Aff. ¶¶ 6-8; Solis Aff. ¶¶ 6-8. In fact, the Commission itself has prescribed the industry-standard process flows applicable to porting a number from one carrier to another. *See* North American Numbering Council, LNPA Technical and Operational Task Force Report, Appendix B, *Inter-Service Provider LNP Operations Flows – Provisioning*, Figure 1 ("LNP Process Flow Chart") (relevant excerpts of which are attached to Exhibit E (Johnson Aff.) as Exhibit MJ-1); *see also* Johnson Aff. ¶ 6 & n.1. This specific process flow was adopted as a

differences that might exist as between these processes are not material to any of the issues raised in this Complaint.

9. When a Complainant receives an order for its retail voice service from a consumer who wants to retain his or her phone number, the Complainant first confirms the carrier change through third-party verification (or through a letter of authorization).[12]

10. Once the order has been confirmed, the relevant Competitive Carrier (directly or via a contractor) submits a Local Service Request ("LSR") to Verizon's wholesale operation, requesting that Verizon port the customer's telephone number to the Competitive Carrier so that the Complainant served by the Competitive Carrier may initiate retail service.[13] Following its receipt and acceptance of the LSR, Verizon transmits a confirmation generally known as a Firm Order Confirmation ("FOC") to the Competitive Carrier, typically within 24 hours of receiving the LSR, establishing a date and time for the execution of the number port.[14]

11. Verizon's wholesale organization offers Competitive Carriers LNP functionality in accordance with Commission regulations.[15] These regulations, *inter alia*, state that a local carrier, such as Verizon, must "provide" number portability "in switches for which another carrier has made a specific request" for that functionality.[16] In some cases, Verizon provides

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requirement by the Commission in August 1997. Later that year the Commission adopted it as an industry-wide requirement. *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 ¶¶ 55-56 & n.159 (1997) (citing to and approving the LNP Process Flow Chart).

[12] Frendberg Aff. ¶ 4; Solis Aff. ¶ 9; Hardey Aff. ¶ 7.

[13] Johnson Aff. ¶¶ 5-7; Frendberg Aff. ¶ 4; Solis Aff. ¶ 10; Hardey Aff. ¶ 11; Sprint Aff. ¶ 8.

[14] Johnson Aff. ¶ 7; Solis Aff. ¶ 11; Hardey Aff. ¶ 13; Sprint Aff. ¶ 13.

[15] 47 C.F.R. §§ 52.21-52.34; *see also* LNP Process Flow Chart.

[16] 47 C.F.R. § 52.23(b)(1); *see also id.* § 52.23(a) (stating that "all local exchange carriers (LECs) must *provide* number portability in compliance" with specified performance criteria) (emphasis added); 47 U.S.C. § 251(b)(2) (stating that all LECs have a "duty to provide, to the extent technically feasible, number portability").

LNP pursuant to its interconnection agreements with various LECs, including the Competitive Carriers.[17]

12. A number port from the incumbent LEC to a competitor cannot be completed without the participation of the incumbent LEC.[18] On information and belief, Verizon takes several affirmative steps to execute the port requested by the Competitive Carrier.[19] These steps include assigning a "ten-digit trigger" to the customer's telephone number that will ensure the proper routing of calls throughout the process of transitioning the telephone number to the new provider, and confirming the subscription record in the NPAC database.[20] In addition, after the Competitive Carrier sends a port activation message to NPAC at the prescribed date and time for the port, Verizon will disconnect the customer's retail service from its own switch.[21]

13. These established processes have enabled Complainants to deliver competitive voice services to millions of subscribers, finally delivering on the promise of facilities-based competition embodied in the Telecommunications Act of 1996.

B. Discovery of Verizon's Retention Marketing Practices

14. Beginning in or around June 2007, the Competitive Carriers observed that Verizon suddenly was cancelling an unusually high number of LNP requests during the interval while such ports remained pending.[22] More specifically, rather than executing ports on the dates

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[17] Solis Aff. ¶ 8; Hardey Aff. ¶ 5; Sprint Aff. ¶ 6.

[18] Johnson Aff. ¶¶ 6, 10; Solis Aff. ¶ 12; Sprint Aff. ¶¶ 15-16.

[19] Johnson Aff. ¶¶ 7, 10; Solis Aff. ¶ 13; Sprint Aff. ¶¶ 15-16.

[20] Johnson Aff. ¶¶ 6-7, 10; Solis Aff. ¶ 13.

[21] Johnson Aff. ¶¶ 7, 10; Solis Aff. ¶ 13; Sprint Aff. ¶ 15.

[22] Johnson Aff. ¶ 13; Frendberg Aff. ¶ 5; Affidavit of David Kowolenko (attached as Exhibit G) ("Kowolenko Aff.") (Comcast) ¶ 7; Affidavit of Shawn Rondeau (attached as Exhibit H) ("Rondeau Aff.") (TWC) ¶ 3; Affidavit of Beth Griffin (attached as Exhibit I) ("Griffin Aff.") (TWC) ¶ 3; Affidavit of Tim Hodge (attached as Exhibit J) ("Hodge Aff.") (TWC) ¶ 3.

established by the FOCs, Verizon began issuing "jeopardy" or error notices to the Competitive Carriers and to NPAC in connection with large numbers of orders, and placing such ports "in conflict" in the NPAC database.[23] Unless and until such conflicts are resolved, execution of the port request is blocked.[24] Indeed, shortly after issuing such a jeopardy on an order, Verizon would cancel the pending port request.[25]

15. In response to these mounting cancellations, Complainants and/or the Competitive Carriers investigated the potential causes, including by communicating with numerous consumers whose service orders were cancelled.[26] These customers reported that they had been contacted by Verizon shortly after placing an order for Competitive Services — in many cases, within 24 hours.[27] Such contacts consisted of express delivery letters, e-mails, and telephone calls in which Verizon directed the customer to "STOP" the "pending order to disconnect . . . Verizon service,"[28] expressed Verizon's desire to help the customer "avoid the hassle of switching companies," and asked "What can we do to retain your business?"[29] Verizon also offered some customers one or more $50, $100, or $200 gift cards to cancel their orders for

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[23] Johnson Aff. ¶¶ 11, 13; Kowolenko Aff. ¶ 7; Rondeau Aff. ¶ 3; Griffin Aff. ¶ 3; Hodge Aff. ¶ 3.

