

STAMP & RETURN

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
JUL - 8 2008
RECEIVED
VERIZON CALIFORNIA INC., et al.,

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

VERIZON CALIFORNIA INC., et al.,)	
)	
Petitioners,)	
)	
v.)	No. 08-1234
)	
FEDERAL COMMUNICATIONS)	
COMMISSION and UNITES STATES of)	
AMERICA)	
)	
Respondents.)	
)	

**OPPOSITION OF AMICUS CURIAE, THE VOICE ON THE NET
COALITION, INC., TO MOTION OF VERIZON FOR STAY PENDING
JUDICIAL REVIEW AND FOR EXPEDITED TREATMENT**

Michael B. Hazzard
WOMBLE CARLYLE SANDRIDGE & RICE,
PLLC
1401 Eye Street, N.W.,
Seventh Floor
Washington, D.C. 20005
Telephone: (202) 857-4540
Fax: (202)261-0035
mhazzard@wcsr.com

*Counsel for the Voice
on the Net Coalition, Inc.*

July 8, 2008

CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rule 26.1 and Federal Rule of Appellate

Procedure 26.1, The Voice on the Net Coalition, Inc. (“VON Coalition”) submits the following corporate disclosure statement. The VON Coalition is a corporation organized in 1998 under the Nonprofit Corporation Act of the District of Columbia. The VON Coalition does not own or maintain a controlling interest in any public company, nor is it owned or controlled by any public company. The VON Coalition’s members either provide Voice over Internet Protocol (“VoIP”) services or provide equipment or other services to VoIP service providers. The VON Coalition is the leading public policy organization for the VoIP industry, educating regulators and legislators worldwide about the benefits of VoIP.

The VON Coalition opposes Petitioners' ("Verizon's") motion for a stay, pending judicial review and for expedited treatment, of the *Order*¹ of the Federal Communications Commission ("FCC") under review in this proceeding. Verizon and the FCC consent to the Coalition's participation in the proceeding as *amicus curiae*.

The Coalition consists of leading companies that provide a diverse array of Voice over Internet Protocol ("VoIP") applications and inputs. The Coalition's membership includes providers of all sizes, including many small VoIP providers. Generally speaking, VoIP applications include broadband-enabled voice offerings and Internet-delivered voice applications. VoIP can include voice communications to and from the traditional public switched telephone network ("PSTN"), as well as voice communications over the public Internet and even private networks. Although Coalition members have varied business plans and market focus, member companies share a common goal: to develop and deliver to all consumers cutting edge voice innovations using the Internet.

In the *Order*, the Commission appropriately focused in part on the issue of the rights and responsibilities of the telecommunications carriers that provide the physical telecommunications network (and thus telecommunications

¹ Memorandum Opinion and Order, *Bright House Networks, LLC v. Verizon California Inc.*, File No. EB-08-MD-002, FCC 08-159 (rel. June 23, 2008) ("*Order*").

services) to VoIP providers, even where the telecommunications carrier may be affiliated with the VoIP provider. The Commission's decision supports Congress's Title II goals of expanding consumer choice for voice communications and encouraging the deployment of broadband services to all consumers, including those in rural areas of the country.

As a general matter, VoIP providers are not "telecommunications carriers" nor do they provide "telecommunications services" as those terms are defined by the Communications Act ("Act"). See *Vonage Holdings Corp. v. FCC*, 498 F.3d 1232, 1237-38 (D.C. Cir. 2007). When providing an offering that involves sending traffic to or receiving traffic from the PSTN, VoIP providers rely on telecommunications services provided by telecommunications carriers. Successful deployment of these services often involves the transfer of traditional telephone numbers from one telecommunications carrier to another.

Put simply, business and residential consumers like to keep their existing telephone numbers when changing voice providers. Local Number Portability ("LNP") is the process by which carriers transfer telephone numbers. During this process, telecommunications carriers are expected to act as "neutrals." *Order* at ¶22. VoIP providers rely on the underlying telecommunications carriers for the provision of telecommunications services, including access to number resources. As a result, smooth operation of the LNP process by all

telecommunications carriers – Verizon, other incumbent local exchange carriers, and competitive local exchange carriers – is critical to Coalition members’ deployment of VoIP services that interoperate with the PSTN.

For well over eight years, and arguably since the passage of the 1996 amendments to the Act, telecommunications carriers have understood that the confidentiality protections contained in section 222 of the Act, 47 U.S.C. § 222, preclude use of information learned solely through the LNP process for retention marketing. *In the Matter of Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14449, ¶78 (1999). Indeed, in the proceeding below, the Commission noted that it was unaware of any other telecommunications carrier using its position in the LNP process to take advantage of proprietary LNP data for targeted retention marketing. *Order* at n.50. And Verizon similarly was unable to identify any source for its “lead list” other than the proprietary information Verizon obtained as a neutral LNP administrator. *Id.* at ¶35.