[24] Johnson Aff. ¶¶ 11, 13; Kowolenko Aff. ¶ 7; Sprint Aff. ¶ 16(a).

[25] *See, e.g.*, Rondeau Aff. ¶ 4; Griffin Aff. ¶ 4; Hodge Aff. ¶ 4.

[26] Johnson Aff. ¶¶ 13, 15; Frendberg Aff. ¶¶ 5-6; Kowolenko Aff. ¶¶ 8, 10-11; Rondeau Aff. ¶¶ 3-5; Griffin Aff. ¶¶ 3-5; Hodge Aff. ¶¶ 3-5.

[27] Johnson Aff. ¶¶ 13, 15; Frendberg Aff. ¶¶ 5-6; Kowolenko Aff. ¶¶ 10-11; Rondeau Aff. ¶ 4; Griffin Aff. ¶ 4; Hodge Aff. ¶ 4.

[28] Kowolenko Aff. ¶ 18.

[29] *See, e.g.*, Frendberg Aff. ¶ 6 & Exhibit TF-1; Kowolenko Aff. ¶¶ 12-18; Rondeau Aff. ¶ 5; Griffin Aff. ¶ 5; Hodge Aff. ¶ 5.

competitive service.[30] These facts are not in dispute: Verizon has conceded that it has contacted Verizon customers who have ordered a Competitive Service from one of the Complainants, by direct mail and/or telephone, and offered price incentives and gift cards in an attempt to convince the customer not to switch carriers while Complainants' orders to port the customers to their services remained pending.[31]

16. While some customers rebuffed Verizon's inducements to stay while the port requests were pending, thousands of customers accepted Verizon's offers, after which Verizon cancelled their orders for the Competitive Services.[32]

17. Complainants further have confirmed that thousands of customers who accepted Verizon's retention marketing offers did not call or otherwise initiate contact with Verizon.[33] Rather, Verizon is using information obtained in the first instance from the LSRs submitted by the Competitive Carriers as the basis for its retention marketing efforts.

18. On information and belief, Verizon makes use of this information in the following manner. Verizon's wholesale organization feeds information from LSRs into "retail service disconnect reports."[34] Verizon's retail personnel then use these reports in their retention marketing campaign.[35] Codes present in the retail service disconnect reports indicate whether an impending cancellation of Verizon's local telephone service resulted from a decision to purchase

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[30] *See, e.g.*, Frendberg Aff. ¶ 6 & Exhibit TF-1; Kowolenko Aff. ¶ 18; Rondeau Aff. ¶ 5; Griffin Aff. ¶ 5; Hodge Aff. ¶ 5.

[31] *See* Exhibit R at 3 (Verizon response regarding BHN); Exhibit P at 3 (Verizon response regarding Comcast); Exhibit M at 3 (Verizon response regarding TWC).

[32] Frendberg Aff. ¶ 6; Kowolenko Aff. ¶¶ 10, 21, 30-31.

[33] Frendberg Aff. ¶ 6; Kowolenko Aff. ¶ 11; Affidavit of Mike Reinink (attached as Exhibit K) (Comcast) ¶ 5; Rondeau Aff. ¶¶4-5; Griffin Aff. ¶¶ 4-5; Hodge Aff. ¶¶ 4-5.

[34] Johnson Aff. ¶ 15; Kowolenko Aff. ¶ 24-25, 28; Sprint Aff. ¶¶ 18-19.

[35] *See, e.g.*, Johnson Aff. ¶ 15; Hardey Aff. ¶ 16; Sprint Aff. ¶¶ 18-19.

a competitor's service, as opposed to other causes (such as geographic relocation or termination for nonpayment), thus allowing Verizon to directly target customers who are attempting to switch providers.[36] Alternatively, on information and belief, Verizon sometimes treats the LSR itself as a retail service disconnect report.[37] In either event, Verizon would be unable to engage in this targeted retention marketing but for its receipt and subsequent use of the carrier change information contained in the LSR, which is either directly or indirectly the source of the carrier change information upon which Verizon relies.

C. Legal Background

19. As discussed further below, the Commission has repeatedly and unequivocally held that carriers are flatly barred from using "carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns."[38] That is precisely what Verizon is doing, in violation of sections 222 and 201 of the Communications Act.

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[36] *See, e.g.*, Hardey Aff. ¶ 16.

[37] *See, e.g., id.*

[38] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14449 ¶ 77 (1999) ("*CPNI Reconsideration Order*"); *see also Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 5099, 5109-10 ¶¶ 26-28 (2003) ("*Third Slamming Reconsideration Order*"); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14917 ¶ 131 (2002) ("*CPNI Third R&O*"); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1572 ¶ 106 (1998) ("*1998 Slamming Order*"); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order, 13 FCC Rcd 8061, 8126-27 ¶ 85 (1998) ("*1998 CPNI Order*").

20. In this area, the Commission has drawn a sharp, common-sense distinction based on the time the marketing occurs. The Commission has authorized LECs to use carrier change information to trigger "winback" marketing — which by definition occurs *after* the LEC executes the carrier change.[39] But the Commission has declared "retention" marketing — marketing that occurs *before* the LEC executes the carrier change — to be almost always unlawful. The Commission has recognized that retention marketing is permissible *only* in the exceptional circumstance where the LEC "has independently learned from its retail operations that a customer is switching to another carrier."[40]

21. This bright-line distinction between retention marketing and winback marketing implements clear Commission policy judgments. The new carrier necessarily depends on the cooperation of the LEC (which is also the soon-to-be-former carrier) in smoothly establishing service for the customer who is switching. It would create an obvious conflict of interest to allow the soon-to-be-former carrier to exploit its advance notice of the switch to try to retain the customer. Moreover, targeted retention marketing of the type at issue here, by its nature, does not, and cannot, occur on a level playing field. When the LEC learns of an impending carrier change based on the submission of an LSR, it has a unique window during which it can offer gift cards or engage in aggressive sales pitches while an LNP request is pending, without the new carrier's knowledge. By contrast, where a customer accepts such a retention offer, the new carrier has no equivalent opportunity to enhance its own marketing efforts to the customer before the cancellation of the change order takes effect; instead, it learns about it only after the fact and is forced to undertake its own marketing efforts from scratch. The result is both unfair and anticompetitive.

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[39] *CPNI Reconsideration Order*, 14 FCC Rcd at 14444-48 ¶¶ 67-75.

[40] *Id.* at 14450 ¶ 79.

22. None of the cancellations at issue in this Complaint concerns winback marketing that occurs after the port has been completed, or instances in which Verizon's retail personnel learned of a customer's planned departure directly from the customer. This Complaint focuses exclusively on Verizon's improper retention marketing based on the carrier change information contained in LSRs submitted by Complainants' Competitive Carrier partners.

D. Procedural History

23. After becoming aware of Verizon's unlawful retention marketing, each Complainant made informal contact with Verizon personnel and followed up with formal cease-and-desist letters in which they described their allegations.[41] Verizon responded in a similar manner to each of these letters.[42]

24. When Verizon refused to halt its unlawful marketing, Complainants submitted letters to the Commission's Enforcement Bureau stating their intention to file formal complaints and seeking placement on the Accelerated Docket.[43] Verizon sent similar responses to each Complainant,[44] and BHN and TWC each sent formal replies.[45] The parties participated in a mediation session supervised by Enforcement Bureau staff on December 10, 2007 in a good faith effort to resolve their dispute, but were unable to do so.

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[41] *See* Exhibit Q (attaching Letter from Cody Harrison, Bright House Networks, to Joshua Swift, Verizon (Oct. 2, 2007)); Exhibit O (attaching Letter from Catherine Avgiris, Comcast Corporation, to Virginia Ruesterholz, Verizon (Sept. 28, 2007)); Exhibit L (attaching Letter from Matthew Brill, Counsel to Time Warner Cable Inc., to Joshua Swift, Verizon (Sept. 21, 2007)).

[42] *See* Exhibit Q (attaching Letter from Joshua Swift, Verizon, to Cody Harrison, Bright House Networks (Oct. 5, 2007)); Exhibit O (attaching Letter from Joshua Swift, Verizon, to Catherine Avgiris, Comcast Corporation (Oct. 3, 2007)); Exhibit L (attaching Letter from Joshua Swift, Verizon, to Matthew Brill, Counsel to Time Warner Cable Inc. (Sept. 28, 2007)).

[43] *See* Exhibits L, O, Q

[44] *See* Exhibits M, P, R.

[45] *See* Exhibits N, S.

25. On January 7, 2008, the Chief of the Market Disputes Resolution Division of the Enforcement Bureau authorized Complainants to file an Accelerated Docket Complaint against Verizon.[46] On January 14, 2008, the parties participated in a pre-complaint conference before the Enforcement Bureau.

26. BHN and Comcast are involved in pending proceedings before the Florida Public Service Commission involving the same basic facts as those described above, focusing on Verizon's independent violations of Florida state law.

Count One: Violation of 47 U.S.C. § 222(b)

27. Complainants incorporate by reference the allegations stated in paragraphs 1 through 26 above.

28. Based on the foregoing, Verizon has violated and continues to violate section 222(b) of the Communications Act of 1934, as amended (the "Act"). Section 222(b) provides that a "telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."[47]

29. The violation is clear based on the plain terms of section 222(b). When the Competitive Carriers submit LSRs based on a customer's decision to purchase Competitive Services, the carrier-to-carrier information conveyed by those LSRs is proprietary within the meaning of section 222(b).[48]

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[46] *See* Exhibit T.

[47] 47 U.S.C. § 222(b).

[48] *See, e.g., 1998 Slamming Order*, 14 FCC Rcd at 1572 ¶ 106 ("[C]arrier change information is carrier proprietary information and, therefore, pursuant to section 222(b), the executing carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier."). Of course, as a matter of common business dealing, this type of customer-

30. None of the customers whose cancellations are at issue in this Complaint initiated contact with Verizon to report their decision to switch to a Complainant as their voice service provider.[49] The only possible source of the information that these customers planned to discontinue their service with Verizon is the LSRs submitted by the Competitive Carriers to Verizon's wholesale operation.