Verizon for the first time began leveraging proprietary LNP data for retail retention efforts during the summer of 2007. *Id.* at ¶7. The Commission put a stop to Verizon’s unlawful practice in less than a year with the *Order*, released on June 23, 2008. Such rapid action by the Commission demonstrates the

seriousness of Verizon's offense. If the Court were to grant Verizon's stay request, which it should not, Verizon would be free to start again using its role as a neutral in the LNP process to generate leads for its retail marketing arm.

That is not all, however. Faced with Verizon's aggressive use of proprietary LNP information for marketing purposes, the Coalition expects that other carriers would be compelled to follow suit, and adopt similar – or perhaps even more aggressive – tactics if a stay were to issue. As a result, a grant of Verizon's stay request here could serve to convert the neutral LNP process into an anarchic one by virtue of carriers seeking to find the outer limit of acceptable behavior. During any stay, substantial disputes and litigation could arise from responsive LNP leveraging implemented by other carriers in reaction to any on-going Verizon misuse of proprietary LNP data. Maintaining the historic *status quo* (at least prior to Verizon's summer 2007 decision to begin leveraging proprietary LNP information received from other carriers), would merely preserve a state where all carriers, including Verizon, respect their roles as neutral LNP administrators.

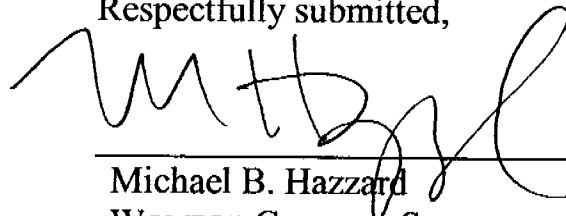
Coalition members work with essentially all telecommunications carriers and a wide array of business and residential consumers to develop and deploy VoIP applications. The neutral LNP process – reaffirmed in the *Order* – has enabled carriers to work cooperatively for a decade or longer to migrate

customers from one network to another while maintaining their telephone numbers. Moreover, enabling Title I VoIP providers to partner with Title II telecommunications carriers creates new service alternatives for all carriers and consumers, which in turn encourages infrastructure investment and the efficient utilization and key resources, such as telephone numbers and the LNP process itself.

Only Verizon believes it has a right to leverage its role as a neutral administrator to use proprietary LNP information for “sifting,” *Order* at ¶7, retail customer lists for targeted marketing. The Commission rejected Verizon’s unique belief, based on the Commission’s reasonable construction of the statute, to which this Court grants substantial deference.

The Court should deny Verizon’s motion.

Respectfully submitted,



Michael B. Hazzard
WOMBLE CARLYLE SANDRIDGE & RICE,
PLLC
1401 Eye Street, N.W.,
Seventh Floor
Washington, D.C. 20005
Telephone: (202) 857-4540
Fax: (202)261-0035
mhazzard@wcsr.com
*Counsel for the Voice
on the Net Coalition, Inc.*

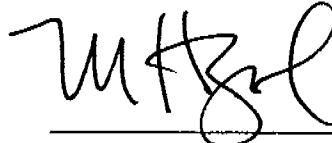
July 8, 2008

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUL - 8 2008

CERTIFICATE OF SERVICE

RECEIVED
Michael B. Hazzard, do hereby certify that on this 8th day of July 2008, I caused true and correct copies of the foregoing **OPPOSITION OF AMICUS CURIAE, THE VOICE ON THE NET COALITION, INC., TO MOTION OF VERIZON FOR STAY PENDING JUDICIAL REVIEW AND FOR EXPEDITED TREATMENT** to be served upon each of the parties identified below by hand delivery.



Michael B. Hazzard

Federal Communications

Commission

Joel Marcus
Federal Communications
Commission
445 12th Street, SW, Room 8-A741
Washington, D.C. 20554

Aaron M. Panner
Kelly P. Dunbar
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, D.C. 20036
Tel.: (202) 326-7900
Fax: (202) 326-7999

Comcast Corporation

Mark D. Schneider
Jenner & Block LLP
Tel: (202) 639-6000
1099 New York Avenue, NW,
Suite 900
Washington, DC 20001-4412

Andrew Gerald McBride
Wiley Rein LLP
Tel.: (202) 719-7000
1776 K Street, NW,
11th Floor
Washington, DC 20006-2359

Bright House Networks, LLC

Christopher William Savage
Davis Wright Tremaine LLP
Tel.: (202) 973-4200
1919 Pennsylvania Avenue, NW,
Suite 200
Washington, DC 20006-3402

**National Cable &
Telecommunications
Association**

Daniel L. Brenner
Neal M. Goldberg
Tel.: (202) 222-2300
25 Massachusetts Avenue, NW,
Suite 100
Washington, DC 20001-1431

Time Warner Cable, Inc.

Matthew A. Brill
Latham & Watkins
Tel.: (202) 637-2200
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304

United States Telecom Association

Bennett L. Ross
Wiley Rein LLP
Tel. (202) 719-7000
1776 K Street, NW, 11th Floor
Washington, DC 20006-2359

Verizon

William P. Barr
1515 North Courthouse Road,
Suite 500
Arlington, VA 22201
Tel: (703) 351-3179