31. Section 222(b) prohibits Verizon from using the LNP information contained in LSRs for retention marketing purposes. When first confronted a decade ago with the BOCs' efforts to justify retention marketing based on carrier proprietary information, and in several orders since that time, the Commission determined in parallel proceedings that such conduct is both anticompetitive and contrary to the statute's express terms.

32. First, in its orders concerning carriers' use of customer proprietary network information ("CPNI") and carrier proprietary information, the Commission rejected the argument that "section 222(d)(1) permits the former (or soon-to-be former) carrier to use the CPNI of its former customer (i.e., a customer that has placed an order for service from a competing provider) for 'customer retention' purposes."[50]

33. The Commission reaffirmed and elaborated on this ruling on reconsideration, broadly prohibiting the use of *any* "carrier-to-carrier information" — whether contained in "PIC" orders (which change a subscriber's long distance carrier), "switch" orders (which refer more generally to carrier change requests), or any other format — "to trigger retention marketing

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specific information, about specific sales to specific people, is inherently highly confidential. *See, e.g.*, Johnson Aff. ¶ 6; Frendberg Aff. ¶ 7.

[49] Frendberg Aff. ¶ 6; Kowolenko Aff. ¶ 11; Rondeau Aff. ¶¶4-5; Griffin Aff. ¶¶ 4-5; Hodge Aff. ¶¶ 4-5.

[50] *1998 CPNI Order*, 13 FCC Rcd at 8126 ¶ 85.

campaigns."[51] The Commission left no doubt that "Section 222(b) restricts the use of such proprietary information and contains an outright prohibition against the use of such proprietary information for a carrier's own marketing efforts."[52]

34. After initially prohibiting the use of carrier proprietary information in both "retention" marketing (which occurs *before* the carrier change process is completed) and "winback" marketing (which occurs *after* the customer has changed carriers), the Commission concluded that its winback restrictions were overbroad. It therefore held that, consistent with section 222, carriers may use proprietary information "to engage in winback marketing campaigns to target valued former customers that have switched to other carriers."[53] But the Commission maintained a bright line rule pursuant to which *retention* marketing based on carrier-to-carrier information remained impermissible.[54]

35. Following the remand of certain CPNI rules (not at issue here) by the U.S. Court of Appeals for the Tenth Circuit, the Commission again "reaffirmed [its] existing rule that a carrier executing a change for another carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier."[55]

36. The Commission reached the same conclusions regarding retention marketing in its orders concerning slamming and related issues. As in the CPNI context, the Commission was concerned "that an incumbent LEC might attempt to engage in conduct that would blur the distinction between its role as a neutral executing carrier and its objectives as a marketplace

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[51] *CPNI Reconsideration Order*, 14 FCC Rcd at 14449 ¶ 77.

[52] *Id.* at 14450 ¶ 77.

[53] *Id.* at 14445 ¶ 67.

[54] *Id.* at 14449-50 ¶ 75.

[55] *CPNI Third R&O*, 17 FCC Rcd at 14917 ¶ 131 (internal quotation marks and citation omitted).

competitor."[56] The Commission therefore ruled, pursuant to section 222(b), that "an executing carrier may not use information gained from a carrier change request for any marketing purposes, including any attempts to change a subscriber's decision to switch to another carrier."[57] The Commission also made clear that the scope of section 222(b) is not limited to any particular application but rather "may be construed broadly to cover a variety of situations."[58]

37. The Commission revisited this issue in 2003. It observed that no party "dispute[d] that, under section 222(b) of the Act, carrier change information cannot be disclosed for competitive benefit."[59] In fact, the point was sufficiently well-settled that even a leading association of incumbent LECs agreed that "Congress intended by the express terms of section 222(b) to prevent carriers from using information obtained from another to be used for the carrier's own marketing efforts against the submitting carrier."[60] Therefore, under the slamming orders, as under the CPNI decisions, there can be no doubt that Verizon's retention marketing violates section 222(b), because it "rel[ies] on specific information [it] obtain[s] from submitting carriers due solely to [its] position as [an] executing carrier[]."[61]

38. The Commission's orders applying section 222(b) to retention marketing are long since final, and Verizon, to the best of Complainants' knowledge, never sought reconsideration or judicial review (much less obtained reversal) of any of these orders. The Commission's orders thus are dispositive. In other words, the fact that the Commission's orders clearly

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[56] *1998 Slamming Order*, 14 FCC Rcd at 1572 ¶ 106.

[57] *Id.*

[58] *Id.* at 1572 ¶ 106 n.340.

[59] *Third Slamming Reconsideration Order*, 18 FCC Rcd at 5109 ¶ 26.

[60] *Id.* (quoting National Telecommunications Cooperative Association Petition at 16).

[61] *Id.* at 5110 ¶ 28.

proscribe Verizon's retention marketing practices necessarily means that such practices violate the statute.[62]

39. In any event, even if this were an issue of first impression, applying section 222(b) to prohibit retention marketing based on *any* carrier-to-carrier information — including LNP information submitted by the Competitive Carriers on behalf of facilities-based competitive voice service providers — would be compelled by the plain language of the statute. When Verizon "receives or obtains" LSRs containing carrier change information from the Competitive Carriers, the only reason that exchange of information occurs is for "purposes of providing any telecommunications service"[63] — namely, the Competitive Carriers' provision of wholesale telecommunications services to Complainants.[64] Indeed, the use of "any" to modify "telecommunications service" makes plain that Congress sought to apply the provision expansively, as the Commission concluded.[65] Furthermore, it is clear that the Competitive Carriers are common carriers providing "telecommunications services" to Complainants.[66]

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[62] *See Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 127 S. Ct. 1513, 1519 (2007) (holding that "to violate a regulation that lawfully implements" a provision of the Communications Act "*is* to violate the statute") (emphasis in original); *Alexander v. Sandoval*, 532 U.S. 275, 284 (2001) (noting that "it is meaningless to talk about a separate cause of action to enforce the regulations apart from the statute").

[63] 47 U.S.C. § 222(b).

[64] *See Time Warner Cable Declaratory Ruling*, 22 FCC Rcd at 3519 ¶ 13 (describing with approval arrangements by which competitive carriers provide wholesale telecommunications services to retail VoIP providers).

[65] *1998 Slamming Order*, 14 FCC Rcd at 1572 ¶ 106 n.340.

[66] Johnson Aff. ¶¶ 2-5; Frendberg Aff. ¶ 2; Solis Aff. ¶ 7; Davis Aff. ¶¶ 9-61; Sprint Aff. ¶ 4; *see also, e.g.*, *Consolidated Commc'ns of Fort Bend Co. v. Pub. Util. Comm'n of Tex.*, 497 F. Supp. 2d 836 (W.D. Tex. 2007); *Sprint Commc'ns Co. v. Neb. Pub. Serv. Comm'n*, No. 4:05CV3260, 2007 WL 282181 (D. Neb. Sept. 7, 2007); *Berkshire Tel. Corp. v. Sprint Commc'ns Co.*, No. 05-CV-6502 CJS, 2006 WL 3095665 (W.D.N.Y. Oct. 30, 2006).

40. Even assuming *arguendo* that the reference to "telecommunications service" in section 222(b) must refer to *Verizon's* provision of service in this context, as Verizon has asserted,[67] the Commission has reasonably concluded that the type of carrier-to-carrier service that Verizon provides to Complainants' Competitive Carrier partners is encompassed by section 222(b).[68] Verizon concedes that its provision of unbundled network facilities would qualify as a request for carrier-to-carrier service within the ambit of section 222(b).[69]

41. Verizon's provision of local number portability — for which it insists that requesting carriers submit a Local *Service* Request — is no different. In each case, Verizon is providing a wholesale input that is a necessary component of a retail telecommunications service, and thus customarily regulated as a telecommunications service itself.[70] As noted above, Verizon (like all carriers) is obliged under the Act and Commission regulations to "provide" number portability.[71] Moreover, a carrier's obligation to "provide" number portability is triggered by a "request" for such provision from another carrier.[72] These regulatory provisions

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[67] *See, e.g.*, Exhibit M at 6.

[68] *See 1998 Slamming Order*, 14 FCC Rcd at 1568 ¶ 99 ("The information contained in a submitting carrier's change request is proprietary information because it must submit that information to the executing carrier in order to obtain provisioning of service for a new subscriber. Therefore, pursuant to section 222(b), the executing carrier may only use such information *to provide service to the submitting carrier, i.e., changing the subscriber's carrier*, and may not attempt to verify that subscriber's decision to change carriers.") (emphasis added); *see also Third Slamming Reconsideration Order*, 18 FCC Rcd at 5102 ¶ 7 (confirming that the carrier executing a change request may only use proprietary information "to provide service to the submitting carriers (*i.e.*, changing the subscriber's carrier)").

[69] *See, e.g.*, Exhibit M at 6.

[70] *See* Johnson Aff. ¶¶ 8-9.

[71] 47 C.F.R. §§ 52.21-52.34; 47 U.S.C. § 251(b)(2).

[72] 47 C.F.R. § 52.21(b)(1) (referring to "another carrier" making "a specific request for the provision of number portability"); § 52.21(b)(2)(i) (all certified LECs and CMRS carriers "must be permitted to make a request for the provision of number portability"); § 52.21(b)(2)(ii) (carriers must "submit requests for deployment" of number portability in top 100 MSAs at least

show that number portability is a function that one carrier provides to another carrier. That function is requested by other carriers, and, in cases where it has not been deployed, the other carrier is entitled to it only in areas where that carrier will be operational. In addition, Verizon's wholesale organization offers what it markets as an "LNP service," which it states is available under tariff or commercial agreement.[73] In this regard, number portability is directly analogous to other functionalities that incumbent LECs must provide to other carriers, such as UNEs, interconnection, and resale under sections 251(c)(3), 251(c)(2), and 251(c)(4) of the Act,[74] and the obligation to execute PIC changes promptly and without unreasonable delay.[75]

42. Not only is there no support in the statutory language or the Commission's rules for a narrow reading of section 222(b), but interpreting the Act to protect carrier-to-carrier information submitted by UNE-based and resale carriers, but not facilities-based carriers, would undercut the Commission's consistent policies favoring facilities-based competition.[76] Indeed,

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9 months before regulatory deadline for deployment); § 52.21(b)(2)(iii) (LEC must make available lists of switches in which number portability has and has not "been requested"); § 52.21(b)(2)(iv) (LEC must deploy number portability "upon request" in non-top-100 MSAs according to various timelines); § 52.21(c) (carriers obliged to make number portability available "within six months after a specific request" by another carrier, within all areas where the requesting carrier "is operating or plans to operate").

[73] Verizon LNP Database Query Service, *available at* http://www22.verizon.com/wholesale/solutions/solution/LNP%2BQuery%2BSvc.html.

[74] 47 U.S.C. §§ 251(c)(3), (c)(2), (c)(4).

[75] *See* 47 C.F.R. § 64.1120(a)(2).

[76] *See, e.g.*, *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2535 ¶ 3 (2005) (seeking to "spread the benefits of facilities-based competition to all consumers"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17026 ¶ 70 n.233 (2003) ("Facilities-based competition also increases the likelihood that new entrants will find and implement more efficient technologies, thus benefiting consumers.") (subsequent history omitted); *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004) (stating that "the purpose of the Act . . . is to stimulate competition — preferably genuine, facilities-based competition"); *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, 16 FCC

Verizon has long espoused the view that only facilities-based competition delivers meaningful benefits to consumers,[77] making its cramped reading of the Act in an effort to disfavor such competitors plainly unpersuasive. Ironically, Verizon has trumpeted in this proceeding the benefits of facilities-based competition in a misguided effort to justify the unlawful retention marketing at issue here.[78] It is difficult to see how the Commission could promote facilities-based competition — as Verizon believes it should — by using a contorted reading of section 222(b) to deny facilities-based competitors the basic protections afforded to resellers and UNE-based service providers.

43. In giving section 222(b) its plain (and broad) meaning, the Commission pointed to compelling public policy considerations regarding the importance of *neutral* execution of carrier change requests. As noted above, the Complainants are compelled to rely on Verizon to port customers' telephone numbers; they (and the Competitive Carriers) cannot effect ports unilaterally.[79] Accordingly, the Commission has recognized that a carrier executing a change order plays two distinct roles that must not be blurred. Insofar as a LEC functions as an

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Rcd 20641, 20644-45 ¶ 5 (2001) ("[F]acilities-based competition, of the three methods of entry mandated by the Act, is most likely to bring consumers the benefits of competition in the long run by providing incentives for both incumbents and competitors to invest and innovate, and will permit both the Commission and the states to reduce regulation.") (citing *Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3701 ¶ 7 (1999)).

[77] *See, e.g.*, Reply Comments of the Verizon Telephone Companies, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, at 27 (filed July 17, 2002) ("Nor is there any real dispute that the consumer benefits from facilities-based competition will offset any conjectured 'waste' from duplication. When CLECs use their own facilities, they have strong incentives to reduce production costs, increase output, and provide innovative services. Moreover, when faced with competition from facilities-based rivals, incumbents have similar incentives to cut costs and innovate."); *id.* at 38-39 (referring to "Congress's core goal of promoting facilities-based competition").

[78] *See, e.g.*, Exhibit M at 2.

[79] *See, e.g.*, *VoIP LNP Order* ¶ 32 (noting that LECs are responsible for "technical execution of the port" requested by a submitting carrier); Johnson Aff. ¶¶ 7-8; LNP Process Flow Chart.

"executing carrier," it "should be a neutral party."[80] Because LECs also function as competitors, the Commission's retention marketing restriction is explicitly designed to avoid a conflict of interest and to "prevent[] the executing carrier from shifting into a competitive role against the submitting carrier using carrier proprietary information."[81] Verizon seeks to eviscerate this clear distinction by freely sharing information it gains as an executing carrier with its retail operations for retention marketing purposes.

44. While Verizon claims that its outreach to consumers during the pendency of LNP requests *benefits* consumers, the Commission has expressly rejected that contention. In fact, Verizon's predecessor companies unsuccessfully sought forbearance from the retention marketing restriction nearly a decade ago, based on the same claims regarding the supposedly procompetitive effects of its conduct. For example, GTE asserted that "[t]he clearest and most vital opportunity for competition to work its magic for customers is precisely when the customer is changing carriers."[82] Similarly, Bell Atlantic argued that eliminating the marketing restrictions would "serve[] the public interest by giving customers an opportunity to negotiate the best deal from two or more competing providers."[83] In response, the Commission concluded that "consumers' substantial interests in a competitive and fair marketplace would be undermined if

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[80] *1998 Slamming Order*, 14 FCC Rcd at 1574 ¶ 109.

[81] *Id.* at 1575 ¶ 109.

[82] GTE Petition for Forbearance, Reconsideration, and/or Clarification, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, at 35 (filed May 26, 1998).

[83] Petition of Bell Atlantic for Partial Reconsideration and Forbearance, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, at 19 (filed May 26, 1998).

[the retention marketing] restriction was not enforced."[84] The Commission "acknowledge[d] that in the short-run allowing carriers to use carrier proprietary information to trigger retention campaigns may result in lower rates for some individual customers," but it found that consumers would not benefit "over the long-term."[85] Thus, the Commission expressly found that retention marketing based on carrier change information harms the competitive process, and, in turn, consumers. If Verizon wants to revisit these policy judgments, it must file a petition for rulemaking, rather than granting itself relief the Commission expressly denied.

45. Verizon cannot find refuge in the narrow exception to the retention marketing prohibition for information obtained "through *independent*, retail means."[86] Verizon has suggested that its retention marketing is triggered by retail service disconnect reports, rather than the LSRs submitted by Complainants' carrier partners.[87] That is wordplay. The retail disconnect information obviously is not "independent" from the carrier change information obtained from the LSR, since the disconnect report flows directly and exclusively from the LSR itself (and in some cases may *be* the LSR itself). Indeed, the Commission has specifically considered the relevance of retail disconnect reports and ruled that they may be used to trigger marketing only

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[84] *CPNI Reconsideration Order*, 14 FCC Rcd at 14452 ¶ 84.

[85] *Id.* at 14452-53 ¶ 85. It is no wonder that the Commission was not persuaded by incumbents' policy arguments to the contrary. Retention marketing occurs at a time when consumers are least able to compare the new service with Verizon's, for the simple reason that the consumer has not yet *used* the competitor's service. *After* the competitive service is established and the consumer has used it, the consumer can evaluate for him- or herself whether it is equal or superior in value to the now-replaced Verizon service. The Commission's longstanding distinction between *retention* marketing—which is prohibited—and win-back marketing—which is permitted—is a well-grounded policy determination. *See also* Frendberg Aff. ¶ 8.

[86] *Id.* at 14450 ¶ 79 (emphasis added).

[87] *See, e.g.*, Exhibit M at 4.

"*after* the carrier change has been implemented," *i.e.*, "in executing carriers' *winback* efforts."[88] Thus, the Commission's reference to "independent, retail means" can only mean information supplied *directly by customers themselves* to retail marketing personnel, and the Commission recognized that such contacts represent "the exception, not the rule."[89] By contrast, Verizon's "exception" theory would permit retention marketing in *all* cases — completely devouring the rule — as long as Verizon passes the tainted information from its wholesale organization to its retail division before making use of it. Allowing such information laundering would render the statute and the Commission's orders interpreting it meaningless.

46. Nor can there be any credible argument that, when a Competitive Carrier submits an LSR to Verizon requesting a number port, its purported status as an agent of the retail customer takes the request outside section 222(b)'s prohibition against use of *carrier-to-carrier* information for retention marketing.[90] Such a claim fundamentally mischaracterizes the nature of LNP, which, as noted above, is requested by and provided to *carriers*, not retail *customers*.[91] Accordingly, the Commission's orders construing section 222(b) make clear that even if a submitting carrier can for some purposes be construed as an "agent" of the retail customer, this has no bearing on the protection afforded to any carrier change information the submitting carrier provides. In particular, "when an executing carrier receives a carrier change request, section 222(b) prohibits the executing carrier from using that information to market services to that

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[88] *Third Slamming Reconsideration Order*, 18 FCC Rcd at 5110 ¶ 27 (emphases added).

[89] *CPNI Third R&O*, 17 FCC Rcd at 14917 ¶ 131 n.302.

[90] *See, e.g.*, Exhibit M at 4.

[91] *See, e.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21427 ¶ 163 (1996) (noting that "number portability is provided by the incumbent LEC to competitors"); 47 C.F.R. §§ 52.21(b), (c).

consumer," period.[92] Whether an agency relationship exists is beside the point. In fact, virtually every carrier-to-carrier request is made on behalf of the retail customer; for example, a carrier that requests UNEs from Verizon undoubtedly does so to serve its retail customer, just as facilities-based carriers do in submitting LNP requests. Thus, if characterizing the submission of a carrier-to-carrier request as a request by an agent of the customer were sufficient to alter the executing carrier's statutory responsibilities, Verizon would effectively evade virtually all of its statutory inter-carrier obligations.

47. Finally, Verizon's suggestion that it does not function as an executing carrier when it receives LNP requests is entirely without merit.[93] The Commission's rules define an executing carrier as "any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed."[94] As explained above, Verizon must undertake specific actions before a port can be effected, and plainly, these steps "effect a request that a subscriber's telecommunications carrier be changed." The Commission recently made clear in the *VoIP LNP Order* that such actions taken by competitive carriers that serve as "numbering partners" to VoIP providers constitute "technical execution of the port."[95] By the same token, when Verizon acts on an LSR from one of the Complainants or its numbering partner, its actions *also* constitute "technical *execution* of the port" — *i.e.*, it serves as the "executing carrier." In this regard, the rule defines an "executing carrier" as a carrier that performs all tasks necessary for "a

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[92] *1998 Slamming Order*, 14 FCC Rcd at 1572 ¶ 106; *see also Third Slamming Reconsideration Order*, 18 FCC Rcd at 5110 ¶ 28 (explaining that the retention marketing prohibition applies to "specific information . . . obtained from submitting carriers" without regard for the fact that submitting carriers may make requests on behalf of retail customers).

[93] *See, e.g.*, Exhibit M at 7.

[94] 47 C.F.R. § 64.1100(b).

[95] *VoIP LNP Order* ¶ 32.

subscriber's telecommunications carrier to be *changed*."[96] In the context of facilities-based competition, a subscriber's carrier has not been "changed" until the old carrier's service is disconnected and the new carrier's service established.[97] As a result, the "executing carrier" must both port the number *and* terminate the customer's existing service to "effect" the carrier change. Without question, therefore, in the context of this Complaint — that is, a customer switching from one facilities-based carrier to another — the original carrier is an "executing carrier" within the meaning of the Commission's. Therefore, Verizon must provide these functions in a neutral manner, without exploiting the information it receives as an executing carrier for the benefit of its own retail operations.

48. The Commission has repeatedly relied on this understanding of its rules in finding one facilities-based carrier liable for slamming another facilities-based carrier's customer.[98] Indeed, if Verizon were permitted to avoid characterization as an executing carrier in these circumstances, the Commission's slamming rules would have no application to changes in a customer's local carrier, as opposed to a customer's long distance carrier — a result at odds not only with Commission enforcement proceedings but with the core policies that animate the slamming prohibitions.[99]

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[96] 47 C.F.R. § 64.1100(b) (emphasis added).

[97] *See* Johnson Aff. ¶ 5.

[98] *See, e.g., Embarq Communications, Inc.; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 22 FCC Rcd 1196 (2007) (finding that Embarq slammed a TWC customer); *AT&T Corp.; Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 20 FCC Rcd 1391 (2005) (finding that AT&T slammed a Comcast customer).

[99] *See, e.g., Third Slamming Reconsideration Order*, 18 FCC Rcd at 5133 ¶ 89 (noting that slamming prohibitions apply "to any carrier acting as an executing carrier").

Count Two: Violation of 47 U.S.C. § 222(a)

49. Complainants incorporate by reference the allegations stated in paragraphs 1 through 26 above.

50. Verizon has violated and continues to violate section 222(a) of the Act. Section 222(a) provides that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers . . . ."[100]

51. In explaining its prohibition against use of "carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns," the Commission specifically cited section 222(a)'s "creat[ion] of a duty to protect the confidentiality of proprietary information of other carriers," in addition to section 222(b).[101] This independent statutory duty entails an obligation to refrain from using the proprietary information contained in LSRs submitted by the Competitive Carriers for any purpose other than terminating service and executing the LNP request. As the Commission has explained, carrier change information "cannot be used for any purpose other than to provide the service requested by the submitting carrier."[102]

52. The protection of proprietary information necessarily includes restricting the use of that information to the purpose or objective for which it was provided. This is evident from the Commission's longstanding rules regarding the use of confidential information in complaint cases. Section 1.731(b) of the rules provides that "materials marked as proprietary" are "only for

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[100] 47 U.S.C. § 222(a).

[101] *CPNI Reconsideration Order*, 14 FCC Rcd at 14450 ¶ 77.

[102] *Third Slamming Reconsideration Order*, 18 FCC Rcd at 5110 ¶ 28.

use in prosecuting or defending a party to the complaint action."[103] Section 1.731(c) states that persons who have access to proprietary information "shall not use the information in any activity or function other than the prosecution or defense in the case before the commission."[104] In the case at hand, this shows that it violates section 222(a)'s directive to "protect" carrier proprietary information — here, the knowledge that a particular customer is leaving Verizon for a competitor — for Verizon to *use* that information for any purpose other than that for which it is provided, namely, effecting the number port and terminating the customer's service with Verizon.

53. Section 222(a) covers a broader range of conduct than does section 222(b). A carrier's duty to protect proprietary information received from another carrier as set forth in section 222(a) contains within it the obligation to use that information only for the specific purpose for which that information was supplied. This prohibits Verizon from using such proprietary information for purposes of retention marketing, or, indeed, for any purpose other than executing the number port and service disconnection. Moreover, section 222(a) includes no language limiting the type of information that is protected; rather, it refers broadly to "proprietary information *of, and relating to*, other telecommunications carriers."[105] By contrast, section 222(b) applies when the information at issue is obtained or received for purposes of providing "any telecommunications service."[106]

54. The proprietary information on which Verizon has relied in its retention marketing efforts both belongs and "relat[es] to" other telecommunications carriers —

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[103] 47 C.F.R. § 1.731(b).

[104] *Id.* § 1.731(c).

[105] 47 U.S.C. § 222(a) (emphasis added).

[106] *Id.* § 222(b).

specifically, the Competitive Carriers. Accordingly, such information is encompassed by the protections set forth in section 222(a).

Count Three: Violation of 47 U.S.C. § 201(b)

55. Complainants incorporate by reference the allegations stated in paragraphs 1 through 26 above.

56. Verizon has violated and continues to violate section 201(b) of the Act. Section 201(b) prohibits carriers from engaging in any "practice," for and in connection with a communications service, that is "unjust or unreasonable."[107]

57. The Commission has "broad authority" to find that Verizon violated section 201(b).[108] The Commission has not had occasion to rule conclusively that the use of carrier-to-carrier information to trigger retention marketing violates section 201(b), because it has focused on the violation of the more specific provisions in section 222. But the Commission has made clear that analogous misconduct in the execution of carrier change orders may independently violate section 201(b).[109]

58. Indeed, the Commission's repeated finding that retention marketing based on carrier change information is anticompetitive compels the conclusion that it is unjust and unreasonable. In particular, the Commission has determined that retention marketing of the sort at issue here impedes competition by allowing an executing carrier to exploit its advance notice

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[107] *Id.* § 201(b).

[108] *See, e.g., Business Discount Plan, Inc.; Apparent Liability for Forfeiture*, Order on Reconsideration, 15 FCC Rcd 24396, 24399 ¶ 8 (2000).

[109] *See, e.g., 1998 Slamming Order*, 14 FCC Rcd at 1570 ¶ 103 ("any carrier that imposes unreasonable delays in executing carrier changes . . . will be in violation of [the Commission's] verification procedures or acting unreasonably in violation of section 201(b)").

of a carrier change.[110] An executing carrier has a duty to "remain[] in its role as a neutral administrator of carrier changes," rather than "shift[] into a competitive role against the submitting carrier using carrier proprietary information."[111] As noted above, Verizon's predecessor companies sought forbearance from the retention marketing restrictions at issue on the ground that they were not necessary to protect competition or consumers, but the Commission disagreed.[112] A fortiori, the Commission's characterization of retention marketing as anticompetitive and harmful to consumer welfare is sufficient to demonstrate a violation of section 201(b).

Prayer for Relief

59. WHEREFORE, Complainants ask that the Commission:

a. enjoin Verizon from continuing its retention marketing based on carrier change information.

b. award damages to Complainants based on Verizon's unlawful inducements to customers to cancel their orders for the Competitive Services, in amounts to be determined in separate proceedings pursuant to section 1.722(d) of the Commission's rules.

c. award such additional relief as may be just and reasonable.

Respectfully submitted,

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[110] *CPNI Reconsideration Order*, 14 FCC Rcd at 14450 ¶ 78.

[111] *1998 Slamming Order*, 14 FCC Rcd at 1575 ¶ 109.

[112] *CPNI Reconsideration Order*, 14 FCC Rcd at 14452 ¶ 84.

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